

HOUSE BILL No. 1281

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-13-9.3; IC 36-1-14-3.

Synopsis: Local government investments. Provides that if the proceeds from the sale of a capital asset owned by a political subdivision exceed \$25,000,000, the fiscal body of the political subdivision may: (1) require some or all of the proceeds to be deposited into a separate fund; and (2) authorize the proceeds to be invested in the same manner as money in the next generation trust fund may be invested. Specifies that if the political subdivision enters into an agreement with investment management professionals or investment advisors regarding investment of the proceeds, the agreement must be a fee-for-service agreement. Provides that the proceeds may be expended from the separate fund only upon appropriation by the fiscal body of the political subdivision, and that the proceeds may be transferred from the separate fund to another fund only upon approval by the fiscal body of the political subdivision. Specifies that an expenditure or transfer of any money that is part of the principal of the fund may be made only if the expenditure or transfer is approved by each member of the fiscal body of the political subdivision and by each member of the executive of the political subdivision. Provides that in the case of a county that receives or will receive at least \$25,000,000 from the sale of a capital asset, the county legislative body and the county fiscal body may, by adopting substantially similar ordinances, establish a charitable nonprofit community foundation to hold some or all of the proceeds of the sale of the capital asset in trust for the benefit of the county. Specifies that the board of trustees of the foundation consists of the members of the county legislative body and the members of the county fiscal body. Specifies certain conditions on the investment and use of the proceeds.

(Continued next page)

Effective: July 1, 2015.

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January 13, 2015, read first time and referred to Committee on Government and Regulatory Reform.



Digest Continued

Provides that an expenditure or transfer of any money that is part of the principal of the donation may be made only upon unanimous approval of the board of trustees. Provides that to the extent that investment income earned on the principal amount of the donation during a calendar year exceeds 5% of the amount of the principal at the beginning of the calendar year, that excess investment income shall be added to and be considered a part of the principal amount of the donation.



Introduced

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1281

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-13-9.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]:
4 **Chapter 9.3. Investment of Proceeds Received From the Sale of**
5 **Certain Capital Assets**
6 **Sec. 1. As used in this chapter, "capital asset" means a building,**
7 **a fixture, a structure, an improvement, or land.**
8 **Sec. 2. As used in this chapter, "fund" means a fund established**
9 **under section 4 of this chapter.**
10 **Sec. 3. (a) Subject to the requirements of this chapter, the fiscal**
11 **body of a political subdivision may adopt an ordinance (in the case**
12 **of a county or municipality) or a resolution (in the case of any**
13 **other political subdivision) to authorize the investment of proceeds**
14 **from the sale of a capital asset owned by the political subdivision.**

2015

IN 1281—LS 6864/DI 73



1 **A fiscal body may adopt an ordinance under this subsection before,**
 2 **after, or at the time of the sale of the capital asset.**

3 **(b) Proceeds from the sale of a capital asset owned by a political**
 4 **subdivision may be invested as provided in this chapter only if:**

5 **(1) the total amount received (either before July 1, 2015, or**
 6 **after June 30, 2015) or that will be received from the sale of**
 7 **the capital asset exceeds twenty-five million dollars**
 8 **(\$25,000,000); and**

9 **(2) the fiscal body of the political subdivision has adopted an**
 10 **ordinance or a resolution, as described in subsection (a), that**
 11 **applies to the investment of proceeds from the sale of that**
 12 **particular capital asset.**

13 **Sec. 4. (a) If the fiscal body of a political subdivision adopts an**
 14 **ordinance or a resolution under section 3 of this chapter for a**
 15 **particular capital asset, the fiscal officer of the political subdivision**
 16 **shall establish a separate fund into which some or all of the**
 17 **proceeds from the sale of the capital asset shall be deposited. All**
 18 **interest and other income earned on investments of money in the**
 19 **fund shall be deposited in the fund.**

20 **(b) Notwithstanding IC 5-13 or any other law, the investing**
 21 **officer of the political subdivision may invest money in the fund in**
 22 **the same manner as money in the next generation trust fund may**
 23 **be invested under IC 8-14-15-8(b). However, if a political**
 24 **subdivision enters into an agreement with investment management**
 25 **professionals or investment advisors regarding investment of**
 26 **money in the fund, the agreement:**

27 **(1) must be a fee-for-service agreement; and**

28 **(2) may not provide that the compensation of the investment**
 29 **management professionals or investment advisors is**
 30 **determined in whole or in part by the amount or percentage**
 31 **of the investment income earned on money in the fund.**

32 **(c) Money in the fund may not be expended or transferred from**
 33 **the fund, except as provided in this chapter.**

34 **Sec. 5. The following apply to money deposited in the fund:**

35 **(1) The principal of the fund consists of:**

36 **(A) the amount deposited in the fund as the proceeds from**
 37 **the sale of the capital asset; plus**

38 **(B) any investment income that is:**

39 **(i) earned on money in the fund; and**

40 **(ii) added to the principal of the fund as provided in**
 41 **subdivision (2).**

42 **(2) To the extent that investment income earned on money in**



1 the fund during a calendar year exceeds five percent (5%) of
 2 the amount of the principal at the beginning of the calendar
 3 year, that excess investment income shall, for purposes of this
 4 chapter, be added to and be considered a part of the principal
 5 of the fund.

6 (3) Money may be expended from the fund only upon
 7 appropriation by the fiscal body of the political subdivision.
 8 Money may be transferred from the fund to another fund of
 9 the political subdivision only if the fiscal body of the political
 10 subdivision authorizes the transfer by ordinance (in the case
 11 of a county or municipality) or by resolution (in the case of
 12 any other political subdivision). However, an expenditure or
 13 transfer of any money that is part of the principal of the fund
 14 may be made only if the expenditure or transfer is approved:

15 (A) by each member of the fiscal body of the political
 16 subdivision; and

17 (B) by each member of the executive of the political
 18 subdivision.

19 **Sec. 6.** The department of local government finance may not
 20 reduce a political subdivision's property tax levy under
 21 IC 6-1.1-18.5 or any other law on account of money deposited in a
 22 fund established under this chapter.

23 SECTION 2. IC 36-1-14-3 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2015]: **Sec. 3.** (a) This section applies to a county in which the
 26 total amount received by the county (either before July 1, 2015, or
 27 after June 30, 2015) or that will be received by the county from the
 28 sale of a capital asset exceeds twenty-five million dollars
 29 (\$25,000,000).

30 (b) As used in this section, "foundation" mean a charitable
 31 nonprofit community foundation established under subsection (c).

32 (c) The county legislative body and the county fiscal body may,
 33 by adopting substantially similar ordinances, establish a charitable
 34 nonprofit community foundation to hold some or all of the
 35 proceeds of the sale of the capital asset in trust for the benefit of
 36 the county. A county legislative body and a county fiscal body may
 37 adopt ordinances under this subsection before, after, or at the time
 38 of the sale of the capital asset. The members of the county
 39 legislative body and the members of the county fiscal body shall
 40 serve as the board of trustees of a foundation established under this
 41 section. A member's term on the board of trustees expires when the
 42 member's term on the county legislative body or the county fiscal



- 1 body expires.
- 2 (d) The board of trustees of a foundation established under this
- 3 section may contract with investment managers, investment
- 4 counsel, trust companies, banks, or other finance professionals to
- 5 assist the board in its investment program. Money held by the
- 6 foundation must be invested in accordance with the terms of an
- 7 investment policy that:
- 8 (1) is approved by the board of trustees; and
- 9 (2) complies with the restrictions and requirements set forth
- 10 in subsections (e) and (f).
- 11 (e) Money held by the foundation may be invested in either or
- 12 both of the following:
- 13 (1) Mutual or pooled funds.
- 14 (2) Nonmutual or nonpooled funds.
- 15 (f) Investments with nonmutual or nonpooled funds are subject
- 16 to the following restrictions and requirements:
- 17 (1) Each investment manager:
- 18 (A) shall have full investment discretion with regard to
- 19 security selection consistent with the investment policies
- 20 approved by the board of trustees and is expected to
- 21 maintain a fully invested portfolio with not more than five
- 22 percent (5%) remaining in cash;
- 23 (B) shall immediately notify the board of trustees in
- 24 writing of any material changes in the investment outlook,
- 25 strategy, portfolio structure, ownership, or senior
- 26 personnel;
- 27 (C) may not make a purchase that would cause a position
- 28 in the portfolio to exceed five percent (5%) of the
- 29 outstanding voting shares of the company or invest in a
- 30 company with the intent of controlling management;
- 31 (D) may not invest in nonmarketable securities;
- 32 (E) may not invest in nondollar denominated securities
- 33 unless the manager is an international manager; and
- 34 (F) in the case of an international manager, shall maintain
- 35 appropriate diversification of the currency and country
- 36 exposure of the investments.
- 37 (2) An equity investment manager:
- 38 (A) may not make investments in any one (1) company that
- 39 exceed eight percent (8%) of the manager's total portfolio
- 40 as measured at market;
- 41 (B) shall vote proxies and share tenders in a manner that
- 42 is in the best interest of the foundation and is consistent



- 1 with the investment policies approved by the board of
 2 trustees;
 3 (C) shall maintain at least twenty (20) positions in the
 4 portfolio to provide adequate diversification; and
 5 (D) shall diversify investments by economic sector so that
 6 no sector comprises more than one hundred fifty percent
 7 (150%) of the benchmark sector weighting. If market
 8 appreciation causes the sector weighting to exceed one
 9 hundred fifty percent (150%) of the benchmark weight, the
 10 manager shall bring the portfolio weighting back into
 11 compliance with this clause within ninety (90) days.
- 12 (3) A fixed income manager:
- 13 (A) shall maintain an overall weighted average credit
 14 rating of at least:
- 15 (i) "Aa" as rated by Moody's; or
 16 (ii) "AA" as rated by Standard & Poor's;
- 17 (B) may not hold more than ten percent (10%) of the
 18 portfolio in investments rated below investment grade (for
 19 purposes of this clause, split rated securities are governed
 20 by the lower rating);
- 21 (C) shall maintain a duration within plus or minus twenty
 22 percent (+/-20%) of the effective duration of the
 23 benchmark index;
- 24 (D) may not invest more than twenty-five percent (25%) of
 25 the portfolio in any one (1) economic sector with respect to
 26 the corporate sector of the portfolio; and
- 27 (E) may not make investments in any one (1) issuer that
 28 exceed eight percent (8%) of the manager's total portfolio
 29 as measured at market, except for securities issued by the
 30 United States or its agencies.
- 31 (g) The following apply if a foundation is established under this
 32 section:
- 33 (1) The county legislative body shall determine the amount of
 34 the proceeds from the sale of the capital asset that shall be
 35 transferred by the county fiscal officer to the foundation.
- 36 (2) The principal amount of the donation to the foundation
 37 consists of the following:
- 38 (A) The amount transferred to the foundation under
 39 subdivision (1).
 40 (B) Any donations, gifts, or other money received from any
 41 private source.
 42 (C) Any investment income that is:



- 1 **(i) earned on the principal of the donation; and**
- 2 **(ii) added to the principal of the donation as provided in**
- 3 **subdivision (3).**
- 4 **(3) To the extent that investment income earned on the**
- 5 **principal amount of the donation during a calendar year**
- 6 **exceeds five percent (5%) of the amount of the principal at the**
- 7 **beginning of the calendar year, that excess investment income**
- 8 **shall, for purposes of this section, be added to and be**
- 9 **considered a part of the principal amount of the donation.**
- 10 **(4) An expenditure or transfer of any money that is part of the**
- 11 **principal amount of the donation may be made only upon**
- 12 **unanimous approval of the board of trustees.**

