

HOUSE BILL No. 1440

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-9.5; IC 6-1.1-15-1.

Synopsis: Assessment of common areas for tax purposes. Provides that a common area may not be subjected to a property tax liability in excess of one dollar for any assessment date. Defines "common area" as a parcel of land in a residential development that: (1) is legally reserved for the exclusive use and enjoyment of all lot owners; (2) is owned by the developer, or each lot owner, or a person or entity that holds title to the land for the benefit of the lot owners; and (3) cannot be transferred for value to another party without the approval of the lot owners. Provides that the owner may file a notice of review before the county board of tax appeals concerning a determination not to assess property as a common area. Provides that an owner who is the prevailing party in an action challenging a determination not to assess the property as a common area may recover reasonable attorney's fees from the opposing party.

Effective: Upon passage.

DeVon

January 14, 2015, read first time and referred to Committee on Ways and Means.



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. 1440



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

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

1 SECTION 1. IC 6-1.1-9.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:
4 **Chapter 9.5. Assessment of Common Areas**
5 **Sec. 1. As used in this chapter, "common area" means a parcel**
6 **of land, including improvements, in a residential development that:**
7 **(1) is legally reserved for the exclusive use and enjoyment of**
8 **all lot owners, occupants, and their guests, regardless of**
9 **whether a lot owner makes actual use of the land;**
10 **(2) is owned by:**
11 **(A) the developer, or the developer's assignee, provided**
12 **such ownership is in a fiduciary capacity for the exclusive**
13 **benefit of all lot owners in the residential development, and**
14 **the developer has relinquished all rights to transfer the**



- 1 property other than to a person or entity that will hold title
 2 to the property for the exclusive benefit of all lot owners;
 3 **(B) each lot owner within the residential development,**
 4 **equally or pro rata; or**
 5 **(C) a person, trust, or entity that holds title to the land for**
 6 **the benefit of all lot owners within the residential**
 7 **development; and**
 8 **(3) cannot be transferred for value to another party without**
 9 **the affirmative approval of:**
 10 **(A) all lot owners within the residential development; or**
 11 **(B) not less than a majority of all lot owners within the**
 12 **residential development, if majority approval is permitted**
 13 **under the bylaws or other governing documents of a**
 14 **homeowners association, or similar entity.**

15 **The term includes a lake, pond, street, sidewalk, park, green area,**
 16 **trail, wetlands, signage, or other features or amenities that benefit**
 17 **all lot owners within the residential development.**

18 **Sec. 2. As used in this chapter, "lot owner" means an individual**
 19 **or entity that is the owner of record of a lot, parcel, tract, unit, or**
 20 **interest within a residential development.**

21 **Sec. 3. As used in this chapter, "residential development" means**
 22 **a parcel of land that is subdivided into lots, parcels, tracts, units,**
 23 **or interests:**

24 **(1) all of which include an existing Class 2 structure (as**
 25 **defined in IC 22-12-1-5), or are designated for the**
 26 **construction of a Class 2 structure; and**

27 **(2) each of which is encumbered by substantively identical**
 28 **restrictive covenants concerning one (1) or more servient**
 29 **estates located within the boundaries of the original undivided**
 30 **parcel.**

31 **Sec. 4. Notwithstanding any other provision of this article, a**
 32 **common area may not be subjected to a property tax liability in**
 33 **excess of one dollar (\$1) for any assessment date, provided that the**
 34 **common area meets the following criteria:**

35 **(1) A common area may not be created or maintained for the**
 36 **primary purpose of generating income from persons or**
 37 **entities that are not lot owners.**

38 **(2) Any income produced from a common area must benefit**
 39 **all lot owners through reduced homeowners or maintenance**
 40 **fees that otherwise would be assessed without such income.**

41 **(3) Easements and covenants restricting the use and**
 42 **conveyance of common areas to lot owners must be recorded,**



1 and notice must be provided, to the appropriate county or
2 township assessor not later than December 31 of the calendar
3 year in which the common area is created.

4 **Sec. 5. (a) A county or township assessor shall designate an area**
5 **as a common area after:**

6 (1) receiving notice as provided in section 4(3) of this chapter;
7 and

8 (2) determining that the area:

9 (A) is a common area; and

10 (B) meets the criteria under section 4 of this chapter.

11 (b) If a county or township assessor determines that the area is
12 not a common area, or determines that the area fails to meet the
13 requirements of section 4 of this chapter, then the county or
14 township assessor shall send a written statement to the owner of
15 the common area not later than thirty (30) days after receiving the
16 notice under section 4(3) of this chapter. The written statement
17 shall contain:

18 (1) the specific provisions on which the county or township
19 assessor based the determination; and

20 (2) a statement that the owner of the common area shall have
21 thirty (30) days to address the specific provisions provided in
22 subdivision (1), and to establish the area as a common area
23 that meets the requirements of section 4 of this chapter.

24 (c) If a county or township assessor fails to send a written
25 statement to the owner of a common area as required by this
26 section, then the area for which notice was provided in section 4(3)
27 of this chapter shall be considered a common area for purposes of
28 this chapter.

29 **Sec. 6. A common area may be created at any time during or**
30 **after a residential development is created.**

31 **Sec. 7. An owner of an area may obtain review by the county**
32 **board of tax appeals of a county or township assessor's**
33 **determination under section 5 of this chapter. The owner of an**
34 **area that is the prevailing party in an action to enforce the**
35 **provisions of this chapter may recover the party's reasonable**
36 **attorney's fees from the opposing party.**

37 SECTION 2. IC 6-1.1-15-1, AS AMENDED BY P.L.257-2013,
38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 UPON PASSAGE]: Sec. 1. (a) A taxpayer may obtain a review by the
40 county board of a county or township official's action with respect to
41 either or both of the following:

42 (1) The assessment of the taxpayer's tangible property.



1 (2) A deduction for which a review under this section is
2 authorized by any of the following:

3 (A) IC 6-1.1-12-25.5.

4 (B) IC 6-1.1-12-28.5.

5 (C) IC 6-1.1-12-35.5.

6 (D) IC 6-1.1-12.1-5.

7 (E) IC 6-1.1-12.1-5.3.

8 (F) IC 6-1.1-12.1-5.4.

9 **(3) A determination concerning a common area under**
10 **IC 6-1.1-9.5.**

11 (b) At the time that notice of an action referred to in subsection (a)
12 is given to the taxpayer, the taxpayer shall also be informed in writing
13 of:

14 (1) the opportunity for a review under this section, including a
15 preliminary informal meeting under subsection (h)(2) with the
16 county or township official referred to in this subsection; and

17 (2) the procedures the taxpayer must follow in order to obtain a
18 review under this section.

19 (c) In order to obtain a review of an assessment or deduction
20 effective for the assessment date to which the notice referred to in
21 subsection (b) applies, the taxpayer must file a notice in writing with
22 the county or township official referred to in subsection (a) not later
23 than forty-five (45) days after the date of the notice referred to in
24 subsection (b).

25 (d) A taxpayer may obtain a review by the county board of the
26 assessment of the taxpayer's tangible property effective for an
27 assessment date for which a notice of assessment is not given as
28 described in subsection (b). To obtain the review, the taxpayer must file
29 a notice in writing with the township assessor, or the county assessor
30 if the township is not served by a township assessor. The right of a
31 taxpayer to obtain a review under this subsection for an assessment
32 date for which a notice of assessment is not given does not relieve an
33 assessing official of the duty to provide the taxpayer with the notice of
34 assessment as otherwise required by this article. The notice to obtain
35 a review must be filed not later than the later of:

36 (1) May 10 of the year; or

37 (2) forty-five (45) days after the date of the tax statement mailed
38 by the county treasurer, regardless of whether the assessing
39 official changes the taxpayer's assessment.

40 (e) A change in an assessment made as a result of a notice for
41 review filed by a taxpayer under subsection (d) after the time
42 prescribed in subsection (d) becomes effective for the next assessment



1 date. A change in an assessment made as a result of a notice for review
 2 filed by a taxpayer under subsection (c) or (d) remains in effect from
 3 the assessment date for which the change is made until the next
 4 assessment date for which the assessment is changed under this article.

5 (f) The written notice filed by a taxpayer under subsection (c) or (d)
 6 must include the following information:

- 7 (1) The name of the taxpayer.
- 8 (2) The address and parcel or key number of the property.
- 9 (3) The address and telephone number of the taxpayer.

10 (g) The filing of a notice under subsection (c) or (d):

- 11 (1) initiates a review under this section; and
- 12 (2) constitutes a request by the taxpayer for a preliminary
 13 informal meeting with the official referred to in subsection (a).

14 (h) A county or township official who receives a notice for review
 15 filed by a taxpayer under subsection (c) or (d) shall:

- 16 (1) immediately forward the notice to the county board; and
- 17 (2) attempt to hold a preliminary informal meeting with the
 18 taxpayer to resolve as many issues as possible by:

- 19 (A) discussing the specifics of the taxpayer's assessment or
 20 deduction;
- 21 (B) reviewing the taxpayer's property record card;
- 22 (C) explaining to the taxpayer how the assessment or
 23 deduction was determined;
- 24 (D) providing to the taxpayer information about the statutes,
 25 rules, and guidelines that govern the determination of the
 26 assessment or deduction;
- 27 (E) noting and considering objections of the taxpayer;
- 28 (F) considering all errors alleged by the taxpayer; and
- 29 (G) otherwise educating the taxpayer about:
 - 30 (i) the taxpayer's assessment or deduction;
 - 31 (ii) the assessment or deduction process; and
 - 32 (iii) the assessment or deduction appeal process.

33 (i) Not later than ten (10) days after the informal preliminary
 34 meeting, the official referred to in subsection (a) shall forward to the
 35 county auditor and the county board the results of the conference on a
 36 form prescribed by the department of local government finance that
 37 must be completed and signed by the taxpayer and the official. The
 38 form must indicate the following:

- 39 (1) If the taxpayer and the official agree on the resolution of all
 40 assessment or deduction issues in the review, a statement of:
 - 41 (A) those issues; and
 - 42 (B) the assessed value of the tangible property or the amount



- 1 of the deduction that results from the resolution of those issues
 2 in the manner agreed to by the taxpayer and the official.
- 3 (2) If the taxpayer and the official do not agree on the resolution
 4 of all assessment or deduction issues in the review:
- 5 (A) a statement of those issues; and
 6 (B) the identification of:
- 7 (i) the issues on which the taxpayer and the official agree;
 8 and
 9 (ii) the issues on which the taxpayer and the official
 10 disagree.
- 11 (j) If the county board receives a form referred to in subsection
 12 (i)(1) before the hearing scheduled under subsection (k):
- 13 (1) the county board shall cancel the hearing;
 14 (2) the county official referred to in subsection (a) shall give
 15 notice to the taxpayer, the county board, the county assessor, and
 16 the county auditor of the assessment or deduction in the amount
 17 referred to in subsection (i)(1)(B); and
 18 (3) if the matter in issue is the assessment of tangible property,
 19 the county board may reserve the right to change the assessment
 20 under IC 6-1.1-13.
- 21 (k) If:
- 22 (1) subsection (i)(2) applies; or
 23 (2) the county board does not receive a form referred to in
 24 subsection (i) not later than one hundred twenty (120) days after
 25 the date of the notice for review filed by the taxpayer under
 26 subsection (c) or (d);
- 27 the county board shall hold a hearing on a review under this subsection
 28 not later than one hundred eighty (180) days after the date of that
 29 notice. The county board shall, by mail, give at least thirty (30) days
 30 notice of the date, time, and place fixed for the hearing to the taxpayer
 31 and the county or township official with whom the taxpayer filed the
 32 notice for review. The taxpayer and the county or township official
 33 with whom the taxpayer filed the notice for review are parties to the
 34 proceeding before the county board. A taxpayer may request a
 35 continuance of the hearing by filing, at least twenty (20) days before
 36 the hearing date, a request for continuance with the board and the
 37 county or township official with evidence supporting a just cause for
 38 the continuance. The board shall, not later than ten (10) days after the
 39 date the request for a continuance is filed, either find that the taxpayer
 40 has demonstrated a just cause for a continuance and grant the taxpayer
 41 the continuance, or deny the continuance. A taxpayer may request that
 42 the board take action without the taxpayer being present and that the



1 board make a decision based on the evidence already submitted to the
 2 board by filing, at least eight (8) days before the hearing date, a request
 3 with the board and the county or township official. A taxpayer may
 4 withdraw a petition by filing, at least eight (8) days before the hearing
 5 date, a notice of withdrawal with the board and the county or township
 6 official.

7 (l) At the hearing required under subsection (k):

8 (1) the taxpayer may present the taxpayer's reasons for
 9 disagreement with the assessment or deduction; and

10 (2) the county or township official with whom the taxpayer filed
 11 the notice for review must present:

12 (A) the basis for the assessment or deduction decision; and

13 (B) the reasons the taxpayer's contentions should be denied.

14 A penalty of fifty dollars (\$50) shall be assessed against the taxpayer
 15 if the taxpayer or representative fails to appear at the hearing and,
 16 under subsection (k), the taxpayer's request for continuance is denied,
 17 or the taxpayer's request for continuance, request for the board to take
 18 action without the taxpayer being present, or withdrawal is not timely
 19 filed. A taxpayer may appeal the assessment of the penalty to the
 20 Indiana board or directly to the tax court. The penalty may not be added
 21 as an amount owed on the property tax statement under IC 6-1.1-22 or
 22 IC 6-1.1-22.5.

23 (m) The official referred to in subsection (a) may not require the
 24 taxpayer to provide documentary evidence at the preliminary informal
 25 meeting under subsection (h). The county board may not require a
 26 taxpayer to file documentary evidence or summaries of statements of
 27 testimonial evidence before the hearing required under subsection (k).
 28 If the action for which a taxpayer seeks review under this section is the
 29 assessment of tangible property, the taxpayer is not required to have an
 30 appraisal of the property in order to do the following:

31 (1) Initiate the review.

32 (2) Prosecute the review.

33 (n) The county board shall prepare a written decision resolving all
 34 of the issues under review. The county board shall, by mail, give notice
 35 of its determination not later than one hundred twenty (120) days after
 36 the hearing under subsection (k) to the taxpayer, the official referred to
 37 in subsection (a), the county assessor, and the county auditor.

38 (o) If the maximum time elapses:

39 (1) under subsection (k) for the county board to hold a hearing; or

40 (2) under subsection (n) for the county board to give notice of its
 41 determination;

42 the taxpayer may initiate a proceeding for review before the Indiana



1 board by taking the action required by section 3 of this chapter at any
2 time after the maximum time elapses.

3 SECTION 3. **An emergency is declared for this act.**

