



Reprinted
February 5, 2004

HOUSE BILL No. 1282

DIGEST OF HB 1282 (Updated February 4, 2004 3:39 pm - DI 51)

Citations Affected: IC 6-9.

Synopsis: RTA food and beverage tax. Authorizes a county that has established a regional transportation authority (RTA) to impose a 1% food and beverage tax to fund the authority. Restricts the use of the revenue to providing new and improved public surface and rail transportation services. Requires a unit in a county imposing the tax to continue its current level of financial support of public surface and rail transportation services after the tax is imposed.

Effective: July 1, 2004.

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January 15, 2004, read first time and referred to Committee on Ways and Means.
January 29, 2004, reported — Do Pass.
February 2, 2004, committee report of January 29, 2004, withdrawn; amended, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.

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HB 1282—LS 7102/DI 103+



Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1282

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 6-9-35 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:
4 **Chapter 35. Regional Transportation Authority Food and
5 Beverage Tax**
6 **Sec. 1. This chapter applies to a county that has established a
7 regional transportation authority under IC 36-9-3-2.**
8 **Sec. 2. As used in this chapter, "authority" refers to a regional
9 transportation authority under IC 36-9-3-2.**
10 **Sec. 3. As used in this chapter, "beverage" includes any
11 alcoholic beverage.**
12 **Sec. 4. As used in this chapter, "commuter transportation
13 district" refers to a commuter transportation district established
14 under IC 8-5-15.**
15 **Sec. 5. As used in this chapter, "food" includes any food
16 product.**
17 **Sec. 6. As used in this chapter, "fund" refers to a food and**



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beverage tax receipts fund established under section 17 of this chapter.

Sec. 7. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 8. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 9. As used in this chapter, "public transportation service" refers only to public surface and rail transportation service.

Sec. 10. As used in this chapter, "retail merchant" has the same meaning set forth in IC 6-2.5-1-8.

Sec. 11. As used in this chapter, "unit" refers to a city, town, or county.

Sec. 12. (a) The fiscal body of a county may adopt an ordinance to impose an excise tax, known as the regional transportation authority food and beverage tax, on a transaction described in section 13 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the regional transportation authority food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

Sec. 13. (a) Except as provided in subsection (c), a tax imposed under section 12 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

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(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) A food and beverage tax imposed under this chapter does not apply to furnishing, preparing, or serving any food or beverage in a transaction that is exempt or to the extent the transaction is exempt from the state gross retail tax imposed under IC 6-2.5.

Sec. 14. The tax imposed on a transaction described in section 13 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 15. The tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 16. The treasurer of state shall pay monthly the amounts received from the tax imposed under this chapter to the regional transportation authority established in the county upon warrants issued by the auditor of state.

Sec. 17. (a) If a tax is imposed under section 12 of this chapter, the authority shall establish a food and beverage tax receipts fund.

(b) The authority shall deposit in the fund all amounts received under this chapter.

(c) Any money earned from the investment of money in the fund becomes a part of the fund.

(d) Money in the fund may be used only for the purposes described in sections 18, 19, and 20 of this chapter.

Sec. 18. (a) Money in the fund may be used only for the purpose of establishing and maintaining new or improved public transportation service in the county imposing the tax that exceeds the level of public transportation service available in the county in 2004.

(b) Subject to subsection (a), the expenditures for which money in the fund may be used include the following:

- (1) Grants to units in the county imposing the tax to provide

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- new or improved public transportation service.
- (2) The costs of preparing plans, specifications, studies, surveys, and estimates of cost and of revenue for public transportation services.
- (3) Any expense necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of providing public transportation services.
- (4) The cost of purchasing, leasing, subleasing, or otherwise acquiring, erecting, constructing, remodeling, renovating, completing, equipping, and furnishing any property.
- (5) The cost of engaging architectural services, engineering services, legal services, incidental expenses, financing costs, underwriter's discounts, funded or capitalized interest, municipal bond insurance premiums, or debt service reserve funds related to the issuance of debt obligations.
- (6) The payment of debt service.
- (7) Operation and management of property.
- (8) Other administration expenses of the authority.

(c) Money in the fund may not be used to provide tax relief to any person or to reduce the ad valorem property levies imposed by any governmental entity. For purposes of computing the ad valorem property tax levy limit imposed on a unit under IC 6-1.1-18.5-3, the unit's ad valorem property tax levy for a particular calendar year does not include any part of a grant provided to the unit under this chapter.

Sec. 19. (a) The authority shall establish a reserve account in the fund.

- (b) The authority shall deposit in the reserve account:
 - (1) two million dollars (\$2,000,000) in each of the first two (2) twelve (12) month periods in which the authority receives tax revenue under this chapter; and
 - (2) one million dollars (\$1,000,000) in each year thereafter.

(c) Subject to subsection (e), in each of the first two (2) twelve (12) month periods in which the authority receives tax revenue under this chapter, the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district to match federal funds for a feasibility study to develop a new rail corridor designated in the feasibility study. The money may be used to pay the costs of:

- (1) the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue for; and
- (2) all other expenses necessary or incident to planning,

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providing, or determining the need for or the feasibility and practicability of; the new rail corridor.

(d) Subject to subsection (e), money in the reserve account of the fund not needed to comply with subsection (c) may be used only to make distributions to a commuter transportation district under this subsection. In:

(1) the first twenty-four (24) months in which the authority receives tax revenue under this chapter, money may be transferred to a commuter transportation district for the commuter transportation district to make capital expenditures for new or improved public transportation service that primarily benefits the county imposing the tax; and

(2) a period after the time described in subdivision (1), money may be transferred to a commuter transportation district for the commuter transportation district to develop in the county imposing the tax under this chapter the new rail corridor designated in the feasibility study funded under subsection (c).

Money transferred under this subsection may not be used to reduce or replace expenditures made in the county by the commuter transportation district from other sources. Money transferred under subdivision (2) may not be used for operating expenditures.

(e) The authority may transfer money during a year in the amounts and at the times determined by the authority. Before the authority transfers money under subsection (c) or (d), the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The plan or amended plan must specify the nature and the amount of proposed expenditures from the money transferred under this section. Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan.

(f) A commuter transportation district may submit a plan or amended plan to the authority not more than once each month. The authority must review a submitted plan or amended plan as soon as practicable after its submission.

(g) If insufficient money is deposited in the fund to comply with subsection (b), the authority shall make the deposits as soon as practicable after sufficient money becomes available to make the required deposits.

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1 (h) If a commuter transportation district is unable in any year
2 to use the full amount of a transfer authorized under subsection (c)
3 or (d), the unexpended amount remains available for transfer to
4 the commuter transportation district when the commuter
5 transportation district is able to expend the money in conformity
6 with the purposes of the transfer.

7 Sec. 20. (a) This subsection applies to money that:
8 (1) is available in the fund beginning twenty-four (24) months
9 after the authority begins to receive tax revenue under this
10 chapter; and
11 (2) is not required to be deposited in the reserve fund under
12 section 19 of this chapter.

13 (b) In addition to any transfer of money under section 19 of this
14 chapter, the authority may make additional distributions of money
15 from the fund to a commuter transportation district only for
16 capital expenditures for new and improved public transportation
17 services in the county imposing the tax under this chapter.

18 (c) Before the authority transfers money under this section, the
19 commuter transportation district must submit a written plan or
20 amended plan to the authority for its review. The authority shall
21 prescribe the format for plans and amended plans. The written
22 plan must specify the nature and the amount of the proposed
23 expenditures.

24 (d) Money transferred under this section may not be used for
25 any purpose other than the purposes specified in the plan or
26 amended plan.

27 Sec. 21. (a) This section applies to a unit that is located in a
28 county that imposes a tax under this chapter and that in 2004:

29 (1) imposed an ad valorem property tax levy; or
30 (2) expended money from an ad valorem property tax levy;
31 for public transportation purposes.

32 (b) In any year in which a tax is imposed under this chapter, a
33 unit may not reduce its ad valorem property tax levy or
34 expenditures for public transportation purposes below the amount
35 necessary to maintain a level of public transportation service
36 equivalent to the level of public transportation service provided in
37 2004, as determined by the authority.

38 (c) The unit shall make a good faith effort to obtain all available
39 federal funding to maintain public transportation services at a
40 level at least equivalent to the public transportation services
41 available in 2004.

42 (d) The department of local government finance shall modify

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1 budgets, tax rates, and tax levies under IC 6-1.1-17-16, as
2 necessary, to implement this subsection.

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HOUSE MOTION

Mr. Speaker: I move that the committee report for House Bill 1282, adopted by the House, be withdrawn from further consideration because it does not accurately report the actions taken by the House Ways and Means Committee.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1282, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 8 through 9, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "authority" refers to a regional transportation authority under IC 36-9-3-2.

Sec. 3. As used in this chapter, "beverage" includes any alcoholic beverage.

Sec. 4. As used in this chapter, "commuter transportation district" refers to a commuter transportation district established under IC 8-5-15.

Sec. 5. As used in this chapter, "food" includes any food product.

Sec. 6. As used in this chapter, "fund" refers to a food and beverage tax receipts fund established under section 16 of this chapter.

Sec. 7. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 8. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 9. As used in this chapter, "retail merchant" has the same meaning set forth in IC 6-2.5-1-8.

Sec. 10. As used in this chapter, "unit" refers to a city, town, or county."

Page 1, line 10, delete "3" and insert "**11**".

Page 1, line 13, delete "4" and insert "**12**".

Page 2, line 4, delete "4" and insert "**12**".

Page 2, line 5, delete "3" and insert "**11**".

Page 2, line 32, delete "5" and insert "**13**".

Page 2, line 32, delete "4" and insert "**12**".

Page 2, line 38, delete "6" and insert "**14**".

Page 3, line 3, delete "7" and insert "**15**".

Page 3, line 7, delete "8" and insert "**16**".

Page 3, line 7, delete "3" and insert "**11**".

Page 3, line 8, delete "regional transportation".

Page 3, line 10, delete "food and beverage tax".

Page 3, line 11, delete "receipts".

Page 3, line 12, delete "food".

Page 3, line 13, delete "and beverage tax receipts".

Page 3, line 14, delete "food and beverage tax receipts".

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Page 3, line 14, delete "shall be" and insert "**may be used only for the purposes described in sections 17 and 18 of this chapter.**".

Page 3, delete lines 15 through 17, begin a new paragraph and insert:

"Sec. 17. (a) Money in the fund may be used only for the purpose of establishing and maintaining new or improved public transportation service in the county imposing the tax that exceeds the level of public transportation service available in the county in 2004.

(b) Subject to subsection (a), the expenditures for which money in the fund may be used include the following:

- (1) Grants to units in the county imposing the tax to provide new or improved public transportation service.**
- (2) The costs of preparing plans, specifications, studies, surveys, and estimates of cost and of revenue for public transportation services.**
- (3) Any expense necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of providing public transportation services.**
- (4) The cost of purchasing, leasing, subleasing, or otherwise acquiring, erecting, constructing, remodeling, renovating, completing, equipping, and furnishing any property.**
- (5) The cost of engaging architectural services, engineering services, legal services, incidental expenses, financing costs, underwriter's discounts, funded or capitalized interest, municipal bond insurance premiums, or debt service reserve funds related to the issuance of debt obligations.**
- (6) The payment of debt service.**
- (7) Operation and management of property.**
- (8) Other administration expenses of the authority.**

(c) Money in the fund may not be used to provide tax relief to any person or to reduce the ad valorem property levies imposed by any governmental entity. For purposes of computing the ad valorem property tax levy limit imposed on a unit under IC 6-1.1-18.5-3, the unit's ad valorem property tax levy for a particular calendar year does not include any part of a grant provided to the unit under this chapter.

Sec. 18. (a) The authority shall establish a reserve account in the fund.

(b) The authority shall deposit in the reserve account:

- (1) two million dollars (\$2,000,000) in each of the first two (2) years in which the authority receives tax revenue under this**

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chapter; and

(2) one million dollars (\$1,000,000) in each year thereafter.

(c) Subject to subsection (e), in each of the first two (2) years in which the authority receives tax revenue under this chapter, the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the payment of the costs of:

(1) the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue for; and

(2) all other expenses necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of;

a new rail corridor, designated by the authority, in the county imposing the tax. To the maximum extent possible the money must be used to match federal money available to pay for the costs described in this subsection.

(d) Subject to subsection (e), each year the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the commuter transportation district to make capital expenditures for new or improved public transportation service that primarily benefits the county imposing the tax. Money transferred under this subsection may not be used to reduce or replace expenditures made in the county by the commuter transportation district from other sources.

(e) The authority may transfer money during a year in the amounts and at the times determined by the authority. Before the authority transfers money under subsection (c) or (d), the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The plan or amended plan must specify the nature and the amount of proposed expenditures from the money transferred under this section. Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan.

(f) A commuter transportation district may submit a plan or amended plan to the authority not more than once each month. The authority must review a submitted plan or amended plan as soon as practicable after its submission.

(g) If insufficient money is deposited in the fund to comply with subsection (b), the authority shall make the deposits as soon as

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practicable after sufficient money becomes available to make the required deposits.

(h) If a commuter transportation district is unable in any year to use the full amount of a transfer authorized under subsection (c) or (d), the unexpended amount remains available for transfer to the commuter transportation district when the commuter transportation district is able to expend the money in conformity with the purposes of the transfer.

Sec. 19. (a) This section applies to a unit that is located in a county that imposes a tax under this chapter and that in 2004:

- (1) imposed an ad valorem property tax levy; or
- (2) expended money from an ad valorem property tax levy; for public transportation purposes.

(b) In any year in which a tax is imposed under this chapter, a unit may not reduce its ad valorem property tax levy or expenditures for public transportation purposes below the amount necessary to maintain a level of public transportation service equivalent to the level of public transportation service provided in 2004, as determined by the authority.

(c) The unit shall make a good faith effort to obtain all available federal funding to maintain public transportation services at a level at least equivalent to the public transportation services available in 2004.

(d) The department of local government finance shall modify budgets, tax rates, and tax levies under IC 6-1.1-17-16, as necessary, to implement this subsection."

and when so amended that said bill do pass.

(Reference is to HB 1282 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 19, nays 7.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1282 be amended to read as follows:

Page 2, line 1, delete "16" and insert "**17**".

Page 2, between lines 6 and 7, begin a new paragraph and insert:

"Sec. 9. As used in this chapter, "public transportation service" refers only to public surface and rail transportation service."

Page 2, line 7, delete "9" and insert "**10**".

Page 2, line 9, delete "10" and insert "**11**".

Page 2, line 11, delete "11" and insert "**12**".

Page 2, line 14, delete "12" and insert "**13**".

Page 2, line 22, delete "12" and insert "**13**".

Page 2, line 23, delete "11" and insert "**12**".

Page 3, line 8, delete "13" and insert "**14**".

Page 3, line 9, delete "12" and insert "**13**".

Page 3, line 14, delete "14" and insert "**15**".

Page 3, line 21, delete "15" and insert "**16**".

Page 3, line 25, delete "16" and insert "**17**".

Page 3, line 25, delete "11" and insert "**12**".

Page 3, line 32, delete "17 and 18" and insert "**18, 19, and 20**".

Page 3, line 33, delete "17" and insert "**18**".

Page 4, line 24, delete "18" and insert "**19**".

Page 4, line 28, delete "years" and insert "**twelve (12) month periods**".

Page 4, line 31, delete "years" and insert "**twelve (12) month periods**".

Page 4, line 34, after "district" insert "**to match federal funds for a feasibility study to develop a new rail corridor designated in the feasibility study. The money may be used to pay**".

Page 4, line 35, delete "for the payment of".

Page 4, line 41, delete "a" and insert "**the**".

Page 4, line 41, delete ", designated by the authority, in the county" and insert ".".

Page 4, delete line 42.

Page 5, delete lines 1 through 2.

Page 5, line 3, delete "each year the authority shall" and insert "**money in the reserve account of the fund not needed to comply with subsection (c) may be used only to make distributions to a commuter transportation district under this subsection. In:**

(1) the first twenty-four (24) months in which the authority receives tax revenue under this chapter, money may be

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transferred".

Page 5, delete line 4.

Page 5, line 5, delete "in the fund".

Page 5, line 8, delete "." and insert "; and

(2) a period after the time described in subdivision (1), money may be transferred to a commuter transportation district for the commuter transportation district to develop in the county imposing the tax under this chapter the new rail corridor designated in the feasibility study funded under subsection (c)."

Page 5, line 8, beginning with "Money" begin a new line blocked left.

Page 5, line 11, after "sources." insert "**Money transferred under subdivision (2) may not be used for operating expenditures.**".

Page 5, between lines 36 and 37, begin a new paragraph and insert:

"Sec. 20. (a) This subsection applies to money that:

(1) is available in the fund beginning twenty-four (24) months after the authority begins to receive tax revenue under this chapter; and

(2) is not required to be deposited in the reserve fund under section 19 of this chapter.

(b) In addition to any transfer of money under section 19 of this chapter, the authority may make additional distributions of money from the fund to a commuter transportation district only for capital expenditures for new and improved public transportation services in the county imposing the tax under this chapter.

(c) Before the authority transfers money under this section, the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The written plan must specify the nature and the amount of the proposed expenditures.

(d) Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan."

Page 5, line 37, delete "19" and insert "21".

(Reference is to HB 1282 as printed February 2, 2004.)

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