
HOUSE BILL No. 1792

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-42-1; IC 34-24-1-4; IC 35-33-8-7; IC 35-50-1-8.

Synopsis: County common school funds. Establishes a county common school fund board in each county to administer a county common school fund (fund). Provides that a county common school fund board consists of the county auditor, the county treasurer, the county superintendent of schools, and the president of the governing body of each school corporation in the county. Provides that a criminal fine is to be deposited in the fund of the county where the court that imposed the fine is located. Provides that certain forfeitures of property seized in a criminal case are to be paid into the fund of the county where the property was seized. Provides that forfeitures of bail bonds are to be deposited in the fund of the county where the criminal case is docketed.

Effective: July 1, 2007.

Smith V

January 26, 2007, read first time and referred to Committee on Ways and Means.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1792

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

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

- 1 SECTION 1. IC 20-42-1-3.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2007]: **Sec. 3.5. (a) A county common school fund board is**
- 4 **established in each county.**
- 5 **(b) A county common school fund board consists of the**
- 6 **following members serving ex officio:**
- 7 **(1) The county auditor.**
- 8 **(2) The county treasurer.**
- 9 **(3) The county superintendent of schools.**
- 10 **(4) For each school corporation in the county, the president of**
- 11 **the governing board of the school corporation.**
- 12 **(c) Unless the county council adopts a resolution under section**
- 13 **6(a) of this chapter, a county common school fund board shall**
- 14 **administer the fund as provided in this chapter.**
- 15 **(d) The members of a common school fund board shall elect a**
- 16 **chairperson of the board from among the members:**
- 17 **(1) annually not earlier than November 1 and not later than**



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November 30; or
(2) at any other time the position of chairperson is vacant.
The term of a chairperson elected under subdivision (1) is from January 1 to December 31 of the following year. The term of a chairperson elected under subdivision (2) is until December 31 of the year in which the election is conducted. A chairperson elected under subdivision (2) shall begin serving immediately after the election.

(e) A county common school fund board shall meet at such times and places within the county as the chairperson of the board designates.

SECTION 2. IC 20-42-1-4, AS ADDED BY P.L.2-2006, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. Subject to sections 5; 6 and 9 of this chapter, the fund shall never be diminished in amount.

SECTION 3. IC 20-42-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4.5. A county common school fund board may without appropriation adopt a resolution to distribute interest received on the principal of the fund to the school corporations of the county. The resolution:

- (1) must direct the county auditor to make the distributions specified in the resolution; and
- (2) may include one (1) or more restrictions on the use of the money.

SECTION 4. IC 20-42-1-6, AS ADDED BY P.L.2-2006, SECTION 165, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) A county council may adopt a resolution to:

- (1) elect to surrender the custody of the fund; and
- (2) order the board of county commissioners ~~the county auditor,~~ and the county treasurer ~~common school fund board~~ to take any and all steps necessary to surrender the custody of a fund held in trust by the county.

If the county council adopts a resolution under this section, the amount of money distributed to and held in trust by the county is due and payable to the treasurer of state. A county council may elect whether the county shall surrender all or any part of the fund. If the county retains custody of any money in the fund, the county shall loan the money as otherwise provided by law. Any part of the money in the fund surrendered by the county shall be paid to the treasurer of state immediately after the election by the county council.

(b) Within ten (10) days after the passage of the resolution by a

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1 county council of a county electing to surrender the custody of the
2 fund, the county auditor shall prepare and file with the board of
3 commissioners of the county a report showing the following:

- 4 (1) The total amount of the fund that has been entrusted to and is
5 held in trust by the county.
- 6 (2) The total amount of the funds that is loaned as provided by
7 law.
- 8 (3) The total amount of the fund, if any, loaned to the county and
9 which loans are unpaid.
- 10 (4) The total amount of the fund held in cash in the possession
11 and custody of the county and that is not loaned.
- 12 (5) A separate schedule of past due loans. The schedule must
13 show the unpaid balance of principal and the amount of
14 delinquent interest due and unpaid on each delinquent loan.

15 (c) The board of county commissioners shall examine the reports,
16 and, if found correct, the board of county commissioners shall order:

- 17 (1) that the report be entered on its records; and
- 18 (2) the county auditor to draw the county auditor's warrant,
19 payable to the treasurer of state, for the amount of the fund that is
20 not loaned and is held in cash in the custody and possession of the
21 county as shown by the report.

22 The county auditor shall forward the warrants to the auditor of state
23 together with a certified copy of the report. The county auditor shall
24 also forward with the payment a certified copy of the resolution of the
25 county council electing to surrender the custody of the fund or any part
26 of the fund.

27 (d) After passage by the county council of a resolution electing to
28 surrender the custody of the funds, no part of the fund that is in the
29 custody of the county may be loaned by the county or by any official of
30 the county. Except as provided in this subsection, all outstanding loans
31 of the fund at the time of the passage of the resolution shall be
32 collected when due. Any loan that comes due and payable after the
33 passage of the resolution may be renewed for one (1) additional five (5)
34 year period, on the application of the person owing the loan as provided
35 by law. However, a loan that is more than one (1) year delinquent in
36 payment of principal or interest at the time of the passage of the
37 resolution of the county council may not be renewed.

38 (e) On:

- 39 (1) May 1 or November 1 immediately after the passage of the
40 resolution electing to surrender the fund; and
- 41 (2) each May 1 and November 1 thereafter;

42 all the money collected and on hand that belongs to the fund shall be

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1 paid to the treasurer of state. If at the time for a semiannual payment
 2 the amount collected and paid to the treasurer of state when added to
 3 the amounts previously paid to the treasurer of state is less than the
 4 result determined by multiplying one-fortieth (1/40) of the amount of
 5 the fund held in trust at the time of the passage of the resolution by the
 6 number of semiannual payments that have occurred after the passage
 7 of the resolution, the county auditor shall draw the county auditor's
 8 warrant on the general fund of the county for an amount sufficient to
 9 pay to the treasurer of state the difference between the amount paid and
 10 the amount equal to the result of multiplying one-fortieth (1/40) of the
 11 amount of the fund held in trust at the time of the passage of the
 12 resolution by the number of semiannual payments that have occurred
 13 after the passage of the resolution.

14 (f) At the same time and in the same manner, there shall be paid to
 15 the treasurer of state interest to the date of the semiannual payment on
 16 the balance of the funds held in trust by the county from the
 17 immediately preceding October 31 or April 30 at the rate fixed by law.
 18 Whenever within the preceding six (6) months any payment of the fund
 19 has been made by the county to the treasurer of state, the county shall
 20 also pay interest at the rate fixed by law on the amount of the payment
 21 to the date of receipt of the payment by the treasurer of state. If the
 22 amount collected as interest on the fund is not sufficient to make
 23 payment of interest to the treasurer of state, the county auditor shall
 24 draw the county auditor's warrant on the general fund of the county for
 25 an amount sufficient when added to the amount collected as interest on
 26 the fund to pay the interest due to the state.

27 (g) The board of county commissioners shall, in its annual budget
 28 estimate, include an estimate of the amount necessary to make the
 29 payments from the county general fund as required by this section, and
 30 the county council shall appropriate the amount of the estimate.

31 (h) A county is subrogated to all the rights and remedies of the state
 32 with respect to loans made from a fund held in trust by the county to
 33 the extent of any and all payments made from the county general fund
 34 under this chapter.

35 SECTION 5. IC 20-42-1-6.5 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2007]: **Sec. 6.5. A county council that adopts a resolution under
 38 section 6(a) of this chapter may rescind the resolution. If a county
 39 council rescinds a resolution adopted under section 6(a) of this
 40 chapter, the county common school fund board shall administer
 41 the common school fund of the county as provided in this chapter.
 42 Any money that is surrendered to the state under section 6 of this**

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1 **chapter remains with the state. However, if a county council**
2 **rescinds a resolution adopted under section 6(a) of this chapter, the**
3 **state may entrust any part of the common school fund held by the**
4 **state to the county as provided by law.**

5 SECTION 6. IC 20-42-1-14, AS ADDED BY P.L.2-2006,
6 SECTION 165, IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) ~~If the funds remain in the~~
8 ~~county treasury of the county for four (4) months without having been~~
9 ~~loaned under this chapter, upon the request of the county auditor, the~~
10 ~~board of county commissioners may, by an order entered of record,~~
11 ~~direct the A county treasurer to may invest the funds money of a fund~~
12 ~~in:~~

- 13 (1) bonds, notes, certificates, and other valid obligations of the
- 14 United States; and
- 15 (2) bonds, notes, debentures, and other securities issued by any
- 16 federal instrumentality that are fully guaranteed by the United
- 17 States.

18 (b) If it becomes necessary to obtain the funds invested in the
19 government bonds under subsection (a) to be able to make a loan to any
20 borrower, whose application has been approved and granted, the
21 treasurer shall sell, at the earliest opportunity, a sufficient amount of
22 the government bonds to make the loan.

23 SECTION 7. IC 34-24-1-4 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) At the hearing,
25 the prosecuting attorney must show by a preponderance of the evidence
26 that the property was within the definition of property subject to seizure
27 under section 1 of this chapter. If the property seized was a vehicle, the
28 prosecuting attorney must also show by a preponderance of the
29 evidence that a person who has an ownership interest of record in the
30 bureau of motor vehicles knew or had reason to know that the vehicle
31 was being used in the commission of the offense.

32 (b) If the prosecuting attorney fails to meet the burden of proof, the
33 court shall order the property released to the owner.

34 (c) If the court enters judgment in favor of the state, or the state and
35 a unit (if appropriate), the court, subject to section 5 of this chapter,
36 shall order delivery to the law enforcement agency that seized the
37 property. The court's order may permit the agency to use the property
38 for a period not to exceed three (3) years. However, the order must
39 require that, after the period specified by the court, the law
40 enforcement agency shall deliver the property to the county sheriff for
41 public sale.

42 (d) If the court enters judgment in favor of the state, or the state and

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1 a unit (if appropriate), the court shall, subject to section 5 of this
 2 chapter:

3 (1) determine the amount of law enforcement costs; and
 4 (2) order that:

5 (A) the property, if it is not money or real property, be sold
 6 under section 6 of this chapter, by the sheriff of the county in
 7 which the property was seized, and if the property is a vehicle,
 8 this sale must occur after any period of use specified in
 9 subsection (c);

10 (B) the property, if it is real property, be sold in the same
 11 manner as real property is sold on execution under IC 34-55-6;

12 (C) the proceeds of the sale or the money be:

13 (i) deposited in the general fund of the state, or the unit that
 14 employed the law enforcement officers that seized the
 15 property; or

16 (ii) deposited in the general fund of a unit if the property
 17 was seized by a local law enforcement agency of the unit for
 18 an offense, an attempted offense, or a conspiracy to commit
 19 an offense under IC 35-47 as part of or in furtherance of an
 20 act of terrorism; and

21 (D) any excess in value of the proceeds or the money over the
 22 law enforcement costs be forfeited and transferred to the
 23 treasurer ~~of state~~ **of the county in which the property was**
 24 **seized** for deposit in the common school fund **of the county.**

25 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
 26 before its repeal) is transferred:

27 (1) after its seizure, but before an action is filed under section 3
 28 of this chapter (or IC 34-4-30.1-3 before its repeal); or

29 (2) when an action filed under section 3 of this chapter (or
 30 IC 34-4-30.1-3 before its repeal) is pending;

31 the person to whom the property is transferred must establish an
 32 ownership interest of record as a bona fide purchaser for value. A
 33 person is a bona fide purchaser for value under this section if the
 34 person, at the time of the transfer, did not have reasonable cause to
 35 believe that the property was subject to forfeiture under this chapter.

36 (f) If the property seized was an unlawful telecommunications
 37 device (as defined in IC 35-45-13-6) or plans, instructions, or
 38 publications used to commit an offense under IC 35-45-13, the court
 39 may order the sheriff of the county in which the person was convicted
 40 of an offense under IC 35-45-13 to destroy as contraband or to
 41 otherwise lawfully dispose of the property.

42 SECTION 8. IC 35-33-8-7 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) If a defendant:

2 (1) was admitted to bail under section 3.2(a)(2) of this chapter;
3 and

4 (2) has failed to appear before the court as ordered;
5 the court shall issue a warrant for the defendant's arrest.

6 (b) In a criminal case, if the court having jurisdiction over the
7 criminal case receives written notice of a pending civil action or
8 unsatisfied judgment against the criminal defendant arising out of the
9 same transaction or occurrence forming the basis of the criminal case,
10 funds deposited with the clerk of the court under section 3.2(a)(2) of
11 this chapter may not be declared forfeited by the court, and the court
12 shall order the deposited funds to be held by the clerk. If there is an
13 entry of final judgment in favor of the plaintiff in the civil action, and
14 if the deposit and the bond are subject to forfeiture, the criminal court
15 shall order payment of all or any part of the deposit to the plaintiff in
16 the action, as is necessary to satisfy the judgment. The court shall then
17 order the remainder of the deposit, if any, and the bond forfeited.

18 (c) Any proceedings concerning the bond, or its forfeiture,
19 judgment, or execution of judgment, shall be held in the court that
20 admitted the defendant to bail.

21 (d) After a bond has been forfeited under subsection (b), the clerk
22 shall mail notice of forfeiture to the defendant. In addition, unless the
23 court finds that there was justification for the defendant's failure to
24 appear, the court shall immediately enter judgment, without pleadings
25 and without change of judge or change of venue, against the defendant
26 for the amount of the bail bond, and the clerk shall record the
27 judgment.

28 (e) If a bond is forfeited and the court has entered a judgment under
29 subsection (d), the clerk shall transfer to the ~~state~~ common school fund
30 **of the county where the court is located:**

31 (1) any amount remaining on deposit with the court (less the fees
32 retained by the clerk); and

33 (2) any amount collected in satisfaction of the judgment.

34 (f) The clerk shall return a deposit, less the administrative fee, made
35 under section 3.2(a)(2) of this chapter to the defendant, if the defendant
36 appeared at trial and the other critical stages of the legal proceedings.

37 SECTION 9. IC 35-50-1-8 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2007]: **Sec. 8. (a) As used in this section, "public official" means**
40 **an individual who holds office in or is an employee of the executive,**
41 **administrative, legislative, or judicial branch of the state or a**
42 **political subdivision of the state.**

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1 **(b) If a public official or an agent of a public official collects any**
2 **part of a fine imposed for violation of a statute defining a crime,**
3 **the public official shall transfer the amount collected to the**
4 **common school fund of the county where the court that imposed**
5 **the fine is located.**

6 SECTION 10. THE FOLLOWING ARE REPEALED [EFFECTIVE
7 JULY 1, 2007]: IC 20-42-1-1; IC 20-42-1-5.

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