

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 105, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Replace the effective dates in SECTIONS 1 through 9 with
2 "[EFFECTIVE JULY 1, 2011]".
3 Between the enacting clause and line 1, begin a new paragraph and
4 insert:
5 SECTION 1. IC 5-1-14-4 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) Notwithstanding any other
7 law, a pledge of revenues or other money, or property made by any
8 issuer is binding from the time the pledge is made. Revenues or other
9 money, or property pledged and thereafter received by the issuer are
10 immediately subject to the lien of the pledge without any further act,
11 and the lien of a pledge is binding against all parties having claims of
12 any kind in tort, contract, or otherwise against the issuer, regardless of
13 whether the parties have notice of any lien. No resolution, ordinance,
14 indenture, or any other instrument by which a pledge is created needs
15 to be filed or recorded except in the records of the issuer.
16 (b) (a) Notwithstanding any other law, an issuer may pledge any
17 revenues or other money or pledge or mortgage property to pay debt
18 service on or secure any obligations or any lease rental or contractual
19 payments, if:

1 (1) the issuer has the necessary statutory authority to issue
2 obligations, pay lease rentals, or make contractual payments for
3 any project or purpose for which the pledge or mortgage is made;

4 (2) the revenues, money, or property is legally available, under
5 federal, state, and local laws, to pay or secure debt service, lease
6 rentals, or contractual payments; and

7 (3) the pledge or mortgage does not purport to create an
8 obligation in violation of any statutory or constitutional limitation
9 to which the issuer is subject.

10 **(b) Notwithstanding any other law, a pledge of revenues or**
11 **other money or property made by any issuer to secure the**
12 **repayment of an obligation, regardless of when made, is binding**
13 **from the time the pledge is, or was, made and the pledge as of the**
14 **date the pledge is or was made, creates a statutory lien upon the**
15 **revenues or other money or property of the issuer pledged at the**
16 **time the pledge is or was made. Revenues or other money, or**
17 **property pledged and thereafter received by the issuer, or that may**
18 **thereafter be held, possessed, maintained, or controlled by, or**
19 **otherwise in the custody of, the state or any other political**
20 **subdivision, or any department, agency or instrumentality thereof,**
21 **under any other law, is immediately subject to the statutory lien of**
22 **the pledge, with this statutory lien immediately and automatically**
23 **attaching thereto, without any further act, and the statutory lien of**
24 **a pledge is binding against all parties having claims of any kind in**
25 **tort, contract, or otherwise against the issuer, regardless of**
26 **whether the parties have notice of any lien. No resolution,**
27 **ordinance, indenture, or any other instrument by which a pledge**
28 **is created must be filed or recorded except in the records of the**
29 **issuer.**

30 **(c) Notwithstanding any other law, to the extent that an issuer**
31 **has pledged any revenues or other money or property to secure the**
32 **repayment of an obligation, the following provisions apply:**

33 **(1) Any revenues or other money or property pledged and**
34 **thereafter received by the issuer, or which may thereafter be**
35 **held, possessed, maintained, or controlled by, or otherwise in**
36 **the custody of, the state or any other political subdivision, or**
37 **any department, agency, or instrumentality thereof, under**
38 **any other law, up to an amount necessary to pay debt service**

1 **on or to maintain a reserve fund or any required coverage**
2 **ratio in any calendar year or bond year with respect to the**
3 **obligation, must be used for the repayment of the obligation**
4 **and for no other purpose until the obligation for the calendar**
5 **year or bond year is fully paid in accordance with its terms.**

6 **(2) An issuer may not consent to or permit, and may not be**
7 **construed as consenting to or permitting, without the consent**
8 **of one hundred percent (100%) of the owners of all**
9 **obligations then outstanding, the use of these pledged**
10 **revenues for any purpose except as described in subdivision**
11 **(1).**

12 **(d) Notwithstanding any other law, to the extent that an issuer**
13 **has pledged any revenues or other money or property to secure the**
14 **repayment of an obligation, the following provisions apply:**

15 **(1) Any revenues or other money or property that may**
16 **thereafter be held, possessed, maintained, or controlled by, or**
17 **otherwise in the custody of, the state or any other political**
18 **subdivision, or any department, agency, or instrumentality**
19 **thereof, under any other law and that would otherwise be**
20 **available for distribution to such issuer, is automatically**
21 **subject to a statutory lien for purposes of IC 5-1.5-8-5,**
22 **IC 6-1.1-20.6-10, or IC 20-48-1-11, whether or not such**
23 **revenues, money, or property has been pledged by the issuer**
24 **to secure these obligations.**

25 **(2) An issuer has no legal or equitable right to any revenues**
26 **or other money or property that may thereafter be held,**
27 **possessed, maintained, or controlled by, or otherwise in the**
28 **custody of, the state or any other political subdivision, or any**
29 **department, agency, or instrumentality thereof, under any**
30 **other law and that would otherwise be available for**
31 **distribution to the issuer, whether or not these revenues,**
32 **money, or property has been pledged to secure the**
33 **obligations, until:**

34 **(A) any reduction permitted under IC 5-1.5-8-5,**
35 **IC 6-1.1-20.6-10, or IC 20-48-1-11 has been applied; and**

36 **(B) the revenues or other money or property has been**
37 **distributed to and received by the issuer.**

38 **(3) An issuer is prohibited from consenting to or permitting,**

1 **and may not be construed as consenting to or permitting, the**
 2 **use of any revenues or other money or property reduced**
 3 **under IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11 for any**
 4 **other purpose other than the purposes described in**
 5 **IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11, respectively.**

6 **(e) This section shall be liberally construed so that the state and**
 7 **any distressed political subdivision (as defined in IC 6-1.1-20.3-2)**
 8 **shall, to the extent legally permitted under Indiana law, ensure that**
 9 **all bonds, all lease rental payments, and all warrants of each**
 10 **distressed political subdivision are paid when due in accordance**
 11 **with the original terms thereof irrespective of any other state or**
 12 **federal law. However, this chapter may not be construed to create**
 13 **a debt of the state.**

14 SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2011]: **Sec. 17. (a) Notwithstanding any other law, the issuer of**
 17 **any obligation shall pay in full the principal of, interest on, and**
 18 **premium on, if any, the obligations in accordance with the terms**
 19 **of the obligations.**

20 **(b) Notwithstanding any other law, any issuer of an obligation**
 21 **is prohibited from consenting to or permitting, and may not be**
 22 **construed as consenting to or permitting, without the consent of**
 23 **one hundred percent (100%) of the owners of all obligations then**
 24 **outstanding:**

25 **(1) an extension of the stated maturity or a reduction in the**
 26 **principal amount of, or a reduction in the rate or an extension**
 27 **of the time of payment of interest on, any obligations;**

28 **(2) the creation of any lien on the revenues or other money or**
 29 **property pledged to the obligations that is senior or prior to**
 30 **the lien upon the obligations;**

31 **(3) a reduction in the aggregate principal amount of the**
 32 **obligations;**

33 **(4) the granting of a privilege, priority, or preference to any**
 34 **of the obligations over any other of the obligations;**

35 **(5) any amendment or modification of the powers, remedies,**
 36 **rights, duties, privileges, or immunities of the owners of the**
 37 **obligations.**

38 **(c) This section shall be liberally construed so that the state and**

1 **any distressed political subdivision (as defined in IC 6-1.1-20.3-2)**
 2 **shall, to the extent legally permitted under Indiana law, ensure that**
 3 **all bonds, all lease rental payments, and all warrants of each**
 4 **distressed political subdivision are paid when due in accordance**
 5 **with the original terms thereof irrespective of any other state or**
 6 **federal law. However, this chapter may not be construed to create**
 7 **a debt of the state.**

8 SECTION 3. IC 5-1-19 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2011]:

11 **Chapter 19. Property Held by the State**

12 **Sec. 1. Notwithstanding any other law, a political subdivision**
 13 **has no legal or equitable right to any revenues or other money or**
 14 **property held, possessed, maintained, controlled, or otherwise in**
 15 **the custody of the state or any department, agency, or**
 16 **instrumentality thereof, that would otherwise be available for**
 17 **distribution to the political subdivision, unless and until the**
 18 **revenues or other money or property has been distributed to and**
 19 **received by the political subdivision."**

20 Page 2, line 34, delete "Either of the following may".

21 Page 2, delete lines 35 through 36.

22 Page 2, line 37, delete "(1)".

23 Page 2, line 37, reset in roman "a".

24 Page 2, line 37, after "distressed" delete "the".

25 Page 2, run in lines 34 through 37.

26 Page 2, line 40, delete "jointly." and insert "**may jointly file a**
 27 **petition with the board seeking to have the political subdivision**
 28 **designated as a distressed political subdivision under this chapter.**
 29 **However, if the political subdivision is a school corporation, the**
 30 **school board may file a petition under this chapter."**

31 Page 2, delete lines 41 through 42.

32 Page 3, delete lines 1 through 3.

33 Page 3, line 24, after "6.5" insert "**(a)**".

34 Page 3, line 34, delete "thirty (30)" and insert "**sixty (60)**".

35 Page 4, line 2, delete "in total".

36 Page 4, line 3, delete "governmental purpose funds".

37 Page 4, line 3, delete "five" and insert "**eight**".

38 Page 4, line 4, delete "(5%)" and insert "**(8%)**".

1 Page 4, line 4, delete "current year".

2 Page 4, line 4, after "revenues." insert **"For purposes of this**
 3 **subdivision, "deficit" means a negative fund balance calculated as**
 4 **a percentage of revenues at the end of a budget year for any**
 5 **governmental or proprietary fund. The calculation must be**
 6 **presented on an accrual basis according to generally accepted**
 7 **accounting principles."**

8 Page 4, between lines 16 and 17, begin a new paragraph and insert:

9 **"(b) If the board designates a political subdivision as distressed**
 10 **under subsection (a), the board shall review the designation**
 11 **annually to determine if the distressed political subdivision meets**
 12 **at least one (1) of the conditions listed in subsection (a).**

13 **(c) If the board designates a political subdivision as a distressed**
 14 **political subdivision under subsection (a), the board shall**
 15 **immediately notify:**

16 **(1) the treasurer of state; and**

17 **(2) the county auditor and county treasurer of each county in**
 18 **which the distressed political subdivision is wholly or partially**
 19 **located;**

20 **that the board has designated the political subdivision as a**
 21 **distressed political subdivision."**

22 Page 4, line 21, delete "chairperson of the".

23 Page 4, between lines 26 and 27, begin a new paragraph and insert:

24 **"(c) The distressed political subdivision shall pay the emergency**
 25 **fiscal manager's compensation and reimburse the emergency fiscal**
 26 **manager for actual and necessary expenses."**

27 Page 4, line 36, after "resolutions" insert **"relating to or affecting**
 28 **the fiscal stability of the political subdivision"**.

29 Page 4, line 37, after "taxes" insert **"or fees"**.

30 Page 4, line 38, after "taxes" insert **"or fees"**.

31 Page 5, line 4, after "subdivision" insert **"not later than six (6)**
 32 **months after appointment"**.

33 Page 5, line 7, delete "Renegotiate" and insert **"Review"**.

34 Page 5, line 7, delete "and act as an agent of" and insert **"."**.

35 Page 5, delete line 8.

36 Page 5, line 20, delete **"six (6)"** and insert **"three (3)"**.

37 Page 5, between lines 28 and 29, begin a new line block indented
 38 and insert:

1 **"(13) Act on behalf of the distressed political subdivision if the**
 2 **distressed political subdivision is authorized under section**
 3 **13(a)(2) of this chapter to file a petition under Chapter 9, Title**
 4 **11 of the United States Code."**

5 Page 5, between lines 30 and 31, begin a new line block indented
 6 and insert:

7 **"(1) Renegotiate existing labor contracts and act as an agent**
 8 **of the political subdivision in collective bargaining."**

9 Page 5, line 31, delete "(1)" and insert "(2)".

10 Page 5, line 33, delete "(2)" and insert "(3)".

11 Page 5, line 35, delete "(3)" and insert "(4)".

12 Page 5, between lines 41 and 42, begin a new paragraph and insert:

13 "SECTION 10. IC 6-1.1-20.3-10, AS ADDED BY P.L.146-2008,
 14 SECTION 209, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2011]: Sec. 10. A ~~distressed~~ political
 16 subdivision may petition the tax court for judicial review of a ~~final~~
 17 determination of the board **under section 6.5 of this chapter**. The
 18 action must be taken to the tax court under IC 6-1.1-15 in the same
 19 manner that an action is taken to appeal a final determination of the
 20 Indiana board of tax review. The petition must be filed in the tax court
 21 not more than forty-five (45) days after the board enters its final
 22 determination."

23 Page 6, between lines 27 and 28, begin a new paragraph and insert:

24 **"(c) Notwithstanding any other section of this chapter, not later**
 25 **than ninety (90) days after taking office, a new executive of a**
 26 **distressed political subdivision may petition the board for**
 27 **suspension of the political subdivision's distressed status. The**
 28 **executive must include in its petition a written plan to resolve the**
 29 **applicable issues described in section 6.5 of this chapter. If the**
 30 **board approves the executive's written plan, the board may**
 31 **suspend the political subdivision's distressed status for one**
 32 **hundred eighty (180) days. Suspension under this chapter**
 33 **terminates automatically upon expiration of the one hundred**
 34 **eighty (180) day period. The board may consider a petition to**
 35 **terminate the political subdivision's distressed status during a**
 36 **period of suspension."**

37 Page 6, line 29, delete "; IC 6-1.1-20.3-10;" and insert ".".

38 Page 6, delete line 30, begin a new paragraph and insert:

1 "SECTION 15. [EFFECTIVE JULY 1, 2011] (a) **Notwithstanding**
2 **this act, the final determinations of the existing distressed unit**
3 **appeal board remain in effect until the final settlement of the 2011**
4 **Lake County property tax bills.**
5 **(b) This SECTION expires December 31, 2013."**
6 Page 6, delete line 31.
7 Renumber all SECTIONS consecutively.
 (Reference is to SB 105 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Bray

Chairperson