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FISCAL IMPACT STATEMENT

LS 6815

BILL NUMBER: HB 1072

NOTE PREPARED: Jan 30, 2012

BILL AMENDED: Jan 27, 2012

SUBJECT: Tax Administration.

FIRST AUTHOR: Rep. Espich

FIRST SPONSOR: Sen. Kenley

BILL STATUS: As Passed House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Adoption Dates:* This bill changes dates for budget and levy adoption actions.

Reporting Requirements: The bill changes certain property tax-related reporting requirements.

Business Preference: This bill provides that the local Indiana business preference applies to a contract for a purchase made by a political subdivision only if the political subdivision provides that the preference is applicable to the purchase. The bill also repeals the local Indiana business preference for public works projects.

IEDC: The bill provides that the projection of the jobs to be created by a project funded from the Indiana Twenty-First Century Research and Technology Fund (the fund) may not be kept confidential. It requires semiannual reporting of the activity of the fund and it requires the report to include information concerning the number of jobs projected for a recipient's project. The bill specifically includes grants and loans from the fund in the economic incentives and compliance report prepared by the Indiana Economic Development Corporation (IEDC). The bill returns the economic incentives and compliance report to the semiannual schedule required before 2010 and it provides that the budget committee is a recipient of both reports.

AV Exclusion: This bill specifies that the amount that may be excluded from assessed value for the purposes of calculating budgets, property tax rates, and property tax levies may not exceed 2% of net assessed value, rather than 2% of assessed value, without approval by the Department of Local Government Finance (DLGF).

Notices: The bill specifies that notices concerning final actions on budgets, property tax rates, and property

tax levies shall be given electronically rather than in writing.

Circuit Breaker Allocation: This bill changes the formula for applying the circuit breaker among debt and nondebt levies.

Nonelected Bodies: This bill makes political subdivisions with nonelected governing bodies (other than libraries outside of Marion County) subject to review and adoption of the political subdivision's budget by a county, city, or town fiscal body. It requires approval of the supplemental appropriations of a political subdivision with a nonelected governing body (other than a library outside Marion County) by a county, city, or town fiscal body.

Circuit Breaker Certification: This bill replaces a separate certification by county auditors concerning the amount of circuit breaker credits granted to taxpayers with an annual report by the DLGF.

Tax Bill Waiver: The bill permits waiver of tax bills under \$5.

Property Tax Appeals: This bill extends period in which to file for a property tax appeal from 45 days to 60 days.

Adjusted Gross Income Attribution Requirement: The bill specifies when receipts received by designated contract markets, swap execution facilities, or derivatives clearing organizations or from market data service revenue are subject to the state adjusted gross income tax.

Hoosier Business Investment Tax Credit: The bill extends the sunset date for the Hoosier Business Investment Tax Credit from December 31, 2013, to December 31, 2015.

LOIT Adoption: This bill changes the procedures for submitting a certified copy of ordinances related to local income taxes to the state to require in all cases that the certified copy be sent to the Commissioner of the Department of State Revenue, the Director of the Budget Agency, and the Commissioner of the DLGF by certified mail or in an approved electronic format within 10 days after adoption.

LOIT Distribution: The bill changes the schedule on which revenue from county adjusted gross income taxes and county economic development taxes are distributed to counties from a semiannual schedule to a monthly schedule. It eliminates provisions that provide for distribution of revenues from certain local income taxes on a quarterly basis in the initial year of adoption.

LOIT Repeals: This bill repeals: (1) authority to impose a local income tax to fund the expenses of prosecuting a capital case in Parke County; (2) authority to impose a local income tax to provide revenue for remediation of a superfund site in Tippecanoe County; and (3) expired authority to grant a tax rate to replace revenue lost from elimination of the inventory tax.

Henry County Food and Beverage Tax: The bill provides that Henry County food and beverage tax revenues may be used for road improvements to foster economic development and tourism in the county. (Current law allows road improvements for an industrial park.) The bill removes provisions prohibiting the county from pledging the tax revenues for the repayment of bonds or lease rentals after December 31, 2015. It requires the county capital improvements committee (CCIC) to meet at least once per year and submit an annual report to the county council. The bill removes provisions terminating the CCIC and the county food and beverage tax

council on January 1, 2016.

The bill also specifies that the county may use the food and beverage tax revenues to pay all or part of the costs associated with the construction of a facility that enhances educational opportunities, economic development, or tourism in the county or issue bonds, enter into leases, or incur other obligations to pay any costs associated with the construction of such a facility. The bill replaces population references in the local income tax law to certain counties with the names of the counties. The bill also repeals an obsolete statute governing Henry County food and beverage tax revenue received before July 1, 1994.

Other: The bill also replaces population references in the local income tax law to certain counties with the names of the counties and makes technical corrections.

Effective Date: (Amended) Upon passage; January 1, 2011 (retroactive); January 1, 2012 (retroactive); July 1, 2012.

Explanation of State Expenditures: *Reporting Requirements:* Under current law, the DLGF must annually publish a report containing tax rates, abstract real property AV, utility AV, and various other AV breakdowns. Under this bill, the DLGF would not be required to publish these reports.

Some of the property types that are the subject of some of the reports are no longer taxed, such as individual personal property and inventory. The DLGF collects some of the data required for the reports from county assessors on forms designed for this specific purpose.

The DLGF would have reduced administrative costs associated with the forms design and the collection and publication of this information under this proposal. More detailed parcel-level assessment and tax bill data is already being collected from county assessors and county auditors, so there would be no loss of information collected from the counties under this proposal.

IEDC: The bill makes changes to current statute relating to the IEDC's annual report on the 21st Century Research and Technology Fund and the annual Economic Incentives and Compliance Report.

(1) The bill changes the schedule for the 21st Century Research and Technology Fund report from an annual report to a biannual report and requires the report to include the projection of the number of jobs to be created by an entity receiving a grant from the Fund. This is likely to have no impact as the report is already done annually and since the IEDC currently reports on 21st Century Fund awards including job projections for the project.

(2) The bill specifies that the IEDC include in its annual Economic Incentives and Compliance Report loans from the 21st Century Research and Technology Fund as part of the report dealing with loans made by the IEDC, including loan guarantees. The bill also requires that the IEDC submit the annual report to the State Budget Committee as well as the Governor and the Legislative Council. The impact of this change should be minimal.

Exemptions: Under current law, counties must forward duplicate copies of all property tax exemption applications to the DLGF. The DLGF is required to review all applications and may deny an exemption if the DLGF determines that the property does not qualify for an exemption. The DLGF must also currently make an annual report to the executive director of LSA that includes the numbers of applications forwarded,

investigated, and denied.

Under this bill, the DLGF would have discretion to review the applications and would not be required to make an annual report. The DLGF would have reduced administrative costs associated with application review and compilation of the report.

Circuit Breaker Certification: Under current law, county auditors must annually certify the amount of circuit breaker credits in the county to the DLGF. The certification must include the amount by which each taxing unit's property tax distribution is reduced. Under this bill, the DLGF would prepare the report and publish on the DLGF website. The breakdown by taxing unit can be computed from the information contained in the county auditor's abstracts.

Notices: Under current law, the DLGF must give written notification to taxing units regarding any revision, reduction, or increase that the DLGF proposes in a unit's levy or rate. The taxing unit has 10 days to respond in written form. This bill would require that these communications are to be made electronically. This provision could reduce the cost of postage and it would also eliminate any delay caused by the time it takes the mail service to deliver the notice and response.

LOIT Distribution: This bill changes the schedule for the distribution of CAGIT and CEDIT revenue to counties from a semiannual schedule to a monthly schedule. Currently, CAGIT and CEDIT distributions (except for CEDIT distributions for homestead credit rates) are on a monthly basis, according to the State Budget Agency.

Annual Reports: Under current law, each state and local government entity is required to electronically file an annual financial report with the State Board of Accounts (SBA). This bill would require the reports to be in the form and content, and filed in the manner, prescribed by the SBA.

Also under current law, each state and local government entity is required to file a written compensation report with the State Board of Accounts (SBA). This bill would require the report to also indicate whether a health plan, pension, and other benefits are offered. The report would have to be filed electronically through a web-based system maintained by the DLGF.

Electronic Transmission: Under current law, the DLGF may require local governmental units to submit forms electronically. In addition, this bill would require the DLGF to work with the Office of Technology or a state educational institution to develop and maintain a web-based system for forms submission. Local governmental units would be required to use these systems as prescribed by the DLGF. The DLGF is already engaged in web-based submission projects so this provision would not add any additional state expenses.

Recognition of Federal Income Exclusions: The Department of State Revenue will have administrative expenses to revise tax forms, instructions, and computer programs to accommodate these changes.

Explanation of State Revenues: (Revised) *Recognition of Federal Income Exclusions:* The bill provides that two Federal income exclusions that were not conformed to under the Internal Revenue Code Update legislation enacted in 2011 would apply for purposes of Indiana income tax. It is estimated that the revenue loss from recognizing the exclusions would total \$6.7 M with the revenue loss occurring in FY 2013. There would be no revenue loss beyond FY 2013 unless Congress extends these income exclusions, one of which expired at the end of 2011 and the other which expires at the end of 2012.

(1) Under current statute, certain employer-provided educational assistance excluded from Federal adjusted gross income (AGI) must be added back to Indiana AGI. The exclusion expires, under Federal law, at the end of 2012.

(2) Under current statute, certain employer-provided mass transit and parking benefits is excluded from Federal AGI must be added back to Indiana AGI. The exclusion expired, under Federal law, at the end of 2011.

Some of revenue loss from recognizing these exclusions could potentially occur in FY 2012 to the extent that taxpayers filing 2011 tax returns in March or April after enactment of this bill do not add back educational or transit benefits to their Indiana AGI.

Hoosier Business Investment Tax Credit - The bill extends the Hoosier Business Investment (HBI) tax credit for two years by changing the sunset date from December 31, 2013, to December 31, 2015. This would allow the Indiana Economic Development Corporation (IEDC) to award new tax credits for qualified investment occurring in 2014 and 2015. The potential amount of new credits that might be certified by the IEDC in 2014 and 2015 is indeterminable.

Adjusted Gross Income Attribution Requirement: In lieu of requirements under current statute relating to the attribution of income to Indiana, the bill provides special income attribution rules for receipts received by certain trading markets or exchanges defined by the bill. The trading markets or exchanges that would be covered by this provision are: (1) designated contract markets, swap execution facilities, or derivatives clearing organizations primarily regulated by the United States Commodity Futures Trading Commission; and (2) securities exchanges and securities clearing agencies primarily regulated by the United States Securities and Exchange Commission.

Under the bill, receipts received by the above defined trading markets or exchanges in respect of trade execution (electronic or otherwise) and clearing are attributable to Indiana for purposes of Indiana income tax as follows:

(1) If the receipts are attributable to transactions executed on a physical trading floor located in Indiana, 100% of the receipts are attributable to Indiana.

(2) If the receipts are attributable to transactions executed by means of an electronic transaction system, the receipts are attributable to Indiana based on a percentage determined by dividing the total Indiana population by the total United States population.

(3) If the receipts are attributable to the clearing of over-the-counter transactions, the receipts are attributable to Indiana based on a percentage determined by dividing the total Indiana population by the total United States population.

The bill also specifies that market data service revenue is sourced based on the billing address of a covered taxpayer's direct customers or the user location of direct customers and location of the customers of the covered taxpayer's distributors.

The impact of these income attribution rules is unknown and the number of entities that may exist in Indiana presently that might be affected by these income attribution rules is unknown.

Background Information - The IEDC Board is authorized to award the HBI tax credit for expenditures on qualified investment determined to foster job creation and higher wages in Indiana. The maximum credit that the IEDC may award is 10% of the qualified investment made by the taxpayer. A taxpayer may claim the credit against the adjusted gross income (AGI) tax, insurance premiums tax, or the financial institutions tax. The credit is nonrefundable and may not be carried back. Unused tax credits may be carried over for up to nine years after the year in which the investment is made, unless a shorter carryover period is stipulated by the IEDC Board. The amount of HBI tax credits claimed on tax returns by individual and corporate taxpayers since 2006 is reported in the table below.

Tax Year	Individual Returns	Credits Claimed	Corporate Returns	Credits Claimed
2006	41	\$111,987	35	\$19,740,201
2007	627	\$1,788,135	21	\$2,970,514
2008	264	\$1,028,627	19	\$8,602,397
2009	91	\$1,409,098	N/A	N/A
N/A = Data not available at this time.				

Explanation of Local Expenditures: Reporting Requirements - Debt: Currently, a taxing unit that issues debt or enters into a lease must supply the DLGF with information regarding the debt issue or lease by December 31 of the year of issue. Under this bill, taxing units would be required to supply a debt issuance report within one month of the date of issue. The report would have to be submitted electronically to the DLGF. Beginning with CY 2013 budgets under the bill, the DLGF would be prohibited from approving appropriations associated with the debt issue or lease if the report has not been submitted.

Taxing units must currently submit an annual report to the DLGF that lists all outstanding bonds and leases. Under this bill, the annual report would no longer be required, but the DLGF may annually require taxing units to verify the information held in the DLGF debt database. Taxing units could have reduced administrative expenditures associated with compiling an annual report.

Circuit Breaker Certification: County auditors would have a reduction in administrative expenses associated with preparing circuit breaker certifications to the DLGF.

Henry County Food and Beverage Tax- Repeal of Expiration Dates- The provision would allow the pledging of tax revenues for bond or lease rentals indefinitely. The impact of this provision on local expenditures involving the food and beverage tax receipts would depend on local action.

CCIC Requirements- This provision would require the CCIC to meet at least once per year. The CCIC would likely be able to incorporate their reported progress on funded projects into an annual report. The Henry County Auditor in their capacity as clerk of the county fiscal body would retain the annual report for the fiscal body.

Uses of Revenues- These provisions would allow new uses of Henry County food and beverage tax revenues. Specifically, the bill would expand the use for road improvements for any economic development or tourism project. Additionally, the county could dedicate revenues for the payment of all or part of the costs for a “facility that enhances educational opportunities, economic development, or tourism in the county. The use of revenue for bonds or leases on any new project would depend on the availability of funds to back any new

projects and existing bonds for current projects.

Explanation of Local Revenues: (Revised) *Recognition of Federal Income Exclusions:* Because the exclusions will decrease taxable income, counties imposing local option income taxes could potentially experience a decrease in revenue from these taxes. Based on the current average LOIT rate of about 1.4%, LOIT collections on a statewide basis could potentially be reduced by about \$2.8 M in FY 2013. (See Explanation of State Revenue for a discussion of the educational assistance and transit benefit exclusions.)

Property Tax Appeals: Under current law, a taxpayer may appeal an assessment or deduction to the county property tax assessment board of appeals (PTABOA) by filing a notice within 45 days after the date of a notice that an action was taken, or within 45 days after the tax statement is mailed if a notice of assessment is not given. In both cases, this bill extends the filing period from 45 days to 60 days.

AV Exclusion: Under current law, county auditors may, for specific reasons, exclude the AV of certain properties from the tax base used to calculate property tax rates. The excluded amount is limited to 2% of a taxing unit's gross AV. Under this bill, the exclusion limit would be 2% of the net AV of the taxing district.

Taxing units are political subdivisions such as counties, townships, cities, towns, school districts, libraries, and special units. Taxing districts are geographical areas that are served by a unique combination of taxing units. Taxing units may serve several taxing districts.

The change from a unit limit to a district limit could reduce the exclusion amount in some cases such as when a taxing unit's excluded AV is concentrated in specific geographical areas. The change from gross to net AV could also reduce exclusion limits because total gross AV includes exempt properties but net AV does not.

When AV is excluded from the tax base, the calculated tax rate is higher. This is done to try to account for AV on which billed taxes may not be collected. If AV exclusions are reduced, then tax rates could decline and the lower tax rate could lead to property tax shortfalls for some taxing units. On the other hand, lower tax rates may also result in lower circuit breaker credit losses for some taxing units.

Under both current law and this bill, county auditors may appeal to the DLGF to reduce a taxing unit's AV by an amount that exceeds the exclusion limitation.

Nonbinding Review: Under current law, civil taxing units in a county without a board of tax adjustment must submit their estimated budget, levy, and tax rate to the county fiscal body for review at least 45 days before the unit adopts the budget. The county fiscal body must perform a review and must issue a nonbinding recommendation regarding the proposal at least 15 days before the taxing unit adopts its budget. In addition to civil taxing units, this bill would require school corporations to submit their estimated levy and tax rate (but not their budget) to the county fiscal body for review.

Circuit Breaker Allocation: Currently, certain levies are exempt from the calculation of property tax limits under the circuit breaker law. These include levies that are approved in a referendum and levies in Lake and St. Joseph Counties for debt incurred before July 1, 2008. Under current law, when a taxing unit distributes tax receipts among its funds, the total amount collected from exempted funds must be allocated to the appropriate fund without any adjustment for circuit breaker credits. The tax loss created by the circuit breaker credits is allocated among the nonexempt funds.

Under this provision, both exempt levies and any debt service levies that are not exempt would be referred to as “protected taxes”. The total amount of protected taxes collected would be allocated to the appropriate fund without any adjustment for circuit breaker credits. The tax loss created by the circuit breaker credits would be allocated among the unprotected funds.

Under current law, if the amount available in a debt service fund is insufficient to pay obligations because of circuit breaker losses, the unit must transfer money from its other funds. This provision would eliminate the need to make the transfer.

Nonelected Bodies: Under current law, certain taxing units whose governing bodies are appointed rather than elected must submit their proposed budgets and tax levies to the fiscal body of the city, town, or county. These taxing units include:

- (1) Conservancy Districts;
- (2) Solid waste management districts;
- (3) Fire protection districts; and
- (4) Any civil taxing units (not schools) whose proposed budget increase exceeds the income-based assessed value growth quotient (AVGQ).

Under this bill, with the exception of libraries, all taxing units with appointed governing bodies, including school corporations, regardless of the percentage change in the proposed budget would be subject to review. Library budgets would be subject to review only if the proposed budget increase exceeds the AVGQ. In addition, the bill would require additional appropriations for these units to be adopted by ordinance of the city, town, or county before approval by the DLGF.

Tax Bill Waiver: Under current law, if a property tax bill equals less than \$5, the tax bill is increased to \$5 by adding a statement processing fee. Under this provision, a county council may, by ordinance, elect not to collect taxes or special assessments that do not exceed \$5. This provision could reduce property tax revenues for all taxing units in the county but could save the county the expense of processing and mailing the small tax bills and then processing the payments. The decision to waive these bills would be a local decision.

Cumulative Fund Adoption: Under current law, a taxing unit may establish a cumulative fund by giving notice to the affected taxpayers and holding a public hearing. Taxpayers may object by filing a petition with the county auditor within 30 days after the publication of the hearing notice. The county auditor must forward the petition to the DLGF, and the DLGF must make a determination after the public hearing.

Under this bill, the 30-day appeal window would begin after the taxing unit publishes a notice of adoption of the cumulative fund after the public hearing. This provision would give taxpayers more time to appeal. It could also eliminate unnecessary appeals in a case where the taxing unit does not adopt the cumulative fund.

LOIT Repeals: This bill repeals the authority to impose the following LOIT rates:

- (1) an additional CAGIT rate to help fund the expenses of prosecuting a capital case in Parke County;
- (2) an additional CEDIT rate of up to 0.25% to help fund remediation of a superfund site in Tippecanoe County; and
- (3) expired authority for a CEDIT tax rate used to provide homestead credits to mitigate tax shifts from the elimination of inventory taxes in counties that opted for the elimination before the statewide elimination took effect. (The ability for any county to adopt this CEDIT rate still exists in another section of the code).

Parke County adopted the additional 0.25% CAGIT rate for the purpose above effective October 1, 2007, but rescinded that rate effective October 1, 2009. Also, Tippecanoe County adopted the additional 0.25% CEDIT rate effective July 1, 1994, but rescinded that rate effective July 1, 1998.

Business Preference: The bill will have indeterminate impact on supply purchases of a local unit of government, potentially decreasing costs. The purchasing preferences are awarded during the evaluation of bids and are a factor in determining who will be awarded contracts. The actual bid price does not change. As a result, a bidder with a bid higher than the lowest price may be accepted. Under the bill, the price preference is applicable only if the political subdivision states in the solicitation for supplies that the preference will apply.

Additionally, the bill clarifies that the local government public works project applies to projects that will cost at least \$150,000, or for a project by a board of aviation commissioners, \$100,000.

Background - Federal Funds: Some federal grants do not allow geographic preferences to be considered in solicitation evaluations. By making price preference for supply purchases an option rather than a requirement, locals will have the flexibility to meet federal requirements for funding, if needed.

(Revised) *Background- Henry County Food and Beverage Tax:* The Henry County food and beverage tax is collected at a 1% rate. FY 2011 revenue was \$493,207. The Henry County food and beverage tax was established by the General Assembly during the 1987 special session. The original use of the revenue was for a basketball hall of fame in the county. Additional uses that have been added in subsequent sessions of the General Assembly include funding for: sanitary sewers/wastewater treatment facilities, drainage or flood control facilities, road improvements, covered horse show arena, historic birthplace memorial, parks, street renovations, and an ambulance.

State Agencies Affected: Legislative Services Agency; Department of Local Government Finance; State Budget Agency; Department of State Revenue; Indiana Economic Development Corporation; State Board of Accounts.

Local Agencies Affected: County assessors; County auditors; County treasurers; Taxing units with appointed governing bodies; Counties imposing local option income taxes; Henry County CCIC, Henry County fiscal body.

Information Sources: OFMA Income Tax Databases; Bob Lain, State Budget Agency, 317-232-3471; Indiana Handbook of Taxes, Revenues, and Appropriations FY 2011 edition.

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