

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1281

AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 5-13-6-1, AS AMENDED BY P.L.151-2012, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) All public funds paid into the treasury of the state or the treasuries of the respective political subdivisions shall be deposited not later than the business day following the receipt of funds on business days of the depository in one (1) or more depositories in the name of the state or political subdivision by the officer having control of the funds.

(b) Except as provided in subsections (d), (f), and (g), all public funds collected by state officers, other than the treasurer of state, shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds. The treasurer of state shall deposit daily on business days of the depository all public funds deposited with the treasurer of state. Deposits do not relieve any state officer from the duty of maintaining a cashbook under IC 5-13-5-1.

(c) Except as provided in ~~subsection~~ **subsections (d) and (g)**, all local officers, except township trustees, who collect public funds of their respective political subdivisions, shall deposit funds not later than the business day following the receipt of funds on business days of the

HEA 1281 — Concur



depository in the depository or depositories selected by the several local boards of finance that have jurisdiction of the funds. The public funds collected by township trustees shall be deposited in the designated depository on or before the first and fifteenth day of each month. Public funds deposited under this subsection shall be deposited in the same form in which they were received.

(d) **Except as provided in subsection (g)**, a city (other than a consolidated city) or a town shall deposit funds not later than the next business day following the receipt of the funds in depositories:

- (1) selected by the city or town as provided in an ordinance adopted by the city or the town; and
- (2) approved as depositories of state funds.

(e) All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories.

(f) An office of:

- (1) the department of natural resources; or
- (2) the department of state revenue;

that is detached from the main office of the department is not required to deposit funds on the business day following receipt if the funds on hand do not exceed five hundred dollars (\$500). However, the office must deposit the funds on hand not later than the business day following the day that the funds exceed five hundred dollars (\$500).

(g) ~~An office of the legislative branch of state government is~~ **The following are** not required to deposit funds on the business day following receipt if the funds on hand do not exceed ~~one hundred dollars (\$100)~~ **five hundred dollars (\$500)**:

- (1) **An office of the legislative branch of state government.**
- (2) **A local officer of a political subdivision required to deposit funds under subsection (c) other than a township trustee.**
- (3) **A city or a town required to deposit funds under subsection (d).**

However, ~~the office must deposit~~ the funds on hand **must be deposited** not later than the business day following the day that the funds exceed ~~one hundred dollars (\$100)~~ **five hundred dollars (\$500)**.

SECTION 2. IC 5-13-9.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 9.3. Investment of Proceeds Received From the Sale of Certain Capital Assets

Sec. 1. As used in this chapter, "capital asset" means a building,



a fixture, a structure, an improvement, or land.

Sec. 2. As used in this chapter, "fund" means a fund established under section 4 of this chapter.

Sec. 3. (a) Subject to the requirements of this chapter, the fiscal body of a political subdivision may adopt an ordinance (in the case of a county or municipality) or a resolution (in the case of any other political subdivision) to authorize the investment of proceeds from the sale of a capital asset owned by the political subdivision. A fiscal body may adopt an ordinance under this subsection before, after, or at the time of the sale of the capital asset.

(b) Proceeds from the sale of a capital asset owned by a political subdivision may be invested as provided in this chapter only if:

- (1)** the total amount received (either before July 1, 2015, or after June 30, 2015) or that will be received from the sale of the capital asset exceeds fifty million dollars (\$50,000,000); and
- (2)** the fiscal body of the political subdivision has adopted an ordinance or a resolution, as described in subsection (a), that applies to the investment of proceeds from the sale of that particular capital asset.

Sec. 4. (a) If the fiscal body of a political subdivision adopts an ordinance or a resolution under section 3 of this chapter for a particular capital asset, the fiscal officer of the political subdivision shall establish a separate fund into which some or all of the proceeds from the sale of the capital asset shall be deposited. All interest and other income earned on investments of money in the fund shall be deposited in the fund. The ordinance or resolution under section 3 of this chapter must require that the investing officer of the political subdivision shall contract with a registered investment advisor concerning the investment of the proceeds in the fund with the expanded investment authority granted to the political subdivision under this section.

(b) Notwithstanding IC 5-13 or any other law, the investing officer of the political subdivision may invest money in the fund in the same manner as money in the next generation trust fund may be invested under IC 8-14-15-8(b). A political subdivision shall enter into an agreement with a registered investment advisor to provide advice regarding investment of money in the fund. The political subdivision shall, with the advice of the registered investment advisor, enter into agreements with investment managers for the investment of the funds. These agreements:

- (1)** must be a fee-for-service agreement; and



(2) may not provide that the compensation of the investment management professionals or investment advisors is determined in whole or in part by the amount or percentage of the investment income earned on money in the fund.

(c) Money in the fund may not be expended or transferred from the fund, except as provided in this chapter.

Sec. 5. The following apply to money deposited in the fund:

(1) The principal of the fund consists of:

(A) the amount deposited in the fund as the proceeds from the sale of the capital asset; plus

(B) any investment income that is:

(i) earned on money in the fund; and

(ii) added to the principal of the fund as provided in subdivision (2).

(2) To the extent that investment income earned on money in the fund during a calendar year exceeds five percent (5%) of the amount of the principal at the beginning of the calendar year, that excess investment income shall, for purposes of this chapter, be added to and be considered a part of the principal of the fund.

(3) Money may be expended from the fund only upon appropriation by the fiscal body of the political subdivision. Money may be transferred from the fund to another fund of the political subdivision only if the fiscal body of the political subdivision authorizes the transfer by ordinance (in the case of a county or municipality) or by resolution (in the case of any other political subdivision). However, an expenditure or transfer of any money that is part of the principal of the fund may be made only if the expenditure or transfer is approved:

(A) by each member of the fiscal body of the political subdivision; and

(B) by each member of the executive of the political subdivision.

(4) All money in the fund that is in a deposit account and not in some other form of investment shall be deposited in one (1) or more designated depositories of the political subdivision in the same manner as other public funds of the political subdivision are deposited under IC 5-13-9.

Sec. 6. The department of local government finance may not reduce a political subdivision's property tax levy under IC 6-1.1-18.5 or any other law on account of money deposited in a fund established under this chapter.



SECTION 3. IC 36-1-14-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 3. (a) This section applies to a county in which the total amount received by the county (either before July 1, 2015, or after June 30, 2015) or that will be received by the county from the sale of a capital asset exceeds fifty million dollars (\$50,000,000).**

(b) As used in this section, "foundation" means a charitable nonprofit foundation established under subsection (c).

(c) The county legislative body and the county fiscal body may, by adopting substantially similar ordinances, establish a charitable nonprofit foundation to hold some or all of the proceeds of the sale of the capital asset in trust for the benefit of the county. A county legislative body and a county fiscal body may adopt ordinances under this subsection before, after, or at the time of the sale of the capital asset. The members of the county legislative body and the members of the county fiscal body shall serve as the board of trustees of a foundation established under this section. A member's term on the board of trustees expires when the member's term on the county legislative body or the county fiscal body expires.

(d) The board of trustees of a foundation established under this section shall contract with investment managers, investment advisors, investment counsel, trust companies, banks, or other finance professionals to assist the board in its investment program. Money held by the foundation must be invested in accordance with the terms of an investment policy statement developed by the board of trustees with an investment advisor that:

- (1) is approved by the board of trustees; and**
- (2) complies with the diversification, risk management, and other fiduciary requirements common to the management of charitable foundations, including that the funds of the foundation must be invested according to the prudent investor rule. However, the investment policy statement may not allow the foundation to invest in any investments in which the political subdivision that established the foundation is not permitted to invest under the Constitution of the State of Indiana. The investment policy statement must include the limitation on the investment in equities specified in subsection (f).**

(e) Money held by the foundation:

- (1) may be invested in any legal, marketable securities; and**
- (2) is not subject to any other investment limitations in the law, other than the limitations under this section and the**



limitations in the investment policy statement.

(f) The total amount of the funds invested by a foundation in equity securities under this section may not exceed fifty-five percent (55%) of the total value of the portfolio of funds invested by the foundation under this section. However:

(1) an investment that complies with this subsection when the investment is made remains legal even if a subsequent change in the value of the investment or a change in the value of the total portfolio of funds invested by the foundation causes the percentage of investments in equity securities to exceed the fifty-five percent (55%) limit on equity securities; and

(2) if the total amount of the funds invested by a foundation in equity securities exceeds the fifty-five percent (55%) limit on equity securities because of a change described in subdivision (1), the investments by the foundation must be rebalanced to comply with the fifty-five percent (55%) limit on equity investments not later than one hundred twenty (120) days after the equity investments first exceed that limit.

(g) The following apply if a foundation is established under this section:

(1) The county legislative body shall determine the amount of the proceeds from the sale of the capital asset that shall be transferred by the county fiscal officer to the foundation.

(2) The principal amount of the donation to the foundation consists of the following:

(A) The amount transferred to the foundation under subdivision (1).

(B) Any donations, gifts, or other money received from any private source.

(C) Any investment income that is:

(i) earned on the principal of the donation; and

(ii) added to the principal of the donation as provided in subdivision (3).

(3) To the extent that investment income earned on the principal amount of the donation during a calendar year exceeds five percent (5%) of the amount of the principal at the beginning of the calendar year, that excess investment income shall, for purposes of this section, be added to and be considered a part of the principal amount of the donation.

(4) An expenditure or transfer of any money that is part of the principal amount of the donation may be made only upon unanimous approval of the board of trustees.



(5) The foundation must be audited annually by an independent third party auditor.

(6) The board of trustees must meet at least quarterly to receive a quarterly compliance and performance update from the investment advisor. Three (3) nonvoting advisors who are officers of different county designated depositories shall attend the quarterly meetings in an advisory capacity to assist the board of trustees:

(A) in reviewing the compliance and performance report from the investment advisor; and

(B) in reviewing the annual audit required by subdivision (5).

The three (3) nonvoting advisors may not vote on any action of the board of trustees. The board of trustees shall by majority vote select the three (3) depositories from which the three (3) nonvoting advisors will be chosen. Each of the three (3) depositories selected under this subdivision shall select an officer of the depository to serve as one (1) of the three (3) nonvoting advisors. Each nonvoting advisor shall serve a term of three (3) years, and the nonvoting advisor shall continue to serve until a successor is selected. However, to provide for staggered terms, the board of trustees shall provide that the initial term of one (1) nonvoting advisor is one (1) year, the initial term of one (1) nonvoting advisor is two (2) years, and the initial term of one (1) nonvoting advisor is three (3) years. For purposes of avoiding a conflict of interest, a financial institution for which a nonvoting advisor is an officer (and any affiliate of such a financial institution) may not receive a commission or other compensation for investments made by the foundation under this section.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1281 — Concur

