

HOUSE BILL No. 1095

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-17.

Synopsis: Public benefit corporation merger. Allows a public benefit corporation to merge with a state educational institution.

Effective: July 1, 2016.

Cherry, Brown T

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1095

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

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

- 1 SECTION 1. IC 23-17-2-26.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2016]: **Sec. 26.5. "State educational**
- 4 **institution" has the meaning set forth in IC 21-7-13-32.**
- 5 SECTION 2. IC 23-17-19-2 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Without the prior
- 7 approval of the circuit court or superior court of the county where the
- 8 corporation's principal office or, if the principal office is not located in
- 9 Indiana, the corporation's registered office, is located in a proceeding
- 10 that the attorney general has been given written notice, a public benefit
- 11 or religious corporation may only merge with the following:
- 12 (1) A public benefit or religious corporation.
- 13 (2) A foreign corporation that would qualify under this article as
- 14 a public benefit or religious corporation.
- 15 (3) A wholly-owned foreign or domestic business or mutual
- 16 benefit corporation if the public benefit or religious corporation
- 17 is the surviving corporation and continues to be a public benefit



1 or religious corporation after the merger.

2 (4) A business or mutual benefit corporation if the following
3 conditions are met:

4 (A) On or before the effective date of the merger, assets with
5 a value equal to the greater of the fair market value of the net
6 tangible and intangible assets, including goodwill, of the
7 public benefit corporation or the fair market value of the
8 public benefit corporation if the corporation were to be
9 operated as a business concern are transferred or conveyed to
10 a person who would have received the corporation's assets
11 under IC 23-17-22-6(a)(5) and IC 23-17-22-6(a)(6) had the
12 corporation dissolved.

13 (B) The business or mutual benefit corporation returns,
14 transfers, or conveys any assets held by the business or mutual
15 benefit corporation upon condition requiring return, transfer,
16 or conveyance, that occurs by reason of the merger, in
17 accordance with the condition.

18 (C) The merger is approved by a majority of directors of the
19 public benefit or religious corporation who are not and will not
20 become:

- 21 (i) members in;
22 (ii) shareholders in; or
23 (iii) officers, employees, agents, or consultants of;
24 the surviving corporation.

25 (D) The requirements of section 8 of this chapter are met.

26 **(5) A state educational institution if it is a public benefit**
27 **corporation and the public benefit corporation is controlled**
28 **by that state educational institution before the merger.**

29 (b) At least twenty (20) days before consummation of any merger of
30 a public benefit corporation or a religious corporation under subsection
31 (a)(4), notice, including a copy of the proposed plan of merger, must be
32 delivered to the attorney general.

33 (c) Without the prior written consent of the attorney general or of
34 the circuit court or superior court of the county where:

- 35 (1) the corporation's principal office is located; or
36 (2) if the principal office is not located in Indiana, the
37 corporation's registered office is located;

38 in a proceeding in which the attorney general has been given notice, a
39 member of a public benefit or religious corporation may not receive or
40 keep anything as a result of a merger other than a membership or
41 membership in the surviving public benefit or religious corporation.
42 The court shall approve the transaction if the transaction is in the



1 public interest.

2 SECTION 3. IC 23-17-19-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) Unless this
4 article, articles of incorporation, bylaws, or the board of directors,
5 **board of trustees**, or members acting under subsection (c) require a
6 greater vote or voting by class, a plan of merger to be adopted must be
7 approved as follows:

- 8 (1) By the board of directors **or the board of trustees**.
9 (2) By the members, if any, by a majority of the votes cast.
10 (3) In writing by a person whose approval is required by articles
11 of incorporation authorized under IC 23-17-17-1 for an
12 amendment to articles of incorporation or bylaws.

13 (b) If a corporation does not have members, a merger must be
14 approved by a majority of the directors **or trustees** in office at the time
15 the merger is approved. In addition, the corporation shall provide
16 notice of any directors meeting at which the approval is to be obtained
17 under IC 23-17-15-3. The notice must also state that the purpose of the
18 meeting is to consider the proposed merger.

19 (c) Unless articles of incorporation provide otherwise, a proposed
20 merger and plan of merger must be initiated by a board of directors **or**
21 **board of trustees**. The board of directors **or board of trustees** may
22 condition the submission of the proposed merger on receipt of a higher
23 percentage of affirmative votes of the members or on another basis.

24 (d) If a board of directors seeks to have the plan approved by the
25 members at a membership meeting, the corporation shall give notice to
26 the corporation's members of the proposed membership meeting under
27 IC 23-17-10-5. The notice must also state that the purpose of the
28 meeting is to consider the plan of merger and contain or be
29 accompanied by a copy or summary of the plan. The copy or summary
30 of the plan for members of the surviving corporation must include a
31 provision that, if contained in a proposed amendment to articles of
32 incorporation or bylaws, would entitle members to vote on the
33 provision. The copy or summary of the plan for members of the
34 disappearing corporation must include a copy or summary of the
35 articles of incorporation and bylaws that will be in effect immediately
36 after the merger takes effect.

37 (e) If a board of directors seeks to have a plan approved by the
38 members by written consent or written ballot, the material soliciting the
39 approval must contain or be accompanied by a copy or summary of the
40 plan. The copy or summary of the plan for members of the surviving
41 corporation must include a provision that, if contained in a proposed
42 amendment to the articles of incorporation or bylaws, would entitle



1 members to vote on the provision. The copy or summary of the plan for
 2 members of the disappearing corporation must include a copy or
 3 summary of the articles and bylaws that will be in effect immediately
 4 after the merger takes effect.

5 (f) Voting by a class of members is required on a plan of merger if
 6 the plan contains a provision that, if contained in a proposed
 7 amendment to articles of incorporation or bylaws, would entitle the
 8 class of members to vote as a separate voting group on the proposed
 9 amendment under IC 23-17-17-6 or IC 23-17-18-2. The plan is
 10 approved by a class of members by a majority of the votes cast by the
 11 class.

12 (g) After a merger is adopted and before articles of merger are filed,
 13 the planned merger may be abandoned subject to any contractual rights
 14 without further action by members or other persons who approved the
 15 plan:

- 16 (1) under the procedure set forth in the plan of merger; or
- 17 (2) if a procedure is not set forth, in the manner determined by the
 18 board of directors.

19 SECTION 4. IC 23-17-19-4 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) After a plan of
 21 merger is approved by the board of directors **or board of trustees** and
 22 if required by section 3 of this chapter by the members and any other
 23 persons, the surviving or acquiring corporation **or state educational**
 24 **institution** shall deliver to the secretary of state articles of merger
 25 setting forth the following:

- 26 (1) The plan of merger.
- 27 (2) If approval of members was not required, a statement to that
 28 effect and a statement that the plan was approved by a sufficient
 29 vote of the board of directors.
- 30 (3) If approval by members was required, the following:
 - 31 (A) The designation, number of memberships outstanding,
 32 number of votes entitled to be cast by each class entitled to
 33 vote separately on the plan, and number of votes of each class
 34 indisputably voting on the plan.
 - 35 (B) Either the total number of votes cast for and against the
 36 plan by each class entitled to vote separately on the plan or the
 37 total number of undisputed votes cast for the plan by each
 38 class and a statement that the number cast for the plan by each
 39 class was sufficient for approval by that class.
- 40 (4) If approval of the plan by a person other than the members or
 41 the board of directors **or board of trustees** is required under
 42 section 3(a)(3) of this chapter, a statement that the approval was



1 obtained.

2 (b) Unless a delayed effective date is specified, a merger takes effect
3 when the articles of merger are filed.

4 (c) The surviving corporation **or state educational institution**
5 resulting from a merger may, after the merger has become effective,
6 file for record with the county recorder of each county in Indiana in
7 which a merging corporation has real property at the time of the
8 merger, the title to which will be transferred by the merger, a
9 file-stamped copy of the articles of merger. If the plan of merger sets
10 forth amendments to the articles of incorporation of the surviving
11 corporation that change the surviving corporation's corporate name, a
12 file-stamped copy of the articles of merger may be filed for record with
13 the county recorder of each county in Indiana in which the surviving
14 corporation has real property at the time the merger becomes effective.
15 A failure to record a copy of the articles of merger under this
16 subsection does not affect the validity of the merger or the change in
17 corporate name.

18 SECTION 5. IC 23-17-19-5 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) When a merger
20 takes effect the following occur:

21 (1) Another corporation party to the merger merges into the
22 surviving corporation **or state educational institution** and the
23 separate existence of every corporation except the surviving
24 corporation ceases.

25 (2) The title to real property and other property owned by each
26 corporation party to the merger is vested in the surviving
27 corporation **or state educational institution** without reversion or
28 impairment subject to any conditions to which the property was
29 subject before the merger.

30 (3) The surviving corporation **or state educational institution**
31 has all liabilities and obligations of each corporation party to the
32 merger.

33 (4) A proceeding pending against a corporation party to the
34 merger may be continued as if the merger did not occur or the
35 surviving corporation **or state educational institution** may be
36 substituted in the proceeding for the corporation whose existence
37 ceased.

38 (5) The articles of incorporation and bylaws of the surviving
39 corporation **or state educational institution** are amended to the
40 extent provided in the plan of merger.

41 (b) After a merger takes effect as provided in this article, any terms
42 of the plan of merger that are not included in the articles of



1 incorporation shall be considered to be contract rights only and not part
2 of the governing document of the corporation.
3 SECTION 6. IC 23-17-19-7 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. A bequest, devise,
5 gift, grant, or promise contained in a will or other instrument of
6 donation, subscription, or conveyance that:
7 (1) is made to a constituent corporation; and
8 (2) takes effect or remains payable after the merger;
9 inures to the surviving corporation **or state educational institution**
10 unless a will or other instrument otherwise specifically provides.

