

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1256

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 36-1-14-5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2018]: **Sec. 5. (a) This section applies only to a county that meets the following:**

(1) **The county sells a county hospital before January 1, 2017.**

(2) **The county council and county executive of the county adopt ordinances under this section to establish a charitable nonprofit foundation after June 30, 2018.**

(b) **As used in this section, "board" means the board of trustees of a foundation established under subsection (f).**

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

(d) **A county council and a county executive may, by adopting substantially similar ordinances, establish a charitable nonprofit foundation to hold some or all of the proceeds of the sale of a county hospital in trust for the benefit of the county.**

(e) **Nothing in subsection (d) shall be construed as superseding, replacing, or modifying any previously adopted ordinance or agreement that effectuates:**

(1) **monetary disbursements from the previously executed asset purchase agreement; and**

(2) **distributions from the previously executed asset purchase**

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agreement;
to an Indiana nonprofit corporation.

(f) If a foundation is established under this section, the board of trustees of the foundation consists of the following five (5) members:

- (1) One (1) member of the county council, appointed by the president of the county council.
- (2) One (1) member of the county executive, appointed by the president of the county executive.
- (3) One (1) individual who has at least five (5) years of experience as a certified public accountant, a financial adviser, a banker, or an investment manager, appointed by the president of the county council.
- (4) One (1) individual who has at least five (5) years of experience as a certified public accountant, a financial adviser, a banker, or an investment manager, appointed by the president of the county executive.
- (5) The county treasurer.

A member who serves on the board under this subsection is not entitled to compensation for service as a board member. Subject to the approval of the policy by the county council and the county executive, the board may establish a policy to reimburse a member of the board for the member's travel expenses and other expenses actually incurred in connection with the member's duties.

(g) The county treasurer shall serve as the chairperson of the board.

(h) The board of a foundation established under this section shall contract with a financial institution eligible to receive public funds of a political subdivision under IC 5-13-8-1 to assist the board in its investment program.

(i) The county council and the county executive shall do the following:

- (1) Formulate an investment policy that ensures that money held by the foundation is invested in accordance with IC 30-2-12.
- (2) Establish a policy concerning distributions of income and principal from the foundation.

A policy concerning distributions of income and principal that is established under subdivision (2) must specify that, except as provided in subsection (j)(5), the board may not expend or transfer money from the principal amount of the donation to the foundation.



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

(1) The county council and the county executive shall determine the amount of the proceeds from the sale of the county hospital 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.

(3) The county council and county executive shall establish a policy to set the annual rate of spending from the foundation. The rate of spending established by the county council and county executive may not exceed five percent (5%) of the principal amount of the donation calculated on January 1 of each year. The county council and county executive may change the annual rate of spending by a majority vote of the members of the county council and a majority vote of the members of the county executive. Any principal that is disbursed from the foundation to the county is not subject to the procedures to access the principal amount of the donation described in subdivision (5).

(4) The county council and county executive may not access the principal amount of the donation in the first five (5) years from the date the foundation is established under this section. Beginning after the fifth year from the date the foundation is established under this section, the county council and county executive may access the principal amount of the donation in accordance with subdivision (5).

(5) This subdivision does not apply to an expenditure or transfer of money that is part of the principal amount of the donation that is used to meet the annual rate of spending and does not exceed the annual rate of spending established under subdivision (3). The county council and county executive may approve an expenditure or transfer of any money that is part of the principal amount of the donation in accordance with the following:

(A) The county council and county executive may access the lesser of ten percent (10%) of the three (3) year average balance or two million dollars (\$2,000,000) from



the principal amount of the donation as follows:

(i) A vote of five (5) of the seven (7) members of the county council and a majority vote of the county executive at a joint meeting of the county council and the county executive must vote in favor of accessing the principal amount of the donation.

(ii) A vote under item (i) to access the principal amount of the donation may occur not more than one (1) time per year.

(iii) The three (3) year average balance is based on the opening balance of the principal amount of the donation on the first day of the month of each of the thirty-six (36) months immediately preceding the joint meeting of the county council and the county executive described in item (i).

(B) If the county council and county executive wish to access an amount from the principal amount of the donation that is more than the amount available under clause (A) but not more than fifty percent (50%) of the principal amount of the donation, the board shall proceed as follows:

(i) Five (5) of the seven (7) members of the county council and a majority vote of the county executive at a joint meeting of the county council and the county executive must vote in favor of accessing the principal amount of the donation. The votes of the county council and the county executive at the joint meeting must occur on two (2) occasions as provided in item (ii).

(ii) The votes described in item (i) must occur on two (2) occasions that are at least one (1) year apart but not more than two (2) years apart.

(iii) The votes described in item (i) must be based on identical language in an ordinance that sets forth the approved use of the funds accessed from the principal amount of the donation.

If the language in an ordinance under this clause is different from the language used in the first vote, the process to vote on accessing the principal amount of the donation must start over. The process to access the principal amount of the donation described in this clause may be used only once in any five (5) year period after the expiration of the five (5) year period in which the principal



amount may not be accessed under subdivision (4).

(C) To compute the five (5) year period described in clause (B), the period begins from the date on which the second vote to access the principal amount of the donation occurs.

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

(7) The board must meet at least quarterly to receive a quarterly compliance and performance update from the investment adviser.

(k) A unit located in a county to which this section applies may enter into an interlocal agreement under IC 36-1-7 with the county council, the county executive, and the board to invest funds obtained by the unit from the sale of a capital asset into the foundation established under this section. An interlocal agreement entered into under this subsection must contain the following:

(1) Funds transferred to the foundation from the sale of a capital asset under this subsection must be held in a separate account within the foundation and are not subject to the requirements of accessing principal and income established in this section.

(2) A policy concerning distributions of income and principal from the unit's account within the foundation.

The department of local government finance may not reduce the actual or maximum permissible property tax levy under IC 6-1.1-18.5 or any other law of a unit that enters into an interlocal agreement under this subsection on account of money transferred into or expended from a foundation established under this section.

(l) Subject to subsection (j)(4), money from the principal amount of the donation may be used for any legal or corporate purpose of the county, including the pledge of money to pay bonds, leases, or other obligations under IC 5-1-14-4. Money from the principal amount of the donation that is expended or transferred under subsection (j)(5) may be used to pay bonds issued by the county. The county council and the county executive may vote once under subsection (j)(5) to expend or transfer money from the principal amount of the donation to pay interest on bonds issued by the county.

(m) The department of local government finance may not reduce the county's actual or maximum permissible property tax levy under IC 6-1.1-18.5 or any other law on account of money deposited into or expended from a foundation established under



this section.

SECTION 2. IC 36-7-14-19, AS AMENDED BY P.L.52-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 19. (a) If no appeal is taken or if an appeal is taken but is unsuccessful, the redevelopment commission shall proceed with the proposed project to the extent that money is available for that purpose.

(b) The redevelopment commission shall first approve and adopt a list of the real property and interests in real property to be acquired and the price to be offered to the owner of each parcel of interest. For properties and interests in real property that:

- (1) are not for sale at auction; or
- (2) have a total purchase price (including land and structures, if any) of at least twenty-five thousand dollars (\$25,000);

the prices to be offered may not exceed the average of two (2) independent appraisals of fair market value procured by the commission except that appraisals are not required in transactions with other governmental agencies. The prices indicated on the list may not be exceeded unless specifically authorized by the commission or ordered by a court in condemnation proceedings. The commission may except from acquisition any real property in the area if the commission finds that such an acquisition is not necessary under the redevelopment plan. Appraisals made under this section are for the information of the commission and are not open for public inspection.

(c) Negotiations for the purchase of property may be carried on directly by the redevelopment commission, by its employees, or by expert negotiations, but no option, contract, or understanding relative to the purchase of real property is binding on the commission until approved and accepted by the commission in writing. The commission may authorize the payment of a nominal fee to bind an option and as a part of the consideration for conveyance may agree to pay the expense incident to the conveyance and determination of the title of the property. Payment for the property purchased shall be made when and as directed by the commission but only on delivery of proper instruments conveying the title or interest of the owner to the "City (or Town or County) of _____, ~~for the use and benefit of its department of redevelopment.~~ **Department of Redevelopment**". Notwithstanding the other provisions of this subsection, any agreement by the commission to:

- (1) make payments for the property to be purchased for a term exceeding three (3) years; or
- (2) pay a purchase price for the property that exceeds five million



dollars (\$5,000,000);
is subject to the prior approval of the legislative body of the unit.

(d) All real property and interests in real property acquired by the redevelopment commission are free and clear of all governmental liens, assessments, and other governmental charges except for current property taxes, which shall be prorated to the date of acquisition.

(e) Notwithstanding subsections (a) through (d), the redevelopment commission may, before the time referred to in this section, accept gifts of property needed for the redevelopment of redevelopment project areas if the property is free and clear of all governmental liens other than taxes, assessments, and other governmental charges. The commission may, before the time referred to in this section, take options on or contract for the acquisition of property needed for the redevelopment of redevelopment project areas if the options and contracts are not binding on the commission or the district until the time referred to in this section and until money is available to pay the consideration set out in the options or contracts.

SECTION 3. IC 36-7-14-19.5, AS ADDED BY P.L.52-2017, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 19.5. (a) Notwithstanding section 19 of this chapter, a redevelopment commission may purchase property in accordance with this section that the redevelopment commission determines is:

- (1) blighted;
- (2) unsafe;
- (3) abandoned;
- (4) foreclosed; or
- (5) structurally damaged;

from a willing seller.

(b) A redevelopment commission may purchase property described in subsection (a) as follows:

- (1) The redevelopment commission may purchase the property if:
 - (A) the sale price of the property is not more than twenty-five thousand dollars (\$25,000) or the property is for sale by another governmental agency; and
 - (B) the redevelopment commission:
 - (i) has a sufficient fund balance available; or
 - (ii) issues an obligation from public funds;
 for the purchase of the property.
- (2) If the sale price of the property is greater than twenty-five thousand dollars (\$25,000), a redevelopment commission shall obtain two (2) independent appraisals of fair market value of the



property. Any agreement by the redevelopment commission to:

- (A) make a purchase under this subdivision that exceeds the greater of the two (2) appraisals;
- (B) make payments for the property to be purchased for a term exceeding three (3) years; or
- (C) pay a purchase price for the property that exceeds five million dollars (\$5,000,000);

is subject to prior approval of the legislative body of the unit.

(c) Negotiations for the purchase of property may be carried on directly by the redevelopment commission, by its employees, or by expert negotiations, but no option, contract, or understanding relative to the purchase of real property is binding on the commission until approved and accepted by the commission in writing. The commission may authorize the payment of a nominal fee to bind an option and as a part of the consideration for conveyance may agree to pay the expense incident to the conveyance and determination of the title to the property. Payment for the property purchase shall be made when and as directed by the commission but only on delivery of proper instruments conveying the title or interest of the owner to the "City (or Town or County) of _____, for the use and benefit of its department of redevelopment". **Department of Redevelopment".**

(d) All real property and interests in real property acquired by the redevelopment commission are free and clear of all governmental liens, assessments, and other governmental charges except for current property taxes, which must be prorated to the date of acquisition.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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