



February 11, 2021

HOUSE BILL No. 1407

DIGEST OF HB 1407 (Updated February 10, 2021 12:44 pm - DI 137)

Citations Affected: IC 36-1.

Synopsis: Proceeds from the sale of a capital asset. Authorizes a nonprofit foundation (foundation) established by a county to hold proceeds from the sale of capital assets to include in the foundation's investment policy statement a formal spending policy for: (1) a spending rate of up to 5% multiplied by a five year moving average of quarterly market values with the distributable amount for each year determined on a specified date; or (2) in the case of a foundation that was established less than 10 years ago, an interim spending rate of up to 5% multiplied by a moving average consisting of all available quarterly market values since the date the foundation was established. Amends provisions that apply to a foundation that is established to hold proceeds from the sale of a county hospital as follows: (1) Specifies that the county may transfer excess money it receives from the foundation's annual spend rate back into the foundation. (2) Provides that if the annual investment income earned on the principal of the foundation exceeds 5% in a calendar year, that amount is added to and considered a part of the principal of the foundation. (3) Requires the board of the foundation to establish one or more separate accounts in which the principal and income of the foundation shall be held and that are subject to the same requirements in current law for accessing the principal and income.

Effective: Upon passage.

Engleman, Clere

January 14, 2021, read first time and referred to Committee on Local Government.
February 11, 2021, amended, reported — Do Pass.

HB 1407—LS 7081/DI 120



February 11, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1407

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-1-14-3, AS ADDED BY P.L.139-2015,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 3. (a) This section applies to a county in
4 which the total amount received by the county (either before July 1,
5 2015, or after June 30, 2015) or that will be received by the county
6 from the sale of a capital asset exceeds fifty million dollars
7 (\$50,000,000).
8 (b) As used in this section, "foundation" means a charitable
9 nonprofit foundation established under subsection (c).
10 (c) The county legislative body and the county fiscal body may, by
11 adopting substantially similar ordinances, establish a charitable
12 nonprofit foundation to hold some or all of the proceeds of the sale of
13 the capital asset in trust for the benefit of the county. A county
14 legislative body and a county fiscal body may adopt ordinances under
15 this subsection before, after, or at the time of the sale of the capital
16 asset. The members of the county legislative body and the members of
17 the county fiscal body shall serve as the board of trustees of a

HB 1407—LS 7081/DI 120



1 foundation established under this section. A member's term on the
 2 board of trustees expires when the member's term on the county
 3 legislative body or the county fiscal body expires.

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

- 11 (1) is approved by the board of trustees; and
- 12 (2) complies with the diversification, risk management, and other
 13 fiduciary requirements common to the management of charitable
 14 foundations, including that the funds of the foundation must be
 15 invested according to the prudent investor rule. However, the
 16 investment policy statement may not allow the foundation to
 17 invest in any investments in which the political subdivision that
 18 established the foundation is not permitted to invest under the
 19 Constitution of the State of Indiana.

20 The investment policy statement must include the limitation on the
 21 investment in equities specified in subsection (f) **and may include a**
 22 **formal spending policy as authorized in subsection (g).**

23 (e) Money held by the foundation:

- 24 (1) may be invested in any legal, marketable securities; and
- 25 (2) is not subject to any other investment limitations in the law,
 26 other than the limitations under this section and the limitations in
 27 the investment policy statement.

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

- 32 (1) an investment that complies with this subsection when the
 33 investment is made remains legal even if a subsequent change in
 34 the value of the investment or a change in the value of the total
 35 portfolio of funds invested by the foundation causes the
 36 percentage of investments in equity securities to exceed the
 37 fifty-five percent (55%) limit on equity securities; and
- 38 (2) if the total amount of the funds invested by a foundation in
 39 equity securities exceeds the fifty-five percent (55%) limit on
 40 equity securities because of a change described in subdivision (1),
 41 the investments by the foundation must be rebalanced to comply
 42 with the fifty-five percent (55%) limit on equity investments not



- 1 later than one hundred twenty (120) days after the equity
 2 investments first exceed that limit.
- 3 **(g) The investment policy statement approved by the board of**
 4 **trustees under subsection (d) may include a formal spending policy**
 5 **for:**
- 6 **(1) a spending rate of up to five percent (5%) multiplied by a**
 7 **five (5) year moving average of quarterly market values with**
 8 **the distributable amount for each year determined on a**
 9 **specified date; or**
- 10 **(2) in the case of a foundation that was established less than**
 11 **ten (10) years ago, an interim spending rate of up to five**
 12 **percent (5%) multiplied by a moving average consisting of all**
 13 **available quarterly market values since the date the**
 14 **foundation was established;**
- 15 **to the extent consistent with Section 4942 of the Internal Revenue**
 16 **Code.**
- 17 ~~(g)~~ **(h)** The following apply if a foundation is established under this
 18 section:
- 19 (1) The county legislative body shall determine the amount of the
 20 proceeds from the sale of the capital asset that shall be transferred
 21 by the county fiscal officer to the foundation.
- 22 (2) The principal amount of the donation to the foundation
 23 consists of the following:
- 24 (A) The amount transferred to the foundation under
 25 subdivision (1).
- 26 (B) Any donations, gifts, or other money received from any
 27 private source.
- 28 (C) Any investment income that is:
- 29 (i) earned on the principal of the donation; and
 30 (ii) added to the principal of the donation as provided in
 31 subdivision (3).
- 32 (3) To the extent that investment income earned on the principal
 33 amount of the donation during a calendar year exceeds five
 34 percent (5%) of the amount of the principal at the beginning of
 35 the calendar year, that excess investment income shall, for
 36 purposes of this section, be added to and be considered a part of
 37 the principal amount of the donation.
- 38 (4) An expenditure or transfer of any money that is part of the
 39 principal amount of the donation may be made only upon
 40 unanimous approval of the board of trustees.
- 41 (5) The foundation must be audited annually by an independent
 42 third party auditor.



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

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

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

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

27 SECTION 2. IC 36-1-14-5, AS ADDED BY P.L.183-2018,
 28 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: Sec. 5. (a) This section applies only to a county
 30 that meets the following:

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

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

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

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

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



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

- 4 (1) monetary disbursements from the previously executed asset
 5 purchase agreement; and
 6 (2) distributions from the previously executed asset purchase
 7 agreement;

8 to an Indiana nonprofit corporation.

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

11 (1) One (1) member of the county council, appointed by the
 12 president of the county council.

13 (2) One (1) member of the county executive, appointed by the
 14 president of the county executive.

15 (3) One (1) individual who has at least five (5) years of
 16 experience as a certified public accountant, a financial adviser, a
 17 banker, or an investment manager, appointed by the president of
 18 the county council.

19 (4) One (1) individual who has at least five (5) years of
 20 experience as a certified public accountant, a financial adviser, a
 21 banker, or an investment manager, appointed by the president of
 22 the county executive.

23 (5) The county treasurer.

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

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

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

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

37 (1) Formulate an investment policy that ensures that money held
 38 by the foundation is invested in accordance with IC 30-2-12.

39 (2) Establish a policy concerning distributions of income and
 40 principal from the foundation.

41 A policy concerning distributions of income and principal that is
 42 established under subdivision (2) must specify that, except as provided



1 in subsection ~~(j)(5)~~; **(j)(6)**, the board may not expend or transfer money
 2 from the principal amount of the donation to the foundation.

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

5 (1) The county council and the county executive shall determine:

6 **(A)** the amount of the proceeds from the sale of the county
 7 hospital that shall be transferred by the county fiscal officer to
 8 the foundation; **and**

9 **(B) the amount of excess money received by the county**
 10 **from the annual rate of spending distributed by the**
 11 **foundation that shall be transferred by the county fiscal**
 12 **officer to the foundation, if any.**

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

15 (A) The ~~amount~~ **amounts** transferred to the foundation under
 16 subdivision (1).

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

19 **(C) Any investment income that is:**

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

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

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

29 ~~(3)~~ **(4)** The county council and county executive shall establish a
 30 policy to set the annual rate of spending from the foundation. The
 31 rate of spending established by the county council and county
 32 executive may not exceed five percent (5%) of the principal
 33 amount of the donation calculated on January 1 of each year. The
 34 county council and county executive may change the annual rate
 35 of spending by a majority vote of the members of the county
 36 council and a majority vote of the members of the county
 37 executive. Any principal that is disbursed from the foundation to
 38 the county is not subject to the procedures to access the principal
 39 amount of the donation described in subdivision ~~(5)~~; **(6)**.

40 ~~(4)~~ **(5)** The county council and county executive may not access
 41 the principal amount of the donation in the first five (5) years
 42 from the date the foundation is established under this section.



1 Beginning after the fifth year from the date the foundation is
2 established under this section, the county council and county
3 executive may access the principal amount of the donation in
4 accordance with subdivision ~~(5)~~: **(6)**.

5 ~~(5)~~ **(6)** This subdivision does not apply to an expenditure or
6 transfer of money that is part of the principal amount of the
7 donation that is used to meet the annual rate of spending and does
8 not exceed the annual rate of spending established under
9 subdivision ~~(3)~~: **(4)**. The county council and county executive may
10 approve an expenditure or transfer of any money that is part of the
11 principal amount of the donation in accordance with the
12 following:

13 (A) The county council and county executive may access the
14 lesser of ten percent (10%) of the three (3) year average
15 balance or two million dollars (\$2,000,000) from the principal
16 amount of the donation as follows:

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

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

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

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

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

42 (ii) The votes described in item (i) must occur on two (2)



1 occasions that are at least one (1) year apart but not more
2 than two (2) years apart.

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

7 If the language in an ordinance under this clause is different
8 from the language used in the first vote, the process to vote on
9 accessing the principal amount of the donation must start over.
10 The process to access the principal amount of the donation
11 described in this clause may be used only once in any five (5)
12 year period after the expiration of the five (5) year period in
13 which the principal amount may not be accessed under
14 subdivision ~~(4)~~: **(5)**.

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

18 ~~(6)~~ **(7)** The foundation must be audited annually by an
19 independent third party auditor.

20 ~~(7)~~ **(8)** The board must meet at least quarterly to receive a
21 quarterly compliance and performance update from the
22 investment adviser.

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

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

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

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

40 **(l) Notwithstanding any provision to the contrary, in order to**
41 **fulfill the purposes for which it was created and exists, the board**
42 **shall establish one (1) or more separate accounts within the**



1 foundation in which funds under subsection (j)(2) shall be held, all
 2 upon request and direction of the county council and county
 3 executive. All of the provisions and requirements for accessing
 4 principal and income under this section shall also apply to any such
 5 separate accounts established within the foundation under this
 6 subsection.

7 ~~(j)~~ (m) Subject to subsection ~~(j)(4)~~; (j)(5), money from the principal
 8 amount of the donation may be used for any legal or corporate purpose
 9 of the county, including the pledge of money to pay bonds, leases, or
 10 other obligations under IC 5-1-14-4. Money from the principal amount
 11 of the donation that is expended or transferred under subsection ~~(j)(5)~~
 12 (j)(6) may be used to pay bonds issued by the county. The county
 13 council and the county executive may vote once under subsection ~~(j)(5)~~
 14 (j)(6) to expend or transfer money from the principal amount of the
 15 donation to pay interest on bonds issued by the county.

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

20 SECTION 3. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1407, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 36-1-14-3, AS ADDED BY P.L.139-2015, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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) **and may include a formal spending policy as authorized in subsection (g).**

(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 investment policy statement approved by the board of trustees under subsection (d) may include a formal spending policy for:

- (1) a spending rate of up to five percent (5%) multiplied by a five (5) year moving average of quarterly market values with the distributable amount for each year determined on a specified date; or**
- (2) in the case of a foundation that was established less than ten (10) years ago, an interim spending rate of up to five percent (5%) multiplied by a moving average consisting of all available quarterly market values since the date the foundation was established;**

to the extent consistent with Section 4942 of the Internal Revenue Code.

~~(g)~~ **(h)** 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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1407 as introduced.)

ZENT

Committee Vote: yeas 12, nays 0.

