

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 163

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 5-4-1-18, AS AMENDED BY P.L.188-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 18. (a) Except as provided in subsections (b), (c), and (d), the following individuals shall file and maintain in place an individual surety bond during each year that the individual serves as an officer, employee, or contractor:

- (1) City judges, controllers, clerks, and clerk-treasurers.
- (2) Town judges, **town controllers**, and clerk-treasurers.
- (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors, and clerks.
- (4) Township trustees.
- (5) Those employees directed to file an individual bond by the fiscal body of a city, town, or county.
- (6) Township assessors (if any).
- (7) Individuals:
 - (A) who are employees or contractors of a city, town, county, or township; and
 - (B) whose official duties include receiving, processing, depositing, disbursing, or otherwise having access to funds:
 - (i) that belong to the federal government, the state, a political subdivision, or another governmental entity; and
 - (ii) in an amount that exceeds five thousand dollars (\$5,000)

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per year.

(b) The fiscal body of a city, town, county, or township may by ordinance authorize the purchase of a blanket bond that:

- (1) is endorsed to include faithful performance to cover the faithful performance of; and
- (2) includes aggregate coverage sufficient to provide coverage amounts specified for;

all employees, commission members, and persons acting on behalf of the local government unit, including the officers, employees, and contractors described in subsection (a) who are required to file a bond under this chapter.

(c) The fiscal body of a city, town, or county may by ordinance or the fiscal body of a township may by resolution authorize the purchase of a name or position schedule bond that:

- (1) names each individual or each position covered under the schedule bond;
- (2) is endorsed to include faithful performance to cover the faithful performance of all officers, employees, and contractors described in subsection (a) who are required to file a bond under this chapter; and
- (3) includes aggregate coverage sufficient to provide coverage amounts specified for all officers, employees, and contractors described in subsection (a) who are required to file a bond under this chapter.

(d) The fiscal body of a city, town, county, or township may by ordinance (or for a township, by resolution) authorize the purchase of a crime insurance policy that:

- (1) provides coverage for criminal acts or omissions committed by;
- (2) is endorsed to include faithful performance to cover the faithful performance of; and
- (3) includes aggregate coverage sufficient to provide coverage amounts specified for;

all officers, employees, contractors, commission members, and persons acting on behalf of the local government unit and required to file a bond under this chapter. For the sole purpose of recovering public funds on behalf of a local government unit, the state is considered to be an additional named insured on all crime insurance policies and endorsements obtained under this subsection.

(e) Except as provided in subsections (k) and (l), the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law



fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

(1) The amount must equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount for the officer or employee.

County auditors shall file bonds in amounts of not less than thirty thousand dollars (\$30,000), as fixed by the fiscal body of the county.

(f) The amount of the bond of a person who is not specified in subsection (e) and is required to file an individual bond shall be fixed by the fiscal body of the unit as follows:

(1) If the person is not described in subsection (a)(7), at not less than fifteen thousand dollars (\$15,000).

(2) If the person is described in subsection (a)(7), at not less than five thousand dollars (\$5,000).

(g) Except as provided in subsection (m), a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least thirty thousand dollars (\$30,000).

(h) Except as provided under subsection (g), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(i) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(j) The commissioner of insurance may prescribe the form of the bonds or crime insurance policies required by this section, in consultation with the state board of accounts and the Indiana archives and records administration under IC 5-15-5.1-6. However, a bond or crime insurance policy that does not conform to a form prescribed under this subsection may be used to meet the requirements of this chapter.

(k) Notwithstanding subsection (e), the state board of accounts may



fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, **town controller**, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township trustee, or conservancy district financial clerk at an amount that exceeds thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(l) Notwithstanding subsection (f), the state board of accounts may fix the amount of the bond for any person who is described in:

- (1) subsection (f)(1) and is required to file an individual bond at an amount that exceeds fifteen thousand dollars (\$15,000); or
- (2) subsection (f)(2) and is required to file an individual bond at an amount that exceeds five thousand dollars (\$5,000).

An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(m) Notwithstanding subsection (g), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) at an amount that exceeds thirty thousand dollars (\$30,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(n) The following apply to a bond that is filed to comply with this section:

- (1) Each bond must provide coverage in the amount required for the individual covered under the bond for one (1) year (the policy year) commencing on the first day of the:
 - (A) calendar year;
 - (B) fiscal year of the political subdivision or governmental unit; or
 - (C) individual's service in the office or position for which a



bond is required.

(2) A continuous bond may be used to satisfy the requirement of subdivision (1) if the bond:

(A) is renewed on an annual basis for the period during which the individual serves in the office or position for which a bond is required; and

(B) provides coverage in the amount required for the individual covered under the bond for each policy year.

However, any claim under a continuous bond used under this subdivision must be brought not later than six (6) years after the occurrence giving rise to the claim.

(3) The maximum aggregate liability of the surety or insurer for a single policy year is the penal sum of the bond. In the case of a continuous bond, the maximum aggregate liability of the surety or insurer for the entire term that the bond is in effect is the penal sum of the bond for the current term of the bond and the penal sums of the bond for the five (5) immediately preceding years.

SECTION 2. IC 34-30-2-153.7, AS ADDED BY P.L.86-2018, SECTION 326, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 153.7. **(a)** IC 36-5-6-6 (Concerning town clerk-treasurers for certain acts or omissions).

(b) IC 36-5-6-6.5 (Concerning town clerks for certain acts or omissions).

(c) IC 36-5-6.5-6 (Concerning town controllers for certain acts or omissions).

SECTION 3. IC 36-4-1-1, AS AMENDED BY P.L.119-2012, SECTION 184, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) Municipalities are classified according to their status and population as follows:

STATUS AND POPULATION	CLASS
Cities of 600,000 or more	First class cities
Cities of 35,000 34,000 to 599,999	Second class cities
Cities of less than 35,000 34,000	Third class cities
Other municipalities of any population	Towns

(b) Except as provided in subsection (c), a city that attains a population of ~~thirty-five~~ **thirty-four** thousand (~~35,000~~) (**34,000**) remains a second class city even though its population decreases to less than ~~thirty-five~~ **thirty-four** thousand (~~35,000~~) (**34,000**) at the next federal decennial census.

(c) The legislative body of a city to which subsection (b) applies may, by ordinance, adopt third class city status.



SECTION 4. IC 36-4-1-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1.1. (a) Except as provided in subsection (b), a third class city remains a third class city even though the city attains a population of at least ~~thirty-five~~ **thirty-four** thousand (~~35,000~~) (**34,000**) at a federal decennial census.

(b) The legislative body of a city to which subsection (a) applies may, by ordinance, adopt second class city status.

SECTION 5. IC 36-5-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. **Except as provided in IC 36-5-6.5**, the clerk-treasurer elected under this chapter is both the town clerk and the town fiscal officer.

SECTION 6. IC 36-5-6-3, AS AMENDED BY P.L.109-2015, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) The clerk-treasurer must reside within the town as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The clerk-treasurer forfeits office if the clerk-treasurer ceases to be a resident of the town. **An individual who resides in territory that is annexed by the town before the election is considered a resident of the town for purposes of this subsection, even if the annexation took effect less than one (1) year before the election.**

(b) Except as provided in subsection (c), (d), (e), or (f), the term of office of the clerk-treasurer is four (4) years, beginning at noon January 1 after election and continuing until a successor is elected and qualified.

(c) The term of office of a clerk-treasurer elected under IC 36-5-1-10.1 following the incorporation of the town:

- (1) begins at noon November 30 following the election; and
- (2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the clerk-treasurer's successor is elected and qualified.

(d) The term of office of a clerk-treasurer subject to an ordinance described by IC 3-10-6-2.6 is:

- (1) one (1) year if the clerk-treasurer is elected at the next municipal election not conducted in a general election year; and
- (2) four (4) years for the successors of the clerk-treasurer described in subdivision (1);

beginning at noon January 1 after the clerk-treasurer's election and continuing until the clerk-treasurer's successor is elected and qualified.

(e) The term of office of a clerk-treasurer subject to an ordinance described by IC 3-10-7-2.7 is:

- (1) three (3) years if the clerk-treasurer is elected at the next



municipal election not conducted in a general election year; and
 (2) four (4) years for the successors of the clerk-treasurer described in subdivision (1);
 beginning noon January 1 after the clerk-treasurer's election and continuing until the clerk-treasurer's successor is elected and qualified.

(f) The term of office of a clerk-treasurer subject to an ordinance described by IC 3-10-7-2.9 is:

- (1) the term of office provided by the ordinance, not to exceed four (4) years, for the clerk-treasurer elected in the first election cycle after adoption of the ordinance; and
- (2) four (4) years for the successors of the clerk-treasurer described in subdivision (1).

SECTION 7. IC 36-5-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. **(a) This section does not apply to a town that has adopted an ordinance under IC 36-5-6.5.**

(a) **(b)** The clerk-treasurer shall do the following:

- (1) Receive and care for all town money and pay the money out only on order of the town legislative body.
- (2) Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money.
- (3) Prescribe payroll and account forms for all town offices.
- (4) Prescribe the manner in which creditors, officers, and employees shall be paid.
- (5) Manage the finances and accounts of the town and make investments of town money.
- (6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate.
- (7) Maintain custody of the town seal and the records of the legislative body.
- (8) Issue all licenses authorized by statute and collect the fees fixed by ordinance.
- (9) Serve as clerk of the legislative body by attending its meetings and recording its proceedings.
- (10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.
- (11) Serve as clerk of the town court under IC 33-35-3-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-35-3-1.
- (12) Perform all other duties prescribed by statute.



~~(b)~~ (c) A clerk-treasurer is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the requirements set forth in subsection ~~(a)~~; **(b)**, unless the act or omission constitutes gross negligence or an intentional disregard of the requirements.

SECTION 8. IC 36-5-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 6.5. (a) This section applies only to a town that adopts an ordinance under IC 36-5-6.5.**

(b) A reference to a town clerk-treasurer in the Indiana Code is considered to be a reference to the town clerk who serves a town that has an appointed controller under IC 36-5-6.5, to the extent that the reference is connected to the duties of the town clerk set forth in subsection (e).

(c) A reference to a town clerk-treasurer in the Indiana Code is considered to be a reference to the town controller who serves a town that has an appointed controller under IC 36-5-6.5, to the extent that the reference is connected to the duties of the town controller set forth IC 36-5-6.5-5.

(d) Not later than the effective date of an ordinance adopted under IC 36-5-6.5, the town clerk-treasurer shall turn over to the controller the records relating to the controller's powers and duties described in IC 36-5-6.5-5.

(e) The town clerk shall do the following:

- (1) Serve as clerk of the town council under IC 36-5-2-2 and maintain custody of its records.**
- (2) Maintain all records required by law.**
- (3) Keep the town seal.**
- (4) As soon as a successor is elected and qualified, deliver to the successor all the records and property of the clerk's office.**
- (5) Perform other duties prescribed by law.**
- (6) Administer oaths when necessary in the discharge of the clerk's duties, without charging a fee.**
- (7) Take depositions, without charging a fee.**
- (8) Take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.**
- (9) Serve as clerk of the town court under IC 33-35-3-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-35-3-1.**

(f) A town clerk is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the requirements set forth in subsection (e), unless the act or



omission constitutes gross negligence or an intentional disregard of the requirements of law.

SECTION 9. IC 36-5-6.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 6.5. Town Controller

Sec. 1. This chapter applies only to a town that:

- (1) has a population of thirty-four thousand (34,000) or more; and**
- (2) adopts an ordinance under this chapter.**

Sec. 2. The town legislative body may adopt an ordinance to establish the office of town controller to be appointed by the legislative body.

Sec. 3. The town controller serves as the town's fiscal officer.

Sec. 4. The town controller is the head of the town department of finance.

Sec. 5. The town controller shall do the following:

- (1) Prescribe the form of reports and accounts to be submitted to the department.**
- (2) Sign and issue all warrants on the town treasury.**
- (3) Audit and revise all accounts and trusts in which the town is concerned.**
- (4) Keep separate accounts for each item of appropriation made for each town department, including a statement showing the amount drawn on each appropriation, the unpaid contracts charged against it, and the balance remaining.**
- (5) At the end of each fiscal year, submit under oath to the town legislative body a report of the accounts of the town published in pamphlet form and showing revenues, receipts, expenditures, and the sources of revenues.**
- (6) Maintain custody of the records of the department and turn them over to the fiscal officer's successor in office.**
- (7) Perform duties prescribed by statute concerning the negotiation of town bonds, notes, and warrants.**
- (8) Keep a register of bonds of the town and of transfers of those bonds.**
- (9) Manage the finances and accounts of the town and make investments of town money, subject to the ordinances of the legislative body and laws concerning public funds.**
- (10) Issue town licenses on payment of the license fee.**
- (11) Collect fees as fixed by ordinance.**
- (12) Pay into the town treasury, in accordance with the laws**



concerning public funds, all fees and other town money collected by the department, specifying the source of each item.

(13) Prescribe payroll and account forms for all town offices.

(14) Prescribe the manner in which salaries shall be drawn.

(15) Prescribe the manner in which creditors, officers, and employees shall be paid.

(16) Provide that all salaries are payable monthly, unless the legislative body establishes more frequent payments.

(17) Notify the town council of the failure of any town officer to collect money due the town or to pay town money into the town treasury.

(18) Draw warrants on the town treasury for miscellaneous town expenditures not made under the direction of a department and not specifically fixed by statute.

(19) If a town owns a utility and the controller is directly responsible for the billing and collection of that utility's rates and charges, the controller shall appoint those employees who are also responsible for that billing and collection. These employees serve at the controller's pleasure.

Sec. 6. The town controller is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the town controller's duties as the town's fiscal officer, unless the act or omission constitutes gross negligence or an intentional disregard of the controller's duty as fiscal officer.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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