



January 26, 2022

SENATE BILL No. 242

DIGEST OF SB 242 (Updated January 24, 2022 6:50 pm - DI 87)

Citations Affected: IC 36-1.

Synopsis: County treasurer duties. Provides that a charitable nonprofit foundation established to hold the proceeds of the sale of certain county hospitals may provide for compensation of the foundation's chairperson. (Under current law, the county treasurer is the foundation's chairperson and the members of the board of the foundation serve without compensation.) Provides that: (1) the county treasurer's service as the board's chairperson is considered to be part of the county treasurer's duties as county treasurer; (2) the chairperson may not vote on, or otherwise participate in, any board action relating to the compensation of the chairperson; (3) if the board provides for the payment of compensation to the chairperson, the compensation: (A) is considered to be part of the county treasurer's compensation as county treasurer; and (B) must be paid from money held by the foundation and not part of the county treasury; and (4) the amount of compensation paid by the foundation: (A) is in addition to the salary paid by the county to the chairperson as county treasurer; and (B) may not exceed \$5000 annually.

Effective: July 1, 2022.

Boehnlein, Becker

January 10, 2022, read first time and referred to Committee on Local Government.
January 25, 2022, amended, reported favorably — Do Pass.

SB 242—LS 6377/DI 75



January 26, 2022

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 BILL No. 242

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 36-1-14-5, AS AMENDED BY P.L.40-2021,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 5. (a) This section applies only to a county that
4 meets the following:
5 (1) The county sells a county hospital before January 1, 2017.
6 (2) The county council and county executive of the county adopt
7 ordinances under this section to establish a charitable nonprofit
8 foundation after June 30, 2018.
9 (b) As used in this section, "board" means the board of trustees of
10 a foundation established under subsection (f).
11 (c) As used in this section, "foundation" means a charitable
12 nonprofit foundation established under subsection (d).
13 (d) A county council and a county executive may, by adopting
14 substantially similar ordinances, establish a charitable nonprofit
15 foundation to hold some or all of the proceeds of the sale of a county
16 hospital in trust for the benefit of the county.
17 (e) Nothing in subsection (d) shall be construed as superseding,

SB 242—LS 6377/DI 75



1 replacing, or modifying any previously adopted ordinance or agreement
2 that effectuates:

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

5 (2) distributions from the previously executed asset purchase
6 agreement;

7 to an Indiana nonprofit corporation.

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

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

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

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

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

22 (5) The county treasurer.

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

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

31 **The county treasurer's service as the board's chairperson under**
32 **this section is considered to be part of the county treasurer's duties**
33 **as county treasurer.**

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

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

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

42 (2) Establish a policy concerning distributions of income and



- 1 principal from the foundation.
 2 A policy concerning distributions of income and principal that is
 3 established under subdivision (2) must specify that, except as provided
 4 in subsection (j)(6), the board may not expend or transfer money from
 5 the principal amount of the donation to the foundation.
 6 (j) The following apply if a foundation is established under this
 7 section:
 8 (1) The county council and the county executive shall determine:
 9 (A) the amount of the proceeds from the sale of the county
 10 hospital that shall be transferred by the county fiscal officer to
 11 the foundation; and
 12 (B) the amount of excess money received by the county from
 13 the annual rate of spending distributed by the foundation that
 14 shall be transferred by the county fiscal officer to the
 15 foundation, if any.
 16 (2) The principal amount of the donation to the foundation
 17 consists of the following:
 18 (A) The amounts transferred to the foundation under
 19 subdivision (1).
 20 (B) Any donations, gifts, or other money received from any
 21 private source.
 22 (C) Any investment income that is:
 23 (i) earned on the principal of the donation; and
 24 (ii) added to the principal of the donation as provided in
 25 subdivision (3).
 26 (3) To the extent that investment income earned on the principal
 27 amount of the donation during a calendar year exceeds five
 28 percent (5%) of the amount of the principal at the beginning of
 29 the calendar year, that excess investment income shall, for
 30 purposes of this section, be added to and be considered a part of
 31 the principal amount of the donation.
 32 (4) The county council and county executive shall establish a
 33 policy to set the annual rate of spending from the foundation. The
 34 rate of spending established by the county council and county
 35 executive may not exceed five percent (5%) of the principal
 36 amount of the donation calculated on January 1 of each year. The
 37 county council and county executive may change the annual rate
 38 of spending by a majority vote of the members of the county
 39 council and a majority vote of the members of the county
 40 executive. Any principal that is disbursed from the foundation to
 41 the county is not subject to the procedures to access the principal
 42 amount of the donation described in subdivision (6).



1 (5) The county council and county executive may not access the
2 principal amount of the donation in the first five (5) years from
3 the date the foundation is established under this section.
4 Beginning after the fifth year from the date the foundation is
5 established under this section, the county council and county
6 executive may access the principal amount of the donation in
7 accordance with subdivision (6).

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

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

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

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

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

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

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



- 1 occasions as provided in item (ii).
 2 (ii) The votes described in item (i) must occur on two (2)
 3 occasions that are at least one (1) year apart but not more
 4 than two (2) years apart.
 5 (iii) The votes described in item (i) must be based on
 6 identical language in an ordinance that sets forth the
 7 approved use of the funds accessed from the principal
 8 amount of the donation.
 9 If the language in an ordinance under this clause is different
 10 from the language used in the first vote, the process to vote on
 11 accessing the principal amount of the donation must start over.
 12 The process to access the principal amount of the donation
 13 described in this clause may be used only once in any five (5)
 14 year period after the expiration of the five (5) year period in
 15 which the principal amount may not be accessed under
 16 subdivision (5).
 17 (C) To compute the five (5) year period described in clause
 18 (B), the period begins from the date on which the second vote
 19 to access the principal amount of the donation occurs.
 20 (7) The foundation must be audited annually by an independent
 21 third party auditor.
 22 (8) The board must meet at least quarterly to receive a quarterly
 23 compliance and performance update from the investment adviser.
 24 (k) A unit located in a county to which this section applies may
 25 enter into an interlocal agreement under IC 36-1-7 with the county
 26 council, the county executive, and the board to invest funds obtained
 27 by the unit from the sale of a capital asset into the foundation
 28 established under this section. An interlocal agreement entered into
 29 under this subsection must contain the following:
 30 (1) Funds transferred to the foundation from the sale of a capital
 31 asset under this subsection must be held in a separate account
 32 within the foundation and are not subject to the requirements of
 33 accessing principal and income established in this section.
 34 (2) A policy concerning distributions of income and principal
 35 from the unit's account within the foundation.
 36 The department of local government finance may not reduce the actual
 37 or maximum permissible property tax levy under IC 6-1.1-18.5 or any
 38 other law of a unit that enters into an interlocal agreement under this
 39 subsection on account of money transferred into or expended from a
 40 foundation established under this section.
 41 (l) Notwithstanding any provision to the contrary, in order to fulfill
 42 the purposes for which it was created and exists, the board shall



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

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

16 (n) The department of local government finance may not reduce the
 17 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 **(o) Notwithstanding subsection (f), the board may, by resolution,**
 21 **provide for compensation of the board's chairperson in the**
 22 **amounts, and under the conditions, described in the resolution. The**
 23 **following apply to an action of the board under this subsection:**

24 **(1) The chairperson may not vote on, or otherwise participate**
 25 **in, any board action relating to the compensation of the**
 26 **chairperson under this subsection.**

27 **(2) The board may amend or revoke a resolution adopted**
 28 **under this subsection. Subdivision (1) applies to any action of**
 29 **the board under this subdivision.**

30 **(3) If the board provides for the payment of compensation to**
 31 **the chairperson under this subsection, the compensation:**

32 **(A) is considered to be part of the county treasurer's**
 33 **compensation as county treasurer; and**

34 **(B) must be paid from money that is:**

35 **(i) held by the foundation; and**

36 **(ii) not part of the county treasury.**

37 **(4) The amount of compensation paid under this subsection:**

38 **(A) is in addition to the salary paid by the county to the**
 39 **chairperson in the chairperson's capacity as county**
 40 **treasurer; and**

41 **(B) may not exceed five thousand dollars (\$5,000) annually.**



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 242, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete lines 30 through 36, begin a new line block indented and insert:

"(3) If the board provides for the payment of compensation to the chairperson under this subsection, the compensation:

(A) is considered to be part of the county treasurer's compensation as county treasurer; and

(B) must be paid from money that is:

(i) held by the foundation; and

(ii) not part of the county treasury.

(4) The amount of compensation paid under this subsection:

(A) is in addition to the salary paid by the county to the chairperson in the chairperson's capacity as county treasurer; and

(B) may not exceed five thousand dollars (\$5,000) annually."

and when so amended that said bill do pass.

(Reference is to SB 242 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 10, Nays 0.

