



February 6, 2015

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# HOUSE BILL No. 1281

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DIGEST OF HB 1281 (Updated February 3, 2015 3:00 pm - DI 87)

**Citations Affected:** IC 5-13; IC 36-1.

**Synopsis:** Local government investments. Provides that if the proceeds from the sale of a capital asset owned by a political subdivision exceed \$50,000,000, the fiscal body of the political subdivision may do the following: (1) Require some or all of the proceeds to be deposited into a separate fund. (2) Authorize the proceeds to be invested in the same manner as money in the next generation trust fund may be invested, and if so invested, all money that is in a deposit account and not in some other form of investment must be deposited in one or more designated depositories of the political subdivision in the same manner as other public funds of the political subdivision are deposited. Specifies that an expenditure or transfer of any money that is part of the principal of the fund may be made only if the expenditure or transfer is approved by each member of the fiscal body of the political subdivision and by each member of the executive of the political subdivision. Provides that in the case of a county that receives or will receive at least \$50,000,000 from the sale of a capital asset, 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. Requires the political subdivision and the foundation to enter into an agreement with a registered investment advisor regarding investment of the proceeds and the agreement must be a fee-for-service agreement. Specifies that the board of trustees of the foundation consists of the members of the  
(Continued next page)

**Effective:** July 1, 2015.

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## Soliday

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January 13, 2015, read first time and referred to Committee on Government and Regulatory Reform.

February 5, 2015, amended, reported — Do Pass.

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HB 1281—LS 6864/DI 73



## Digest Continued

county legislative body and the members of the county fiscal body. Provides the following if a foundation is established: (1) Money must be invested in accordance with the terms of an investment policy statement developed by the board of trustees with the investment advisor. (2) The investment policy statement must require 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. 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. (3) Money held by the foundation may be invested in any legal, marketable securities, and is not subject to any other investment limitations in the law (other than the limitations contained in the statute authorizing such an investment and the restrictions contained in the investment policy statement). (4) The total amount of the funds invested by the foundation in equity securities may not exceed 55% of the total portfolio value. (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. (7) Three nonvoting advisors who are officers of different county designated depositories shall be appointed by those depositories to attend the quarterly meetings and assist the board of trustees in reviewing the compliance and performance report and the annual audit. Provides that an expenditure or transfer of any money that is part of the principal of the donation may be made only upon unanimous approval of the board of trustees. Provides that to the extent that investment income earned on the principal amount of the donation during a calendar year exceeds 5% of the amount of the principal at the beginning of the calendar year, that excess investment income shall be added to and be considered a part of the principal amount of the donation.



February 6, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1281

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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 5-13-9.3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]:  
4 **Chapter 9.3. Investment of Proceeds Received From the Sale of**  
5 **Certain Capital Assets**  
6 **Sec. 1. As used in this chapter, "capital asset" means a building,**  
7 **a fixture, a structure, an improvement, or land.**  
8 **Sec. 2. As used in this chapter, "fund" means a fund established**  
9 **under section 4 of this chapter.**  
10 **Sec. 3. (a) Subject to the requirements of this chapter, the fiscal**  
11 **body of a political subdivision may adopt an ordinance (in the case**  
12 **of a county or municipality) or a resolution (in the case of any**  
13 **other political subdivision) to authorize the investment of proceeds**  
14 **from the sale of a capital asset owned by the political subdivision.**

HB 1281—LS 6864/DI 73



1 A fiscal body may adopt an ordinance under this subsection before,  
2 after, or at the time of the sale of the capital asset.

3 (b) Proceeds from the sale of a capital asset owned by a political  
4 subdivision may be invested as provided in this chapter only if:

5 (1) the total amount received (either before July 1, 2015, or  
6 after June 30, 2015) or that will be received from the sale of  
7 the capital asset exceeds fifty million dollars (\$50,000,000);  
8 and

9 (2) the fiscal body of the political subdivision has adopted an  
10 ordinance or a resolution, as described in subsection (a), that  
11 applies to the investment of proceeds from the sale of that  
12 particular capital asset.

13 Sec. 4. (a) If the fiscal body of a political subdivision adopts an  
14 ordinance or a resolution under section 3 of this chapter for a  
15 particular capital asset, the fiscal officer of the political subdivision  
16 shall establish a separate fund into which some or all of the  
17 proceeds from the sale of the capital asset shall be deposited. All  
18 interest and other income earned on investments of money in the  
19 fund shall be deposited in the fund. The ordinance or resolution  
20 under section 3 of this chapter must require that the investing  
21 officer of the political subdivision shall contract with a registered  
22 investment advisor concerning the investment of the proceeds in  
23 the fund with the expanded investment authority granted to the  
24 political subdivision under this section.

25 (b) Notwithstanding IC 5-13 or any other law, the investing  
26 officer of the political subdivision may invest money in the fund in  
27 the same manner as money in the next generation trust fund may  
28 be invested under IC 8-14-15-8(b). A political subdivision shall  
29 enter into an agreement with a registered investment advisor to  
30 provide advice regarding investment of money in the fund. The  
31 political subdivision shall, with the advice of the registered  
32 investment advisor, enter into agreements with investment  
33 managers for the investment of the funds. These agreements:

34 (1) must be a fee-for-service agreement; and

35 (2) may not provide that the compensation of the investment  
36 management professionals or investment advisors is  
37 determined in whole or in part by the amount or percentage  
38 of the investment income earned on money in the fund.

39 (c) Money in the fund may not be expended or transferred from  
40 the fund, except as provided in this chapter.

41 Sec. 5. The following apply to money deposited in the fund:

42 (1) The principal of the fund consists of:



- 1           (A) the amount deposited in the fund as the proceeds from  
2           the sale of the capital asset; plus  
3           (B) any investment income that is:  
4           (i) earned on money in the fund; and  
5           (ii) added to the principal of the fund as provided in  
6           subdivision (2).  
7           (2) To the extent that investment income earned on money in  
8           the fund during a calendar year exceeds five percent (5%) of  
9           the amount of the principal at the beginning of the calendar  
10          year, that excess investment income shall, for purposes of this  
11          chapter, be added to and be considered a part of the principal  
12          of the fund.  
13          (3) Money may be expended from the fund only upon  
14          appropriation by the fiscal body of the political subdivision.  
15          Money may be transferred from the fund to another fund of  
16          the political subdivision only if the fiscal body of the political  
17          subdivision authorizes the transfer by ordinance (in the case  
18          of a county or municipality) or by resolution (in the case of  
19          any other political subdivision). However, an expenditure or  
20          transfer of any money that is part of the principal of the fund  
21          may be made only if the expenditure or transfer is approved:  
22          (A) by each member of the fiscal body of the political  
23          subdivision; and  
24          (B) by each member of the executive of the political  
25          subdivision.  
26          (4) All money in the fund that is in a deposit account and not  
27          in some other form of investment shall be deposited in one (1)  
28          or more designated depositories of the political subdivision in  
29          the same manner as other public funds of the political  
30          subdivision are deposited under IC 5-13-9.
- 31          Sec. 6. The department of local government finance may not  
32          reduce a political subdivision's property tax levy under  
33          IC 6-1.1-18.5 or any other law on account of money deposited in a  
34          fund established under this chapter.
- 35          SECTION 2. IC 36-1-14-3 IS ADDED TO THE INDIANA CODE  
36          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
37          1, 2015]: Sec. 3. (a) This section applies to a county in which the  
38          total amount received by the county (either before July 1, 2015, or  
39          after June 30, 2015) or that will be received by the county from the  
40          sale of a capital asset exceeds fifty million dollars (\$50,000,000).  
41          (b) As used in this section, "foundation" mean a charitable  
42          nonprofit foundation established under subsection (c).



1           (c) The county legislative body and the county fiscal body may,  
2 by adopting substantially similar ordinances, establish a charitable  
3 nonprofit foundation to hold some or all of the proceeds of the sale  
4 of the capital asset in trust for the benefit of the county. A county  
5 legislative body and a county fiscal body may adopt ordinances  
6 under this subsection before, after, or at the time of the sale of the  
7 capital asset. The members of the county legislative body and the  
8 members of the county fiscal body shall serve as the board of  
9 trustees of a foundation established under this section. A member's  
10 term on the board of trustees expires when the member's term on  
11 the county legislative body or the county fiscal body expires.

12           (d) The board of trustees of a foundation established under this  
13 section shall contract with investment managers, investment  
14 advisors, investment counsel, trust companies, banks, or other  
15 finance professionals to assist the board in its investment program.  
16 Money held by the foundation must be invested in accordance with  
17 the terms of an investment policy statement developed by the  
18 board of trustees with an investment advisor that:

- 19           (1) is approved by the board of trustees; and  
20           (2) complies with the diversification, risk management, and  
21 other fiduciary requirements common to the management of  
22 charitable foundations, including that the funds of the  
23 foundation must be invested according to the prudent investor  
24 rule. However, the investment policy statement may not allow  
25 the foundation to invest in any investments in which the  
26 political subdivision that established the foundation is not  
27 permitted to invest under the Constitution of the State of  
28 Indiana. The investment policy statement must include the  
29 limitation on the investment in equities specified in subsection  
30 (f).

31           (e) Money held by the foundation:

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

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

- 40           (1) an investment that complies with this subsection when the  
41 investment is made remains legal even if a subsequent change  
42 in the value of the investment or a change in the value of the



1 total portfolio of funds invested by the foundation causes the  
 2 percentage of investments in equity securities to exceed the  
 3 fifty-five percent (55%) limit on equity securities; and

4 (2) if the total amount of the funds invested by a foundation in  
 5 equity securities exceeds the fifty-five percent (55%) limit on  
 6 equity securities because of a change described in subdivision  
 7 (1), the investments by the foundation must be rebalanced to  
 8 comply with the fifty-five percent (55%) limit on equity  
 9 investments not later than one hundred twenty (120) days  
 10 after the equity investments first exceed that limit.

11 (g) The following apply if a foundation is established under this  
 12 section:

13 (1) The county legislative body shall determine the amount of  
 14 the proceeds from the sale of the capital asset that shall be  
 15 transferred by the county fiscal officer to the foundation.

16 (2) The principal amount of the donation to the foundation  
 17 consists of the following:

18 (A) The amount 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  
 27 principal amount of the donation during a calendar year  
 28 exceeds five percent (5%) of the amount of the principal at the  
 29 beginning of the calendar year, that excess investment income  
 30 shall, for purposes of this section, be added to and be  
 31 considered a part of the principal amount of the donation.

32 (4) An expenditure or transfer of any money that is part of the  
 33 principal amount of the donation may be made only upon  
 34 unanimous approval of the board of trustees.

35 (5) The foundation must be audited annually by an  
 36 independent third party auditor.

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



1           **(A) in reviewing the compliance and performance report**  
2           **from the investment advisor; and**  
3           **(B) in reviewing the annual audit required by subdivision**  
4           **(5).**  
5           **The three (3) nonvoting advisors may not vote on any action**  
6           **of the board of trustees. The board of trustees shall by**  
7           **majority vote select the three (3) depositories from which the**  
8           **three (3) nonvoting advisors will be chosen. Each of the three**  
9           **(3) depositories selected under this subdivision shall select an**  
10           **officer of the depository to serve as one (1) of the three (3)**  
11           **nonvoting advisors. Each nonvoting advisor shall serve a term**  
12           **of three (3) years, and the nonvoting advisor shall continue to**  
13           **serve until a successor is selected. However, to provide for**  
14           **staggered terms, the board of trustees shall provide that the**  
15           **initial term of one (1) nonvoting advisor is one (1) year, the**  
16           **initial term of one (1) nonvoting advisor is two (2) years, and**  
17           **the initial term of one (1) nonvoting advisor is three (3) years.**  
18           **For purposes of avoiding a conflict of interest, a financial**  
19           **institution for which a nonvoting advisor is an officer (and**  
20           **any affiliate of such a financial institution) may not receive a**  
21           **commission or other compensation for investments made by**  
22           **the foundation under this section.**





## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1281, 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:

Delete AM1281 #1 adopted by the Committee on Government and Regulatory Reform on January 27, 2015.

Page 2, line 7, delete "twenty-five" and insert "**fifty**".

Page 2, line 8, delete "(\$25,000,000);" and insert "**(\$50,000,000);**".

Page 2, line 19, after "fund." insert "**The ordinance or resolution under section 3 of this chapter must require that the investing officer of the political subdivision shall contract with a registered investment advisor concerning the investment of the proceeds in the fund with the expanded investment authority granted to the political subdivision under this section.**".

Page 2, line 23, delete "However, if a" and insert "**A**".

Page 2, line 24, delete "enters" and insert "**shall enter**".

Page 2, line 24, delete "investment management".

Page 2, line 25, delete "professionals or" and insert "**a registered**".

Page 2, line 25, delete "advisors" and insert "**advisor to provide advice**".

Page 2, line 26, after "fund" delete ", the agreement:" and insert "**The political subdivision shall, with the advice of the registered investment advisor, enter into agreements with investment managers for the investment of the funds. These agreements:**".

Page 3, between lines 18 and 19, begin a new line block indented and insert:

**"(4) All money in the fund that is in a deposit account and not in some other form of investment shall be deposited in one (1) or more designated depositories of the political subdivision in the same manner as other public funds of the political subdivision are deposited under IC 5-13-9."**

Page 3, line 28, delete "twenty-five" and insert "**fifty**".

Page 3, line 29, delete "(\$25,000,000)." and insert "**(\$50,000,000).**".

Page 3, line 31, delete "community".

Page 3, line 34, delete "community".

Page 4, line 3, delete "may" and insert "**shall**".

Page 4, line 3, after "managers," insert "**investment advisors,**".

Page 4, line 7, after "policy" insert "**statement developed by the board of trustees with an investment advisor**".

Page 4, line 9, delete "restrictions and requirements set forth" and



insert "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)."

Page 4, delete lines 10 through 42, begin a new paragraph and insert:

**"(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."**

Page 5, delete lines 1 through 30.

Page 6, after line 12, begin a new line block indented and insert:

**"(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."

and when so amended that said bill do pass.

(Reference is to HB 1281 as introduced.)

LUCAS

Committee Vote: yeas 9, nays 2.

