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HOUSE BILL No. 1005

Proposed Changes to February 2, 2023 printing by AM100509

DIGEST OF PROPOSED AMENDMENT

Housing. Removes the threshold conditions for establishing a residential housing development program and a tax increment allocation area for the program, including the condition that the governing body of each school corporation affected by the program pass a resolution approving the program before the program may go into effect. Changes the duration of a residential housing development program from 25 years (under current law) to 20 years after the date on which the first obligation for program is incurred. Provides that the fiscal body of a county may adopt an ordinance to designate an economic development target area.

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.

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

1 SECTION 1. IC 5-1.2-2-26, AS AMENDED BY P.L.154-2021,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 26. (a) "Financial assistance agreement", for
4 purposes of the wastewater program and drinking water program
5 established under IC 5-1.2-10, the supplemental program established
6 under IC 5-1.2-11, the Indiana brownfields program established under
7 IC 5-1.2-12, the flood control program established under IC 5-1.2-13,
8 the water infrastructure assistance program established under
9 IC 5-1.2-14, the water infrastructure grant program established by
10 IC 5-1.2-14.5, ~~and~~ the local transportation infrastructure program
11 established under IC 5-1.2-15, ~~and the residential housing~~
12 ~~infrastructure assistance program established by IC 5-1.2-15.5,~~
13 ~~]~~ refers to a financial assistance agreement, financial aid agreement,
14 grant agreement, or any other obligation between the authority and a
15 participant under those chapters establishing the terms and conditions

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of a grant, loan, or other financial assistance, including forgiveness of principal if allowed under federal law, by the authority to the participant under those chapters.

(b) Nothing in this section restricts the authority from denominating any financial assistance agreement by any other name the authority determines to be administratively convenient.

SECTION 2. IC 5-1.2-2-54, AS AMENDED BY P.L.154-2021, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 54. "Participant" means the following:

(1) For purposes of the wastewater program established under IC 5-1.2-10:

(A) a political subdivision; or

(B) any person, entity, association, trust, or other manner of participant allowed by law to enter contractual arrangements for a purpose eligible for assistance under the federal Clean Water Act.

(2) For purposes of the drinking water program established under IC 5-1.2-10:

(A) a political subdivision; or

(B) any person, entity, association, trust, or other manner of participant allowed by law to enter contractual arrangements for a purpose eligible for assistance under the federal Safe Drinking Water Act.

(3) For purposes of the supplemental program established under IC 5-1.2-11, the Indiana brownfields program established under IC 5-1.2-12, the flood control program established under IC 5-1.2-13, the water infrastructure assistance program established under IC 5-1.2-14, and the water infrastructure grant program established by IC 5-1.2-14.5:

(A) a political subdivision;

(B) the Kankakee River basin and Yellow River basin development commission established by IC 14-13-9-6; or

(C) any person, entity, association, trust, or other manner of participant allowed by law to enter contractual arrangements for a purpose eligible for assistance under those chapters.

(4) For purposes of the local transportation infrastructure program established under IC 5-1.2-15:

(A) a political subdivision;

(B) an agency, authority, department, instrumentality, or body corporate and politic acting on behalf of a political subdivision; or

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(C) a regional authority, instrumentality, or body corporate and politic acting on behalf of one (1) or more entities described in clause (A) or (B).

(5) For purposes of the residential housing infrastructure assistance program established by IC 5-1.2-15.5, a political subdivision.

SECTION 3. IC 5-1.2-2-59, AS AMENDED BY P.L.154-2021, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 59. "Program" or "programs" means:

- (1) the drinking water program established under IC 5-1.2-10;
- (2) the Indiana brownfields program established under IC 5-1.2-12;
- (3) the flood control program established under IC 5-1.2-13;
- (4) the water infrastructure assistance program established under IC 5-1.2-14;
- (5) the local transportation infrastructure program established under IC 5-1.2-15;
- (6) the storm water management program;
- (7) the supplemental program established under IC 5-1.2-11;
- (8) the wastewater program established under IC 5-1.2-10; ~~and~~
- (9) the water infrastructure grant program established by IC 5-1.2-14.5; **and**
- (10) the residential housing infrastructure assistance program established by IC 5-1.2-15.5.**

SECTION 4. IC 5-1.2-4-24, AS ADDED BY P.L.189-2018, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 24. **(a)** The issuance of bonds and the adoption of rules under the referenced statutes need not comply with the requirements of any other state laws applicable to the issuance of the bonds or adoption of these rules. No proceedings, notice, or approval is required for the issuance of any bonds or any instrument or the security for the bonds or instrument, except as provided in the referenced statutes.

(b) All:

- (1) economic development projects for which funds are advanced, loaned, or otherwise provided by the authority under IC 5-1.2-9; and**
- (2) eligible projects for which funds are loaned by the authority under IC 5-1.2-15.5;**

must be in compliance with any land use, zoning, subdivision, and other laws of this state applicable to the land upon which the economic development project **or eligible project** is located or is to be

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constructed, but a failure to comply with these laws does not invalidate any bonds issued to finance an economic development project under IC 5-1.2-9 or an eligible project under IC 5-1.2-15.5.

SECTION 5. IC 5-1.2-15.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 15.5. Residential Housing Infrastructure Assistance Program

Sec. 1. The authority shall carry out the program established under this chapter.

Sec. 2. As used in this chapter, "eligible project" means a project for housing infrastructure.

Sec. 3. As used in this chapter, "fund" refers to the residential housing infrastructure assistance revolving fund established by section 9 of this chapter.

Sec. 4. As used in this chapter, "housing infrastructure" means the installation, replacement, upgrade, or improvement of public infrastructure for the support of residential housing.

Sec. 5. As used in this chapter, "program" refers to the residential housing infrastructure assistance program established by section 8 of this chapter.

Sec. 6. (a) As used in this chapter, "public infrastructure" means any of the following infrastructure that is or will be owned, maintained, or provided by a political subdivision:

- (1) A water distribution system.
- (2) A water treatment plant.
- (3) A wastewater treatment plant.
- (4) A sanitary sewer system.
- (5) A storm sewer system.
- (6) A lift station.
- (7) A street, road, or bridge.
- (8) A curb, gutter, or sidewalk.
- (9) A traffic signal.
- (10) A street light.
- (11) An electric or gas distribution line.

(b) The term includes the purchase of land necessary to accommodate a project listed in this section, including any excavation and compaction.

(c) For purposes of subsection (a)(1) through (a)(4), a political subdivision is providing the infrastructure notwithstanding that, after completion of construction, the infrastructure is contributed by the political subdivision to a:

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- (1) public utility (as defined in IC 8-1-2-1(a));
- (2) municipally owned utility (as defined in IC 8-1-2-1(h));
- (3) not-for-profit utility (as defined in IC 8-1-2-125(a));
- (4) cooperatively owned corporation;
- (5) conservancy district established under IC 14-33; or
- (6) regional water or sewer district established under IC 13-26.

Sec. 7. As used in this chapter, "residential housing" means single family or multifamily housing for rent or sale. The term includes condominiums and townhouses located within an economic development target area that is designated under IC 6-1.1-12.1-7.

Sec. 8. The residential housing infrastructure assistance program is established.

Sec. 9. (a) The residential housing infrastructure assistance revolving fund is established. The fund is a revolving fund to provide money for loans under this chapter to or for the benefit of participants.

(b) The fund consists of:

- (1) appropriations from the general assembly;
- (2) grants and other gifts of money; and
- (3) loan repayments, including interest, premiums, and penalties.

(c) The authority shall administer, hold, and manage the fund.

(d) The cost of administering the fund shall be paid from money in the fund.

(e) Money in the fund shall be used to make loans for public infrastructure for the support of residential housing.

(f) Money in the fund may not be used for any of the following purposes:

- (1) Repayment of any debt incurred for a project other than an eligible project.
- (2) Routine maintenance and repair projects.
- (3) Upgrading utility poles.
- (4) Fees for studies, reports, designs, or analyses prepared by consultants or engineers for an eligible project.

(g) Money in the fund is continuously appropriated for the purposes of this chapter.

(h) Money in the fund does not revert to the state general fund at the end of a state fiscal year.

Sec. 10. Loans from the fund must be allocated and made available to participants as follows:

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(1) Seventy percent (70%) of the money in the fund must be used for housing infrastructure in municipalities with a population of less than fifty thousand (50,000).

(2) Thirty percent (30%) of the money in the fund must be used for housing infrastructure in all other political subdivisions not described in subdivision (1).

Sec. 11. (a) The authority shall invest the money in the fund in accordance with an investment policy adopted by the authority. Interest, premiums, gains, or other earnings from the investments shall be credited to and deposited in the fund.

(b) As an alternative to subsection (a), the authority may invest or cause to be invested all or a part of the fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with one (1) or more trust agreements or indentures. A trust agreement or indenture may permit disbursements by the trustee to:

(1) a participant;

(2) the authority; or

(3) any person to which the authority or a participant is obligated, as provided in the trust agreement or indenture.

Sec. 12. This chapter does not require the authority to provide a loan to any participant to the extent the authority determines the loan is not in the best interests of the program and the authority.

Sec. 13. The authority shall do the following under this chapter:

(1) Manage the program.

(2) Prepare and provide program information to participants.

(3) Negotiate the negotiable aspects of each financial assistance agreement.

(4) Prepare or cause to be prepared each financial assistance agreement.

(5) Sign each financial assistance agreement.

(6) Conduct or cause to be conducted an evaluation as to the financial ability of each participant to pay the loan and other obligations evidencing the loans, if required to be paid, and comply with the financial assistance agreement.

(7) Review each proposed eligible project and financial assistance agreement to determine if the project meets the credit, economic, or fiscal criteria established by guidelines of the authority.

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1 **Sec. 14. (a) The authority shall develop and use a priority**
 2 **ranking system in making loans from the fund.**

3 **(b) The ranking system must prioritize making loans for**
 4 **eligible projects to participants that:**

5 **(1) have:**

6 **(A) invested in a housing study within the last five (5)**
 7 **years;**

8 **(B) had a housing study performed by a region's local**
 9 **economic development organization; or**

10 **(C) demonstrated the need for housing inventory as**
 11 **indicated by the Indiana state housing dashboard;**

12 **(2) have voluntarily revised unified development ordinances,**
 13 **zoning regulations, or other land development rules to allow**
 14 **for:**

15 **(A) higher density development;**

16 **(B) construction of other housing types including**
 17 **accessory dwelling units and manufactured and modular**
 18 **housing;**

19 **(C) adaptive reuse of commercial buildings for**
 20 **residential use; or**

21 **(D) waiver or elimination of regulations such as**
 22 **requirements for:**

23 **(i) garage size and placement;**

24 **(ii) steeper roof pitch;**

25 **(iii) minimum lot size and square footage;**

26 **(iv) greater setbacks;**

27 **(v) off-street parking; or**

28 **(vi) design standards that restrict or prohibit the**
 29 **use of code compliant products;**

30 **(3) do not have impact fee ordinances;**

31 **(4) have secured private, local, state, or federal funds to**
 32 **contribute to the eligible project;**

33 **(5) have secured a letter of support from an employer**
 34 **stipulating that the public infrastructure will support**
 35 **residential housing that is in reasonable proximity to**
 36 **employment; or**

37 **(6) assist:**

38 **(A) homeowners to age in place through restoration or**
 39 **renovation of existing homes; or**

40 **(B) communities in preparing for shovel ready housing.**

41 **Sec. 15. The authority shall establish the terms and conditions**
 42 **that the authority considers necessary or convenient to make loans**

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1 under this chapter.

2 Sec. 16. (a) An application for a loan from the fund must be
3 accompanied by all papers and opinions required by the authority.

4 (b) The authority may require that an application for a loan
5 from the fund be accompanied by the following:

6 (1) A certification and guarantee of signatures.

7 (2) A certification that, as of the date of the loan, no litigation
8 is pending challenging the validity of or entry into:

9 (A) the loan; or

10 (B) any security for the loan.

11 (3) Any other certifications, agreements, security, or
12 requirements that the authority requests.

13 (4) An approving opinion of nationally recognized bond
14 counsel.

15 Sec. 17. A participant receiving a loan from the fund shall
16 enter into a financial assistance agreement. A financial assistance
17 agreement related to the program is a valid, binding, and
18 enforceable agreement of the participant.

19 Sec. 18. (a) The authority may pledge loans and other
20 obligations of participants evidencing the loans from the fund to
21 secure other loans from the fund to or for the benefit of
22 participants.

23 (b) The authority must approve the terms of a pledge under
24 this section.

25 (c) Notwithstanding any other law, a pledge of property made
26 by the authority under this section is binding from the time the
27 pledge is made. Revenues, other money, or other property pledged
28 and that is received after the pledge is immediately subject to the
29 lien of the pledge without any other act. The lien of a pledge is
30 binding against all parties having claims of any kind in tort,
31 contract, or otherwise against:

32 (1) the fund; or

33 (2) the authority;

34 regardless of whether the parties have notice of any lien.

35 (d) A resolution, an indenture, or another instrument by which
36 a pledge is created does not have to be filed or recorded, except in
37 the records of the authority.

38 (e) Action taken to:

39 (1) enforce a pledge under this section; and

40 (2) realize the benefits of the pledge;

41 is limited to the property pledged.

42 (f) A pledge under this section does not create a liability or

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1 indebtedness of the state.

2 **Sec. 19. (a) The authority shall establish the interest rate or**
 3 **parameters for establishing the interest rate on each loan made**
 4 **under this chapter, including parameters for establishing the**
 5 **amount of interest subsidies.**

6 **(b) The authority, in setting the interest rate or parameters for**
 7 **establishing the interest rate on each loan, may take into account**
 8 **the following:**

- 9 **(1) Credit risk.**
- 10 **(2) Affordability.**
- 11 **(3) Other fiscal factors the authority considers relevant,**
 12 **including the program's cost of funds and whether the**
 13 **financial assistance provided to a particular participant is**
 14 **taxable or tax exempt under federal law.**

15 **Based on the factors set forth in subdivisions (1) through (3), more**
 16 **than one (1) interest rate may be established and used for loans to**
 17 **different participants or for different loans to the same**
 18 **participants.**

19 **Sec. 20. (a) As an alternative to making loans to participants,**
 20 **the authority may use the money in the fund to provide a leveraged**
 21 **loan program to or for the benefit of participants, including using**
 22 **money in the fund to enhance the obligations of participants issued**
 23 **for the purposes of this chapter by:**

- 24 **(1) granting money to:**
 - 25 **(A) be deposited in:**
 - 26 **(i) a capital fund or reserve fund established under**
 27 **IC 5-1.2-4 or another statute or a trust agreement**
 28 **or indenture as contemplated by this chapter; or**
 - 29 **(ii) an account established within a fund described**
 30 **in item (i); or**
 - 31 **(B) provide interest subsidies;**
- 32 **(2) paying bond insurance premiums, reserve insurance**
 33 **premiums, or credit enhancement, liquidity support,**
 34 **remarketing, or conversion fees, or other similar fees or costs**
 35 **for obligations of a participant or for bonds issued by the**
 36 **authority, if credit market access is improved or interest**
 37 **rates are reduced; or**
- 38 **(3) guaranteeing all or a part of obligations issued by**
 39 **participants or bonds issued by the authority.**

40 **(b) A guarantee of obligations or bonds under subsection (a)(3)**
 41 **must be limited to money in the fund. A guarantee under**
 42 **subsection (a)(3) does not create a liability or indebtedness of the**

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1 state.

2 Sec. 21. Notwithstanding any other law, money in the fund,
3 together with loan repayments to be deposited in the fund, may be
4 used to establish a leveraged loan program in connection with the
5 fund.

6 Sec. 22. The authority may adopt guidelines, without
7 complying with IC 4-22-2, to govern the administration of this
8 chapter.

9 Sec. 23. Not later than August 1 of each year, the public
10 finance director shall prepare for the budget committee established
11 by IC 4-12-1-3 and the legislative council a report that includes the
12 following:

13 (1) Information concerning the loans made available to
14 participants from the fund during each fiscal year.

15 (2) Any other information requested by the budget
16 committee and the legislative council.

17 The report to the legislative council must be submitted in an
18 electronic format under IC 5-14-6.

19 [] [SECTION 6. IC 6-1.1-12.1-7 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) After
21 favorable recommendation by an economic development commission,
22 the fiscal body of a city, ~~or~~ town, ~~or~~ county may by ordinance
23 designate as an economic development target area a specific
24 geographic territory that:

25 (1) has become undesirable or impossible for normal
26 development and occupancy because of a lack of development,
27 cessation of growth, deterioration of improvements or character
28 of occupancy, age, obsolescence, substandard buildings, or other
29 factors that have impaired values or prevent a normal
30 development of property or use of property;

31 (2) has been designated as a registered historic district under:

32 (A) the National Historic Preservation Act of 1966; or

33 (B) the jurisdiction of a preservation commission organized
34 under:

35 (i) IC 36-7-11;

36 (ii) IC 36-7-11.1;

37 (iii) IC 36-7-11.2;

38 (iv) IC 36-7-11.3; or

39 (v) IC 14-3-3.2 (before its repeal); or

40 (3) encompasses buildings, structures, sites, or other facilities
41 that are:

42 (A) listed on the national register of historic places

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1 established pursuant to 16 U.S.C. 470 et seq.;
 2 (B) listed on the register of Indiana historic sites and
 3 historic structures established under IC 14-21-1; or
 4 (C) determined to be eligible for listing on the Indiana
 5 register by the Indiana state historic preservation officer.

6 (b) The fiscal body of a city, ~~or town, or county~~ may designate a
 7 maximum of fifteen percent (15%) of the total geographic territory of
 8 the city or town to be in economic development target areas.

9 (c) Notwithstanding the repeal of IC 36-7-11.9-4 and
 10 IC 36-7-12-38, an economic development target area established by a
 11 city or town before July 1, 1987, continues in effect until it is modified
 12 or abolished by ordinance of the city or town fiscal body.

13 SECTION 7. IC 36-7-14-53, AS AMENDED BY P.L.154-2020,
 14 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 53. (a) ~~Subject to subsection (g);~~ A
 16 commission may establish a residential housing development program
 17 by resolution for the construction of new residential housing or the
 18 renovation of existing residential housing in an area within the
 19 jurisdiction of the commission. ~~if:~~

20 (1) ~~for a commission established by a county, the average of~~
 21 ~~new, single family residential houses constructed within the~~
 22 ~~township in which the area is located during the preceding three~~
 23 ~~(3) calendar years is less than one percent (1%) of the total~~
 24 ~~number of single family residential houses within that township~~
 25 ~~on January 1 of the year in which the resolution is adopted; or~~
 26 ~~(2) for a commission established by a municipality, the average~~
 27 ~~of new, single family residential houses constructed within the~~
 28 ~~municipal boundaries during the preceding three (3) calendar~~
 29 ~~years is less than one percent (1%) of the total number of single~~
 30 ~~family residential houses within the boundaries of the~~
 31 ~~municipality on January 1 of the year in which the resolution is~~
 32 ~~adopted.~~

33 However, the calculations described in subdivisions (1) and (2) and the
 34 provisions of subsection (f) do not apply for purposes of establishing
 35 a residential housing development program within an economic
 36 development target area designated under IC 6-1.1-12.1-7.

37 (b) The program, which may include any relevant elements the
 38 commission considers appropriate, may be adopted as part of a
 39 redevelopment plan or amendment to a redevelopment plan, and must
 40 establish an allocation area for purposes of sections 39 and 56 of this
 41 chapter for the accomplishment of the program. The program must be
 42 approved by the municipal legislative body or county executive as

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1 specified in section 17 of this chapter.

2 (c) The notice and hearing provisions of sections 17 and 17.5 of
 3 this chapter, including notice under section 17(c) of this chapter to a
 4 taxing unit that is wholly or partly located within an allocation area,
 5 apply to the resolution adopted under subsection (b). Judicial review of
 6 the resolution may be made under section 18 of this chapter.

7 (d) Before formal submission of any residential housing
 8 development program to the commission, the department of
 9 redevelopment shall:

10 (1) consult with persons interested in or affected by the proposed
 11 program, including the superintendents and governing body
 12 presidents of all school corporations located within the proposed
 13 allocation area;

14 (2) provide the affected neighborhood associations, residents,
 15 and township assessors with an adequate opportunity to
 16 participate in an advisory role in planning, implementing, and
 17 evaluating the proposed program; and

18 (3) hold at least one (1) public meeting to obtain the views of
 19 neighborhood associations and residents of the affected
 20 neighborhood. The department of redevelopment shall send
 21 notice thirty (30) days prior to the public meeting to the fiscal
 22 officer of all affected taxing units and to the superintendents and
 23 governing body presidents of all school corporations located
 24 within the proposed allocation area.

25 (e) A residential housing development program established under
 26 this section must terminate not later than ~~twenty-five (25)~~ twenty (20)
 27 years after the date on which the first obligation was incurred to pay
 28 principal and interest on bonds or lease rentals on leases payable from
 29 tax increment revenues from the program.

30 (f) The department of local government finance in cooperation
 31 with either the appropriate county agency or the appropriate municipal
 32 agency; or both, shall determine whether a county or municipality
 33 meets the threshold requirements under subsection (a). In making the
 34 determination, the department of local government finance may request
 35 information necessary to make the determination. A county or
 36 municipality may request from the department of local government
 37 finance a report, if it exists, describing the effect of current assessed
 38 value allocated to tax increment financing allocation areas on the
 39 amount of the tax levy or proceeds and the credit for excessive property
 40 taxes under IC 6-1.1-20.6 for the taxing units within the boundaries of
 41 the residential housing development program.

42 (g) A program established under subsection (a) may not take effect

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1 until the governing body of each school corporation affected by the
2 program passes a resolution approving the program:

3 SECTION 8. An emergency is declared for this act.

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