

HOUSE BILL No. 1386

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1; IC 33-26-7-4.

Synopsis: Property tax assessments. Repeals the provision that requires the county surveyor to make a survey of certain land, if an assessor and a landowner fail to agree on the amount of land included in assessments involving rights-of-way, levees, and public drainage ditches. Provides that a survey must be done if an assessor and a landowner fail to agree on the amount of land in those circumstances, and: (1) requires the landowner to provide written notice of the disagreement to the assessor; (2) requires the survey to be completed within six months from the date of the landowner's notice; (3) allows the landowner to elect to choose the surveyor to conduct the survey (if the landowner does not choose a surveyor, the county surveyor is required to conduct the survey); and (4) specifies the party who is required to pay for the survey. Provides that the attorney general, upon written request of a county assessor, may authorize the chief administrative officer of the office of judicial administration to hire private counsel to represent the county assessor: (1) in a judicial review initiated by the county assessor for review of a final determination of the Indiana board of tax review regarding the assessment or exemption of tangible property; and (2) in a judicial review seeking relief from the tax court to establish that the Indiana board of tax review rendered a decision that was: (A) an abuse of discretion; (B) arbitrary and capricious; (C) contrary to substantial or reliable evidence; or (D) contrary to law (the office of the attorney general may not represent the assessor in these actions under current law).

Effective: Upon passage.

GiaQuinta

January 13, 2022, read first time and referred to Committee on Ways and Means.



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.

HOUSE BILL No. 1386

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

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

1 SECTION 1. IC 6-1.1-4-14, AS AMENDED BY P.L.171-2018,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b),
4 land may not be assessed to an adjacent property holder if it:
5 (1) is occupied by and is within the right-of-way of a railroad,
6 interurban, or street railway;
7 (2) is within the line of a levee constructed and maintained either
8 by a levee association or under any law of this state;
9 (3) is used and occupied as part of a public drainage ditch,
10 including land that:
11 (A) is adjacent to the ditch; and
12 (B) cannot be used for farmland or any other purpose because
13 of a need for access to the ditch; or
14 (4) is within a right-of-way that is used and occupied as a public
15 highway.
16 (b) If land described in subsection (a)(1), (a)(2), or (a)(3) has not
17 been transferred by deed to a person who holds the land for railroad,



1 interurban, street railway, levee, drainage, or public highway purposes,
 2 the land shall be assessed to the adjacent property owner. However, the
 3 assessed value of the land shall be deducted from the assessed value of
 4 the land assessed to the adjacent property owner.

5 (c) If an assessor and a landowner fail to agree on the amount of
 6 land described in subsection (a)(1), (a)(2), (a)(3), or (a)(4), ~~the assessor~~
 7 ~~shall have the county surveyor make~~ a survey **must be done** to
 8 determine the amount of land so described. **The landowner shall give**
 9 **written notice to the assessor of the landowner's dispute**
 10 **concerning the amount of land described in subsection (a)(1),**
 11 **(a)(2), (a)(3), or (a)(4). The survey required under this subsection**
 12 **must be completed within six (6) months from the date of the**
 13 **landowner's written notice. The landowner may elect to choose the**
 14 **surveyor to conduct the survey under this subsection by indicating**
 15 **the landowner's intention to do so and by providing the name and**
 16 **address of the surveyor in the landowner's written notice to the**
 17 **assessor. If the landowner's written notice to the assessor does not**
 18 **include the name and address of a surveyor chosen by the**
 19 **landowner to conduct the survey, the county surveyor shall**
 20 **conduct the survey. The cost of the survey required under this**
 21 **subsection shall be paid as follows:**

22 (1) **Except as provided in subdivision (2):**

23 (A) **if the dispute involves land described in subsection**
 24 **(a)(1) or (a)(4), the county shall pay the cost of the survey;**
 25 **and**

26 (B) **if the dispute involves land described in subsection**
 27 **(a)(2) or (a)(3), the landowner shall pay the cost of the**
 28 **survey.**

29 (2) **If, following the completion of the survey required under**
 30 **this subsection, a civil action is initiated to resolve the dispute**
 31 **concerning the amount of land described in subsection (a)(1),**
 32 **(a)(2), (a)(3), or (a)(4), the nonprevailing party on the issue of**
 33 **the amount of land described in subsection (a)(1), (a)(2),**
 34 **(a)(3), or (a)(4) shall pay to the prevailing party on that issue**
 35 **the cost of the survey completed under this subsection.**

36 SECTION 2. IC 6-1.1-15-5, AS AMENDED BY P.L.156-2020,
 37 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 UPON PASSAGE]: Sec. 5. (a) Not later than fifteen (15) days after the
 39 Indiana board gives notice of its final determination under section 4 of
 40 this chapter to the party or the maximum allowable time for the
 41 issuance of a final determination by the Indiana board under section 4
 42 of this chapter expires, a party to the proceeding may request a



1 rehearing before the Indiana board. The Indiana board may conduct a
 2 rehearing and affirm or modify its final determination, giving the same
 3 notices after the rehearing as are required by section 4 of this chapter.
 4 The Indiana board has fifteen (15) days after receiving a petition for a
 5 rehearing to determine whether to grant a rehearing. Failure to grant a
 6 rehearing not later than fifteen (15) days after receiving the petition
 7 shall be treated as a final determination to deny the petition. A petition
 8 for a rehearing does not toll the time in which to file a petition for
 9 judicial review unless the petition for rehearing is granted. If the
 10 Indiana board determines to rehear a final determination, the Indiana
 11 board:

- 12 (1) may conduct the additional hearings that the Indiana board
 13 determines necessary or review the written record without
 14 additional hearings; and
- 15 (2) shall issue a final determination not later than ninety (90) days
 16 after notifying the parties that the Indiana board will rehear the
 17 final determination.

18 If the Indiana board fails to make a final determination within the time
 19 allowed under subdivision (2), the entity that initiated the petition for
 20 rehearing may take no action and wait for the Indiana board to make a
 21 final determination or petition for judicial review under subsection (g).

22 (b) A party may petition for judicial review of the final
 23 determination of the Indiana board. In order to obtain judicial review
 24 under this section, a party must:

- 25 (1) file a petition with the Indiana tax court;
- 26 (2) serve a copy of the petition on:
 - 27 (A) the parties to the review by the Indiana board;
 - 28 (B) the attorney general; and
 - 29 (C) any entity that filed an amicus curiae brief with the Indiana
 30 board; and
- 31 (3) file a written notice of appeal with the Indiana board
 32 informing the Indiana board of the party's intent to obtain judicial
 33 review.

34 Petitions for judicial review may be consolidated at the request of the
 35 appellants if it can be done in the interest of justice. The department of
 36 local government finance may intervene in an action taken under this
 37 subsection if the interpretation of a rule of the department is at issue in
 38 the action. The county assessor is a party to the review under this
 39 section.

40 (c) Except as provided in subsection (g), to initiate a proceeding for
 41 judicial review under this section, a party must take the action required
 42 by subsection (b) not later than:



1 (1) forty-five (45) days after the Indiana board gives the person
 2 notice of its final determination, unless a rehearing is conducted
 3 under subsection (a); or

4 (2) forty-five (45) days after the Indiana board gives the person
 5 notice under subsection (a) of its final determination, if a
 6 rehearing is conducted under subsection (a) or the maximum time
 7 elapses for the Indiana board to make a determination under this
 8 section.

9 (d) The failure of the Indiana board to conduct a hearing within the
 10 period prescribed in section 4(e) of this chapter does not constitute
 11 notice to the party of an Indiana board final determination.

12 (e) The county assessor may petition for judicial review to the tax
 13 court in the manner prescribed in this section. If the county auditor
 14 appeared before the Indiana board concerning the matter, the county
 15 auditor may petition for judicial review to the tax court in the manner
 16 prescribed in this section.

17 (f) The county assessor may not be represented by the attorney
 18 general in a judicial review initiated under subsection (b) by the county
 19 assessor. **However, upon written request of the county assessor, the**
 20 **attorney general may authorize the chief administrative officer of**
 21 **the office of judicial administration to hire private counsel to**
 22 **represent the county assessor in a judicial review initiated under**
 23 **subsection (b) by the county assessor.**

24 (g) If the maximum time elapses for the Indiana board to give notice
 25 of its final determination under subsection (a) or section 4 of this
 26 chapter, a party may initiate a proceeding for judicial review by taking
 27 the action required by subsection (b) at any time after the maximum
 28 time elapses. If:

29 (1) a judicial proceeding is initiated under this subsection; and

30 (2) the Indiana board has not issued a determination;

31 the tax court shall determine the matter de novo.

32 SECTION 3. IC 33-26-7-4 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. A township
 34 assessor, a county assessor, a county auditor, a member of a county
 35 property tax assessment board of appeals, or a county property tax
 36 assessment board of appeals:

37 (1) may seek relief from the tax court to establish that the Indiana
 38 board of tax review rendered a decision that was:

39 (A) an abuse of discretion;

40 (B) arbitrary and capricious;

41 (C) contrary to substantial or reliable evidence; or

42 (D) contrary to law; and



1 (2) may not be represented by the office of the attorney general in
2 an action initiated under subdivision (1).

3 **However, upon written request of the county assessor, the attorney**
4 **general may authorize the chief administrative officer of the office**
5 **of judicial administration to hire private counsel to represent the**
6 **county assessor in an action initiated by the county assessor under**
7 **subdivision (1).**

8 SECTION 4. **An emergency is declared for this act.**

