

HOUSE BILL No. 1521

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. Instead, 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). Makes a technical correction.

Effective: Upon passage.

GiaQuinta

January 17, 2019, read first time and referred to Committee on Ways and Means.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1521

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 6-1.1-1-9, AS AMENDED BY P.L.86-2018,
2 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 9. (a) For purposes of this article, the "owner"
4 of tangible property shall be determined by using the rules contained
5 in this section.
6 (b) Except as otherwise provided in this section, the holder of the
7 legal title to personal property, or the legal title in fee to real property,
8 is:
9 (1) the owner of that property, regardless of whether the holder of
10 the legal title holds a fractional interest, a remainder interest, a
11 life estate, or a tenancy for a term of years, if a title document is
12 not ordinarily issued to an owner for that type of property; or
13 (2) the owner of that property who is designated as the grantee,
14 buyer, or other equivalent term in the title document or bureau of
15 motor vehicles affidavit of sale or disposal, if a title document is
16 ordinarily issued to an owner for that type of property.
17 (c) When title to tangible property passes on the assessment date of



1 any year, only the person obtaining title is the owner of that property on
2 the assessment date.

3 (d) When the mortgagee of real property is in possession of the
4 mortgaged premises, the mortgagee is the owner of that property.

5 (e) When personal property is security for a debt and the debtor is
6 in possession of the property, the debtor is the owner of that property.

7 (f) When a life tenant of real property or a holder of a tenancy for a
8 term of years in real property is in possession of the real property, ~~only~~
9 the life tenant or the holder of a tenancy for a term of years is the owner
10 of that property.

11 (g) When the grantor of a qualified personal residence trust created
12 under United States Treasury Regulation 25.2702-5(c)(2) is:

13 (1) in possession of the real property transferred to the trust; and

14 (2) entitled to occupy the real property rent free under the terms
15 of the trust;

16 the grantor is the owner of that real property.

17 SECTION 2. IC 6-1.1-4-14, AS AMENDED BY P.L.171-2018,
18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b),
20 land may not be assessed to an adjacent property holder if it:

21 (1) is occupied by and is within the right-of-way of a railroad,
22 interurban, or street railway;

23 (2) is within the line of a levee constructed and maintained either
24 by a levee association or under any law of this state;

25 (3) is used and occupied as part of a public drainage ditch,
26 including land that:

27 (A) is adjacent to the ditch; and

28 (B) cannot be used for farmland or any other purpose because
29 of a need for access to the ditch; or

30 (4) is within a right-of-way that is used and occupied as a public
31 highway.

32 (b) If land described in subsection (a)(1), (a)(2), or (a)(3) has not
33 been transferred by deed to a person who holds the land for railroad,
34 interurban, street railway, levee, drainage, or public highway purposes,
35 the land shall be assessed to the adjacent property owner. However, the
36 assessed value of the land shall be deducted from the assessed value of
37 the land assessed to the adjacent property owner.

38 (c) If an assessor and a landowner fail to agree on the amount of
39 land described in subsection (a)(1), (a)(2), (a)(3), or (a)(4), ~~the assessor~~
40 ~~shall have the county surveyor make~~ a survey **must be done** to
41 determine the amount of land so described. **The landowner shall give**
42 **written notice to the assessor of the landowner's dispute**



1 concerning the amount of land described in subsection (a)(1),
 2 (a)(2), (a)(3), or (a)(4). The survey required under this subsection
 3 must be completed within six (6) months from the date of the
 4 landowner's written notice. The landowner may elect to choose the
 5 surveyor to conduct the survey under this subsection by indicating
 6 the landowner's intention to do so and by providing the name and
 7 address of the surveyor in the landowner's written notice to the
 8 assessor. If the landowner's written notice to the assessor does not
 9 include the name and address of a surveyor chosen by the
 10 landowner to conduct the survey, the county surveyor shall
 11 conduct the survey. The cost of the survey required under this
 12 subsection shall be paid as follows:

13 (1) Except as provided in subdivision (2):

14 (A) if the dispute involves land described in subsection
 15 (a)(1) or (a)(4), the county shall pay the cost of the survey;
 16 and

17 (B) if the dispute involves land described in subsection
 18 (a)(2) or (a)(3), the landowner shall pay the cost of the
 19 survey.

20 (2) If, following the completion of the survey required under
 21 this subsection, a civil action is initiated to resolve the dispute
 22 concerning the amount of land described in subsection (a)(1),
 23 (a)(2), (a)(3), or (a)(4), the nonprevailing party on the issue of
 24 the amount of land described in subsection (a)(1), (a)(2),
 25 (a)(3), or (a)(4) shall pay to the prevailing party on that issue
 26 the cost of the survey completed under this subsection.

27 SECTION 3. IC 6-1.1-15-5, AS AMENDED BY P.L.219-2007,
 28 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: Sec. 5. (a) Not later than fifteen (15) days after the
 30 Indiana board gives notice of its final determination under section 4 of
 31 this chapter to the party or the maximum allowable time for the
 32 issuance of a final determination by the Indiana board under section 4
 33 of this chapter expires, a party to the proceeding may request a
 34 rehearing before the Indiana board. The Indiana board may conduct a
 35 rehearing and affirm or modify its final determination, giving the same
 36 notices after the rehearing as are required by section 4 of this chapter.
 37 The Indiana board has fifteen (15) days after receiving a petition for a
 38 rehearing to determine whether to grant a rehearing. Failure to grant a
 39 rehearing not later than fifteen (15) days after receiving the petition
 40 shall be treated as a final determination to deny the petition. A petition
 41 for a rehearing does not toll the time in which to file a petition for
 42 judicial review unless the petition for rehearing is granted. If the



1 Indiana board determines to rehear a final determination, the Indiana
2 board:

- 3 (1) may conduct the additional hearings that the Indiana board
4 determines necessary or review the written record without
5 additional hearings; and
6 (2) shall issue a final determination not later than ninety (90) days
7 after notifying the parties that the Indiana board will rehear the
8 final determination.

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

13 (b) A party may petition for judicial review of the final
14 determination of the Indiana board regarding the assessment or
15 exemption of tangible property. In order to obtain judicial review under
16 this section, a party must:

- 17 (1) file a petition with the Indiana tax court;
18 (2) serve a copy of the petition on:
19 (A) the county assessor;
20 (B) the attorney general; and
21 (C) any entity that filed an amicus curiae brief with the Indiana
22 board; and
23 (3) file a written notice of appeal with the Indiana board
24 informing the Indiana board of the party's intent to obtain judicial
25 review.

26 Petitions for judicial review may be consolidated at the request of the
27 appellants if it can be done in the interest of justice. The department of
28 local government finance may intervene in an action taken under this
29 subsection if the interpretation of a rule of the department is at issue in
30 the action. The county assessor is a party to the review under this
31 section.

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

- 35 (1) forty-five (45) days after the Indiana board gives the person
36 notice of its final determination, unless a rehearing is conducted
37 under subsection (a); or
38 (2) forty-five (45) days after the Indiana board gives the person
39 notice under subsection (a) of its final determination, if a
40 rehearing is conducted under subsection (a) or the maximum time
41 elapses for the Indiana board to make a determination under this
42 section.



1 (d) The failure of the Indiana board to conduct a hearing within the
2 period prescribed in section 4(e) or 4(f) of this chapter does not
3 constitute notice to the party of an Indiana board final determination.

4 (e) The county assessor may petition for judicial review to the tax
5 court in the manner prescribed in this section.

6 (f) The county assessor may not be represented by the attorney
7 general in a judicial review initiated under subsection (b) by the county
8 assessor. **However, upon written request of the county assessor, the**
9 **attorney general may authorize the chief administrative officer of**
10 **the office of judicial administration to hire private counsel to**
11 **represent the county assessor in a judicial review initiated under**
12 **subsection (b) by the county assessor.**

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

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

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

20 the tax court shall determine the matter de novo.

21 SECTION 4. IC 33-26-7-4 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. A township
23 assessor, a county assessor, a county auditor, a member of a county
24 property tax assessment board of appeals, or a county property tax
25 assessment board of appeals:

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

28 (A) an abuse of discretion;

29 (B) arbitrary and capricious;

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

31 (D) contrary to law; and

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

34 **However, upon written request of the county assessor, the attorney**
35 **general may authorize the chief administrative officer of the office**
36 **of judicial administration to hire private counsel to represent the**
37 **county assessor in an action initiated by the county assessor under**
38 **subdivision (1).**

39 SECTION 5. An emergency is declared for this act.

