Mergers, Consolidation and Interlocal Cooperation in Indiana: Law, Practice and Strategy

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One of the hottest legislative and political topics in the last decade has been the role, funding and structure of local government in the State of Indiana. While some inroads on reform have been made, despite the efforts of governors, chief justices and legislative leaders, little progress has been made in truly reducing the cost and size of Indiana's local units of government. Despite the lack of direct legislative success, an 800 pound gorilla forcing local consolidation may be on the horizon. This article will review the history and challenges facing local government modernization, present the statutory options available to those forward thinking local officials who desire to take advantage of them, and offer brief thoughts regarding the future course of local unit mergers, consolidation and interlocal cooperation.

I. PRELUDE TO TODAY'S CONSOLIDATION TRENDS

A. A Brief History of Local Government in Indiana[1]

Indiana's present system of county and township government can trace its historical roots to the local institutions established under the terms of the Northwest Ordinance of 1787. Under the Ordinance, the Governor of the Northwest Territory was charged with laying out lands ceded by the Indian tribes into counties and townships

[1] For a thorough and fascinating discussion of the development of county and township government in Indiana dating to territorial times, *see* Snider, *Indiana Counties and Townships*, 33 Indiana Magazine of History, Issue 2, pp. 119-152 (June, 1937). The vast majority of the material contained in this section on the history of local government in Indiana has been excerpted from Dr. Snider's article, which can be accessed at the Indiana Magazine of History website at http://webapp1.dlib.indiana.edu/imh/index.jsp. Extensive citation footnotes are available in the article and have generally been omitted from this material.

subject to such alterations as might be made by territorial legislatures as they were established. Prior to Indiana's statehood in 1816 and the establishment of its first constitution, the entire state of Indiana, along with portions of Michigan, Wisconsin and Illinois, were located in a single county, Knox County, the smallest semblance of which still exists in southwest Indiana today.

During Northwest Territory days, an elaborate machinery of local government evolved relying on appointed county and township officials including a sheriff, coroner, treasurer, recorder and fence viewer at the county level, as well as constables, overseers of the poor and clerks at the township level. Highway supervisors and fence viewers were also appointed in the townships and appointed judges at both the county and township level were responsible for budgets and local official appointments in addition to the appointment authority of the territorial governor.

By act of Congress on May 7, 1800, the Northwest Territory was divided and the Indiana Territory established, to be governed in conformity with the provisions of the Ordinance of 1787 until such time as it was admitted to statehood. During the years following 1800, successive new counties were created by the subdivision of older ones, with fifteen (15) counties being organized within the area now comprising Indiana by the time the state was admitted to the Union in 1816. Apart from the establishment of a "governing board" at the county level, the same county officers existed during the period of the Indiana Territory as existed during the Northwest Territory period. In 1802, a county surveyor was added to the list, completing the elected lineup we know today.

In the Indiana Territory, as in the Northwest, the township existed solely as a subdivision of county government for administrative purposes only, and had little independent authority or role. The county governing body was authorized by statute to divide the county into townships and to subdivide townships as the "convenience of the inhabitants" might require, and was generally responsible for the appointment of all township officials.

Indiana was admitted to statehood by act of Congress in 1816 under a state constitution which contained few provisions regulating county and township government. The constitution of 1816 did provide for circuit courts and clerks, county recorders, sheriffs, coroners and justices of the peace, and introduced the principle of popular

election for these offices. In addition, a "competent number" of justices of the peace were to be popularly elected in each township, and other township offices were to be appointed in such manner as directed by law.

At the time of its admission, the state consisted of fifteen (15) counties, with fourteen (14) roughly occupying the southern third of the state. Knox County, the oldest and largest of the fifteen, extended northward from the White River to include both the present county of that name and the greater part of the northern two-thirds of the state, much of it still under Indian control.

While the Constitution of 1816 did not prescribe a form of organization for county government, the General Assembly, in its first session, adopted a Board of County Commissioners form of governance similar in nature to the present County Commission, but without a separate fiscal body. The Commissioners were authorized to levy taxes, order the opening of new roads, establish ferries, and even license tavern keepers "upon recommendation of twelve respectable householders." The Commissioners were also authorized to appoint annually in each township two overseers of the poor, an election inspector, one or more constables, three fence viewers and an appropriate number of highway supervisors. The Commission was also authorized to fix the number of justices of the peace to be elected in each township.

The period from 1824 to 1851 was a time of extensive special legislation in the Indiana General Assembly, which resulted in a patchwork of different governance systems in Indiana's counties. By 1827, at least three differing governance models were prevalent, apparently determined in great part by the history of the region which supplied the early settlers. While attempts at uniformity passed the legislature on numerous occasions during this period, it was not until the adoption of the Constitution of 1851 that uniformity in the composition of county governing boards was permanently established.

New counties continued to be organized and old counties divided until there were 91 counties in 1851. The 92nd county (Newton) was also formed during this period but was attached to a neighboring county and was not in official existence in 1851. This period also witnessed a widespread shift from the appointment of local elected officials to their popular election. By 1850, practically all county officers were popularly elected,

and appointment of township officers by county boards was the exception rather than the rule.

The Constitution of 1851 was more elaborate in many areas of governance, including that of local government. The new Constitution provided that there should be elected in each county a clerk of the circuit court, an auditor, a recorder, a treasurer, a sheriff, a coroner and a surveyor. A competent number of justices of the peace were to be elected in each township for a term of four (4) years and such other county and township officers as might be necessary were to be elected or appointed in such manner as might be prescribed by law.

As statutes were revised immediately following adoption of the Constitution of 1851, the General Assembly established a Board of County Commissioners as the governing body of each and every county of the state with the three (3) commissioners popularly elected from separate commissioner districts. Broad powers were vested in the commissioners, which over the next several decades resulted in questionable practices, the letting of contracts and seemingly widespread graft. In 1899, the General Assembly responded by enacting the County Reform Law[2] removing fiscal affairs of the county from the county commissioners and placing them in the hands of a county council consisting of seven (7) members elected for a four (4) year term. With this legislation, county government assumed its present general form of organization.

After the adoption of the Constitution of 1851, the plan of township government was also continued with several modifications. The Board of County Commissioners continued to be authorized to divide the county into any number of townships, but now had little authority or oversight over township affairs. The voters of each township annually elected three (3) trustees, a clerk and a treasurer. The trustees managed township property and the levying of township taxes, served as fence viewers and overseers of the poor and otherwise exercised the powers previously spread among numerous township officeholders. The trustees were also vested with the charge of overseeing the educational affairs of the township, including teacher employment and school property maintenance responsibilities.

[2] *Laws of Indiana* 1899, Ch. 154.

In 1859, the three member township board was abandoned in favor of the present single trustee system. The single trustee was charged with the management of township property, was the inspector of elections, overseer of the poor and fence viewer. The trustee could levy township taxes "with the advice and concurrence of county commissioners," thus transferring fiscal responsibility to the county commissioners.[3]

In 1899, as part of the County Reform Law,[4] control of township finances was taken from the county commissioners and placed in the hands of a new fiscal body – the township advisory board (today's township board), which was established in each township in the state. Three members were to be elected by the voters of the township for a term of four (4) years. The new township advisory board was vested with the authority to adopt the township's budget, levy taxes and authorize the incurrence of indebtedness. With limited exceptions, we enjoy the same township government today.

With minor changes, county and township government has remained in its current form since 1899. The single largest change during that time was the elimination of virtually every township assessor in the state and eliminating in its entirety the assessing duties of township trustee-assessors, by act of the General Assembly in 2008.[5]

B. Governor Daniels and the Kernan-Shepherd Commission

Echoing calls of a century prior, and building on the efforts of the Indianapolis and Indiana Chambers of Commerce and the Central Indiana Corporate Partnership to forward local government consolidation and reform, Governor Mitch Daniels appointed a blue ribbon commission focused on local government reform with the charge of developing recommendations to reform and restructure local government in Indiana, increase the efficiency and effectiveness of operations and reduce its costs to Hoosier taxpayers.[6]

In an historic action, the Governor appointed his unsuccessful opponent in the November, 2004 election, Governor Joe Kernan, and the Chief Justice of the Indiana Supreme Court, Randall Shepherd, to chair a truly blue-ribbon group of panelists to

[3] *Laws of Indiana*, 1859, Ch. 133.
[4] *Laws of Indiana*, 1899, Ch. 154.
[5] House Enrolled Act 1001-2008.
[6] Report of Indiana Commission on Local Government Reform, Appendix A. The Report can be accessed at http://indianalocalgovreform.iu.edu/.

address head on the challenge of reforming local government. The Governor cited the state's 2,730 local units of government with the authority to levy property taxes and its 10,746 elected officials as outdated, expensive and cumbersome.[7] He charged the Commission with reviewing previous studies, receiving testimony from Hoosiers, and developing its own set of recommendations to change the structure, organization and absolute number of units of local government and elected officials to achieve efficiencies and reduce the financial burden on taxpayers. The Commission did not stop short of the Governor's charge.

On December 11, 2007, the Commission issued its report entitled Streamlining Local Government[8] which included 28 separate recommendations to reform county and township government, consolidate schools and libraries, strengthen the accountability for cities and towns and increase efficiency and effectiveness for all local units. The recommendations[9] ranged from simple measures such as designating a state officer to provide technical assistance to local government and encouraging joint purchasing by schools to more controversial measures such as the elimination of the 200 year old system of townships and the appointment of all county officeholders by a single elected county executive. The Commission even took on the "sacred cow" of Indiana politics, and suggested the consolidation of school districts,[10] a topic the legislature has been unwilling to touch despite its necessity for more than half a century.

C. Legislative Reaction

The Kernan-Shepherd Commission findings have been heralded as Gospelic by some, and harangued by others as the end of the republic as we know it. The most common reaction from state legislators was parochial; each considered the effect of any given recommendation on his or her local community, and supported it accordingly. If the district would not be better represented by establishing a single person elected county chief executive instead of the existing three member commission, that reform was a tough sell.

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[7] *Id.*
[8] *See id.*, Main body of Report.
[9] A summary of the recommendations appear as Exhibit "A" to these materials.
[10] *See id.*, Recommendation number 11.

Over the three years since the publication of the Commission's findings, a handful of its recommendations have been adopted in part or whole, including the elimination of local assessors (generally), consolidating emergency public safety dispatch, moving the funding of child welfare from counties to the state, encouraging joint purchasing by schools, allowing city councils to appoint the city clerk in some municipalities, expanding voluntary coordination and consolidation of local services and requiring budgets of appointed officials to be reviewed, and bonds to be approved, by an elected fiscal body. More controversial (and parochial) recommendations such as the elimination of townships and the reform of county government to establish a single elected executive who appoints an auditor, treasurer, recorder, assessor, surveyor, sheriff and coroner, have hit the legislative buzz saw despite concerted efforts by many to pass these important measures.

But even prior to the publication of the Kernan-Shepherd Report, legislative efforts to encourage local consolidation had some success. Most notably, House Enrolled Act 1362 (Buck, Bosma) was enacted in 2006 to promote the voluntary consolidation of local units of all kinds. As discussed below, this statutory means of encouraging creativity and innovation at the local level has resulted in the elimination of two of Indiana's 1,008 townships, in addition to causing much creative discussion and planning at the local level.

Legislation specifically targeted at the voluntary consolidation of Marion County Public Safety services was also adopted in 2006,[11] resulting in the consolidation of the Marion County Sheriff's Department and the Indianapolis Police Department into the Indianapolis Metropolitan Police Department, and the merger of four township fire departments into the Indianapolis Fire Department. When given the tools, responsible local officials can and will take steps to streamline local government. However, given the limited response by local units, much remains to be done.

D. Pressure to Consolidate – The Tax Caps

In March, 2008, the Indiana General Assembly enacted the most substantial property tax reforms in 35 years.[12] Many of these reforms first took effect in 2009, and

[11] Senate Enrolled Act 227-2005, codified in part at I.C.36-3-1-5.1 and 6.1.
[12] House Enrolled Act 1001-2008.

some are still being phased in. Property tax rates for county welfare funds, the school general fund and several other funds were eliminated and all costs related thereto were transferred to the state. An additional one cent was added to the state's sales tax to fund the proposed property tax cuts, which lowered 2009 property taxes for 96% of homeowners by an average of 32.2% compared to their 2007 bills.

The legislature also adopted statutory "circuit breaker" tax caps which limit taxpayers' tax bills to a fixed percentage of their property's assessed value before deductions. Tax bills that exceed the caps are reduced by a credit to the cap limit. In 2009, the "circuit breaker" rates were 1.5% for homesteads, 2.5% for other residential (rental) property and farmland and 3.5% for business property. In 2010 and thereafter, the statutory "circuit breaker" cap rates are at 1%, 2%, and 3% for each respective category of property. On February of 2010, House Joint Resolution 1 passed the General Assembly, providing for the amendment of the State Constitution to include the "circuit breaker" tax caps for Indiana constitutional posterity. In November of 2010, Hoosiers will vote on the issue of whether the tax caps should be canonized as permanent constitutional protection for every Hoosier property owner.

While the tax caps certainly protect Hoosier taxpayers, they also have the effect of dramatically reducing the revenues of many local units of government. On average, local units in 85 counties lost 2.6% of their gross levies to the "circuit breaker" in 2009. Local units in 7 counties lost 5% or more. The largest share of total credits (42%) was lost by cities and towns due to their higher municipal tax rates.[13] In short, with nearly half a billion dollars of lost revenues to local governments projected for 2010, local elected officials are scrambling for cuts, savings and economies of scale and are reexamining options for local government mergers, consolidation and cooperation.

II. TRIED AND TRUE OPTION – THE TRADITIONAL INTERLOCAL COOPERATION AGREEMENT

While agreements for interlocal cooperation have long existed among local units of government, the Interlocal Cooperation Statute[14] was enacted in 1980.[15] The

[13] 2009 Statewide Property Tax Report, Legislative Services Agency, December, 2009.
[14] I.C. 36-1-7 *et seq.*

traditional interlocal cooperation agreement is used to allow joint services among two or more political subdivisions or allow one political subdivision to perform services on behalf of others. The statute applies to the state, all state agencies and all "political subdivisions".[16]

Political subdivisions enter into the traditional cooperation agreement by adopting identical ordinances or resolutions approving a written agreement.[17] Each agreement must address its duration (containing a specific termination date or indefinite duration), purpose (including scope of services or functions to be covered), the manner of financing, staffing and supplying the joint undertaking, and the manner by which parties may either partially or wholly terminate the agreement. Each agreement must address whether the joint undertaking will be administered as a separate legal entity, or by a joint board consisting of representatives from the participating political subdivisions.[18] Regardless of which administrative option is utilized, the agreement may not allow members, directors or trustees to fill vacancies on the separate legal entity or the joint board by appointment.[19] If the agreement provides for a joint board, it must establish how real and personal property used for the joint undertaking will be acquired, held and disposed of.

Before entering into an interlocal cooperation agreement, local entities must meet certain conditions:

A. *Mutuality of Power.*

A traditional interlocal cooperation agreement may not allow a political subdivision to exercise power that it does not otherwise possess. Thus, each participating political subdivision must individually possess the power to carry out the activities, services or functions that will be exercised through the agreement, even if the services will be provided by another entity under the agreement.[20]

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[15] Public Law 211, Section 1 (1980).
[16] I.C. 36-1-7-1. The term includes counties, cities and towns, townships, schools, library districts, housing authorities, fire districts, transportation corporations, building authorities, hospital authorities, airport authorities and other "separate local governmental entities that may sue and be sued." I.C. 36-1-2-10.
[17] I.C. 36-1-7-2(a).
[18] I.C. 36-1-7-3-5(a).
[19] I.C. 36-1-7-3(d).
[20] I.C. 36-1-7-2(a).

B. *Approval by the Attorney General.*

Interlocal agreements do not require the Indiana Attorney General's approval if they meet all of the following conditions:

1. All of the parties to the agreement are political subdivisions of Indiana.
2. The fiscal body of each participating political subdivision approves the agreement.
3. The treasurer or disbursing officer of one of the parties is designated to handle all of the joint undertaking's financial administration.[21]

If the interlocal agreement fails to meet all of the above conditions, the parties must submit the agreement to the Indiana Attorney General's office for approval. The Attorney General must act within sixty (60) days, and if he fails to do so, the agreement is considered approved.[22]

Every interlocal cooperation agreement must be recorded and filed in the County Recorder's office,[23] and for most interlocal agreements, the document becomes effective upon recording. For certain interlocal agreements, however, additional steps may be required. For example, county-municipal highway agreements are not effective until all the following have occurred: (1) approval by the fiscal body of all parties, (2) recordation, (3) filing with the municipal executive and county auditor, and (4) filing with the State Board of Accounts.[24] Within sixty (60) days of becoming effective (ie, the day it is recorded for most agreements), the agreement must be filed with the State Board of Accounts for audit purposes.[25]

The only limit on the use of traditional interlocal cooperation agreements for joint undertakings, other than the mutuality of power discussed above, is the creativity of community leaders and their lawyers. The following uses are offered as some examples of how traditional interlocal agreements are being used in Indiana today:

[21] I.C. 36-1-7-4(a).
[22] I.C. 36-1-7-4(b).
[23] I.C. 36-1-7-6.
[24] I.C. 36-1-7-10.
[25] I.C. 36-1-7-6.

A. *Fire Territories*

A special statute, the Fire Protection Territory Statute,[26] provides for the creation of fire protection territories, a popular means of consolidating and making fire and emergency services in rural communities more efficient and cost effective. An interlocal cooperation agreement setting forth the specifics of the agreement among the participating units is an essential element of territory creation and governance.[27]

B. *Emergency Services or Mutual Aid Agreements*

These agreements allow emergency service departments of one jurisdiction to respond to emergency calls from another jurisdiction pursuant to specific statutory provisions.[28]

C. *Parks and Recreation*

Interlocal cooperation agreements are frequently used for joint operation of parks and recreation departments among cities, towns, townships and counties.

D. *Highway Construction and Maintenance*[29]

E. *Public Contract Bidding and Purchasing*[30]

F. *Economic Development Projects and Entities*[31]

[26] I.C. 38-8-19-1 *et seq.*

[27] *See* Exhibit "B", *Restated Interlocal Cooperation Agreement for the Brownsburg Fire Territory*, drafted by the author.

[28] I.C. 36-1-7-7 contains special provisions for interlocal cooperation agreements addressing law enforcement or firefighting services including the power, authority and responsibility for visiting officers. *See* Exhibit "C", *Marion County Fire and Emergency Response Mutual Aid Agreement*, drafted by the author.

[29] I.C. 36-1-7-9 and -10 contains special provisions for highway construction and maintenance agreements.

[30] *See* Exhibit "D", *Interlocal Cooperation Agreement between City of Beech Grove and Brownsburg Fire Territory for the Purchase of Equipment*, drafted by the author.

[31] I.C. 36-1-7-11.5 and -15 contains special provisions for agreements addressing economic development projects and economic development entities.

III. THE GOVERNMENT MODERNIZATION ACT OF 2006 – VOLUNTARY CONSOLIDATION POWERS FOR GOVERNMENTAL UNITS

In 2006, the General Assembly enacted legislation designed to give local units of government broad tools to voluntarily merge, based loosely on the corporate merger model requiring director recommendation of a plan of merger for the consideration and approval of the shareholders of the merging entities. House Enrolled Act 1362 (Buck, Bosma) enacted in 2006 was dubbed the "Government Modernization Act" and combined concepts brought to the table by House Republican leaders and Governor Daniels which were subsequently refined by all four political caucuses in the House and Senate.

The Modernization Act[32] was adopted to grant "broad powers to enable political subdivisions to operate more efficiently by eliminating restrictions under existing law that: (A) impede the economy of operation of; (B) interfere with the ease of administration of; (C) inhibit cooperation among; and (D) thwart better government by; political subdivisions," and to "encourage efficiency by and cooperation among political subdivisions to: (A) reduce reliance on property taxes; and (B) enhance the ability of political subdivisions to provide critical and necessary services."[33] The Act provided two broad authorities to political subdivisions: reorganization and consolidation by referendum, and the authority to enter into "enhanced" interlocal cooperation agreements resulting in the transfer of responsibilities between participating units.

A. Government Reorganization Part I - Reorganization by Referendum

The Government Modernization Act allows the reorganization and consolidation of any of the following entities:

A. *Two or more counties;*

B. *Two or more townships;*

C. *Two or more municipalities (cities or towns);*

D. Two or more school corporations;

E. Two or more municipal corporations that have substantially equivalent powers;

[32] Codified at I.C. 36-1.5 *et seq.*
[33] I.C. 36-1.5-1-1.

F. Two or more special taxing districts;

G. A township and a municipality;

H. A county and one or more townships within the county;

I. A municipality and a county (other than Marion County);

J. A school corporation and a county, city or town; and

K. A municipal corporation and a county, city or town.[34]

In addition, more than one resolution permitted under the act may be consolidated into a combined resolution. For example, a resolution between a municipality and a county could be joined with a resolution between a township and a municipality in that township to plan for a single mega merger among the three or more entities. Reorganization can take one of two forms: (1) consolidation of the participant entities into a new political subdivision; or (2) consolidation of all the participants into one of the other participants.[35]

A reorganization can be initiated in one of two ways: (1) the legislative body of a political subdivision may initiate by adopting a resolution that proposes a reorganization and names the participating political subdivisions; or (2) the voters of a political subdivision may initiate a proposed reorganization by filing a written petition with the clerk of the political subdivision to propose a reorganization and naming the participating political subdivision.[36]

After adoption by the initiating political subdivision, the reorganization resolution is forwarded to the other participating political subdivisions for review and action by their legislative bodies. The receiving legislative bodies may do any of the following: adopt a resolution declining to participate; adopt a substantially identical resolution proposing to participate with the named political subdivisions; or adopt a resolution proposing to participate in reorganization with political subdivisions that differ from the initial resolution.[37] If the reorganization is to be between a municipality and a county, the initiating resolution also must state whether an approving referendum will be conducted

[34] I.C. 36-1.5-4-1. For items 1 through 6, a reorganizing entity must be adjacent to at least one other reorganizing entity.
[35] I.C. 36-1.5-4-3.
[36] I.C. 36-1.5-4-9 and -10. A reorganization initiated by voters has certain additional procedures for the petition and approval process listed in the statute.
[37] I.C. 36-1.5-4-13

on a countywide basis with or without a percentage rejection threshold.[38] Prior to approving a resolution, a public hearing by the legislative body must be conducted.

Once a reorganization resolution is adopted, the participating entities each appoint members to a reorganization committee which is charged with preparing a reorganization plan to govern the actions, duties and powers of the reorganized political subdivision. In the event the adopted resolutions do not state the composition of the reorganization committee, three members are appointed by the executive of each participant with not more than two of each of the members appointed from the same political party.[39] The joint reorganization committee must prepare and propose to each participating legislative body an initial plan of reorganization within one (1) year after the clerk of the last political subdivision approving the resolution has certified the resolution to all of the other participating political subdivisions.[40] The plan of reorganization must include at least the following:

A. *The name and description of the reorganized political subdivision that will succeed the reorganizing political subdivisions.*
B. *A description of the boundaries of the reorganized political subdivision.*
C. *A description of the taxing areas in which taxes to retire obligations of the reorganizing political subdivisions will be imposed.*
D. *A description of the membership of the legislative body, fiscal body, and executive of the reorganized entity, and the identification of any election districts and manner of election or appointment of all officials.*
E. *A description of the services to be offered by the reorganized entity and the service areas in which services will be offered.*
F. *The disposition of the personnel, agreements, assets and liabilities of the reorganizing political subdivisions.*

[38] I.C. 36-1.5-4-18(b)(8). This allows an "inside" and "outside" mutual approval requirement to be set, for example, in the instance of consolidation of a city into the surrounding county.
[39] I.C. 36-1.5-4-16.
[40] I.C. 36-1.5-4-18(d).

G. *Any other matters that the reorganization committee determines to be necessary or appropriate, or the legislative bodies of the reorganizing political subdivisions require.*[41]

When the plan is returned to the legislative bodies, they must each conduct a public hearing on the plan after public notice, and thereafter either adopt the plan as presented, adopt it with modifications, or reject the plan and order the committee to submit a new plan within thirty (30) days after rejection.[42] Any modifications must be approved by each participating entity.[43] The public hearing and up or down vote on the resolution must be conducted within one (1) month after receipt of the final plan of organization by the legislative body, or the plan is deemed approved.[44] In the event of rejection of the reorganization plan by any of the legislative bodies, 10% of the voters of that political subdivision can petition to place the plan on a public question ballot through a petition filed with the Clerk of the Circuit Court notwithstanding the legislative bodies' rejection.[45]

Presuming approval of the plan occurs by the participating legislative bodies, notification is made to the county election board for inclusion of the consolidation plan as a referendum question on the first regularly scheduled election that will occur in all the precincts of the reorganizing political subdivisions. The statute even dictates the form of the question to avoid the insertion of editorial comment on the ballot.[46]

If the reorganization is not approved by a majority of the voters in each reorganizing political subdivision, the reorganization is terminated. If the ballot is successful in all the participating units, the political subdivisions are reorganized in the form and under the conditions specified in the plan of reorganization.[47] If provided for in the plan, boundaries of the reorganized political subdivisions may be changed subject to compliance with any annexation or disannexation procedures required by law. [48]

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[41] I.C. 36-1.5-4-18.
[42] I.C. 36-1.5-4-19 and -20.
[43] I.C. 36-1.5-4-21.
[44] I.C. 36-1.5-4-23.5(2). Note that the burden of affirmatively rejecting the plan's enactment has been placed on the participating legislative bodies.
[45] I.C. 36-1.5-4-23.5(4).
[46] I.C. 36-1.5-4-28.
[47] I.C. 36-1.5-4-34(b).
[48] I.C. 36-1.5-4-37.

The reorganized political subdivision has the powers granted by statute to a political subdivision of the same type as the reorganized entity, and if provided for in the approved plan, the reorganized entity can exercise a power or have the officers or number of offices that a statute would have permitted any of the reorganizing political subdivisions to have.[49] Functions can be transferred from one elected office to another,[50] and the Act has specific provisions for the maintenance and allocation of preexisting debt[51] and pension[52] obligations of the participating and reorganized entities.

Finally, the Act also provides a "rewind" button by allowing for the termination of a reorganization and restoration of the original governmental structure in the same manner that reorganization is initiated.[53] Consequently, if the participating legislative bodies decide that the program is not working, they presumably can adopt a termination resolution, appoint a reorganization committee to develop a plan to put things back the way they were, consider the plan for adoption, and if approved, place it on a future public ballot for consideration.

While numerous political subdivisions are discussing options for merger under the Government Modernization Act, only one set of participants has successfully effected a consolidation under HEA 1362. In May of 2007, the Zionsville Town Council adopted a resolution proposing reorganization with Eagle Township and Union Township in Southeastern Boone County. Upon adoption of substantially identical resolutions in April of 2007 by the Union Township and Eagle Township Boards, a bipartisan reorganization committee was organized to develop a plan of reorganization. Extensive committee work and public participation followed, and after approval of the resulting consolidation plan by each of the participating legislative bodies in July of 2008, the question was placed on the ballot and approved overwhelmingly on November 4, 2008. The consolidation became effective January 2, 2010 pursuant to I.C. 36-1.5-4-5(b), which prohibits any consolidation from taking effect in a year prior to a census year.

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[49] I.C. 36-1.5-4-38.
[50] I.C. 36-1.5-4-42.
[51] I.C. 36-1.5-4-40.
[52] I.C. 36-1.5-4-41.
[53] *See* Exhibit "E" - "Plan of Reorganization prepared by the Community of Zionsville Area for Better Government," provided through the courtesy of the law firm of Krieg DeVault, LLP.

Under the adopted reorganization plan, the "New Town of Zionsville" is now divided into a town district and rural district, with different land use and planning regulations, tax rates, infrastructure provision and public safety requirements. The township form of government in Eagle and Union Township is completely abolished, and the former trustees became members of the new Town Council. Each of the participating units continues to retire preexisting debt paid exclusively from their taxpayers as required by statute.[54]

The Zionsville consolidation successfully reduced the number of townships in Indiana from 1,008 to 1,006, removing a duplicative layer of government which local officials determined was unnecessary. While successful, many more local elected officials must step up to the plate to make voluntary consolidation a viable mechanism for substantial savings and efficiencies across our state, and to dissuade the forces of reform from using an ax, rather than a scalpel, to affect local government efficiencies.

B. Government Reorganization Part II - Enhanced Interlocal Agreements.

In addition to allowing the formal consolidation or reorganization of political subdivisions as discussed above, the Government Modernization Act also provided procedures for two or more political subdivisions to enter into "enhanced" interlocal cooperative agreements to effect government consolidations.[55] The statute melds the requirements of a traditional interlocal cooperation agreement and the adoption procedures necessary for the approval of a governmental reorganization under the Government Modernization Act.[56]

Under the "enhanced" cooperative agreement chapter, by going through the same process of legislative body approval, committee appointment, committee generated plan and referendum process as provided for reorganizations, local entities can: transfer the functions of an employee, elected official or department of a political subdivision to an employee, elected official or department of another political subdivision; abolish elected offices not required by the constitution of the State of Indiana; share the services of an employee employed by either party; appropriate and pledge legally available revenues to

[54] I.C 36-1.5-4-40.
[55] I.C. 36-1.5-5 *et seq.*
[56] I.C. 36-1.5-5-1.

the payment of bonds or other obligations of the other party; transfer money from one political subdivision to the other; or take virtually any other action, provided at least one of the parties to the cooperative agreement has the authority and power to take that action.[57]

A few limitations apply. First, the functions of an elected office may be transferred only to another elected office.[58] Much like the traditional interlocal agreement, the enhanced cooperative agreement must provide for its duration, purpose, the manner of financing, staffing and budgeting for the joint undertaking, the methods to be employed terminate the agreement and dispose of property, the manner of administration, and the manner of acquiring, holding and disposing of property for the undertaking.[59] In the event functions of an elected officer are transferred, the transfer only takes effect after the end of the term of the incumbent that holds the affected office.[60] Finally, the Department of Local Government Finance is required to adjust as necessary all tax rates, levies and budgets of participating political subdivisions to reflect the reorganization.[61]

Because the public referendum is required for the approval of an enhanced Interlocal Cooperation Agreement, the process differs little from the reorganization method presented by the reorganization portions of the statute. However, the enhanced Interlocal Cooperation Agreement does give local units an additional (as yet unused) tool in their arsenal of consolidation and efficiency.

IV. ADDITIONAL OPTIONS SPECIFIC TO LOCAL FIRE AND EMERGENCY SERVICES

As briefly stated above, the creation of statutory fire territories,[62] fire districts,[63] dual response and mutual aid agreements[64] and the traditional interlocal cooperation

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[57] I.C. 36-1.5-5-6. Note that all participating parties must have the underlying authority for the joint action under the traditional interlocal cooperation agreement. *See* I.C 36-1-7-2(a).
[58] I.C. 36-1.5-5-3.
[59] I.C. 36-1.5-5-2. *See also* I.C. 36-1-7-3.
[60] I.C. 36-1.5-5-7(a).
[61] I.C. 36-1.5-5-8.
[62] *See* footnote 25 *infra*.
[63] I.C. 36-8-11 *et seq.*
[64] *See* footnote 27 *infra*.

agreement[65] all provide additional options for local units to consolidate and promote efficiency under existing Indiana law.

In 2005, special authority was given to Marion County to consolidate its public safety services, both police and fire, without a public referendum. Senate Enrolled Act 227-2005 allowed the Indianapolis Marion County City-County Council to adopt an ordinance to consolidate the police department of the consolidated city and the Marion County Sheriff's Department. [66] That consolidation was completed by action of the City-County Council shortly thereafter.

In addition, SEA 227-2005 also provided a procedure by which the eight Marion County township fire departments and the Indianapolis Fire Department could merge upon the approval of each department's governing legislative body, and approval by their respective executives.[67] Since the adoption of SEA 227-2005, Washington Township, Warren Township, Perry Township, and now Franklin Township have each merged their township fire departments into IFD.[68]

In contrast to the Government Modernization Act, the Marion County Public Safety Consolidation Statute contains very specific provisions regarding the transfer of property and funds, and the retention of the respective debts and obligations of each participant. Notwithstanding this specificity, integral to the Marion County department consolidation is a companion resolution or ordinance[69] adopted by each participant which details the terms of financial matters, the treatment of transferring personnel with respect to rank, wages and promotional opportunities, the retention of property and equipment by the township in order to continue its remaining non-public safety obligations and the continued sharing of facilities. The later mergers have been further complicated by the implementation of the tax caps and the effect of the same on both the City of Indianapolis and the merging townships.

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[65] *See* footnote 13 *infra*.
[66] Codified at I.C. 36-3-1-5.1.
[67] Codified at I.C. 36-3-1-6.1.
[68] The merger of the Franklin Township Fire Department into the Indianapolis Fire Department is not effective until July 1, 2010.
[69] *See* Exhibit "F" Resolution of the Franklin Township Board and Plan of Merger attached thereto, drafted by the author.

V. POSTLUDE – THE FUTURE OF LOCAL GOVERNMENT CONSOLIDATION

Due to the efforts of the Indiana and Indianapolis Chambers of Commerce, the Central Indiana Corporate Partnership, Governor Daniels and many other elected officials and civic leaders, the issue of local government consolidation and efficiency remains front and center in Indiana political discourse. With the advent of the tax caps and the tightening of local revenues, there is little doubt that the debate will continue until significant local government downsizing occurs. Indiana's 1,006 remaining townships, at the center of this debate, will continue to be the target of reformers, as they were in the 2010 Session of the Indiana General Assembly. Competing provisions in the Democrat controlled House and the Republican controlled Senate died in the closing days of the 2010 Session.

The Democrat proposal focused on a township-by-township referendum to be conducted with a simple question as to whether township government in that locality should be eliminated in its entirety and all duties and responsibilities transferred to county officials. Some criticized this as mandating a patchwork of townships sprinkled haphazardly throughout the state, with no assurance of eliminating multiple layers of government in any single county. The Senate proposal, with Governor Daniels' encouragement, included the dissolution of all township boards (eliminating 3,027 local elected officials) and transferring all of the township board's fiscal duties to the county fiscal body, the county council.[70] Each proposal died in the closing days of this year's legislative session as each author refused to accept the proposal of the other party.

Notwithstanding the standoff of 2010, the board elimination proposal may receive friendlier future treatment depending upon the results of the election of November 2010. Regardless of electoral results, the issue of local government reform, and the voluntary or involuntary consolidation of services at the local government level, will remain a hot topic for years to come, as it has been for Indiana's 200 year history.

[70] Ironically, this appears to be nearly the same "reform" enacted by the Indiana General Assembly in 1859, and repealed by the County Reform Law of 1899. *See* footnotes 3 and 4 *infra*.