

[Bond Case Briefs](#)

Municipal Finance Law Since 1971

[Lawmaker Sees State Rainy Day Fund as Lifeline For Localities Battling Big-Box Stores Over Taxes.](#)

The Indiana legislation could assist local governments dealing with “dark-store theory” property tax appeals.

Big-box retailers and other businesses around the U.S. in recent years have been battling with local governments to get the assessed value of their stores lowered so that they can pay less in property taxes.

In some cases, where their appeals are successful, cities and counties can end up owing the companies sizable tax refunds. The localities are also forced to grapple with the long-term effects of the lost revenue, which can mean shifting tax burdens onto others or service cuts.

Earlier this week, an Indiana lawmaker filed a bill intended to provide short-term relief for some places in situations like this. Rep. Lisa Beck’s legislation would allow cities and school districts access to loans from the state rainy day fund to pay these sorts of property tax refunds.

An important caveat with the bill is that, as it’s now written, it would only apply to local governments that meet certain criteria in Lake County, which is located in Beck’s district. But it’s easy to see how the legislation could be amended so its framework applies more broadly.

The loans would be zero- or low-interest (up to 1%) and could be up to \$8 million. Borrowers would have 12 years to pay them back, with no payments required in the first two years.

Indiana has in the past offered low-interest loans to local governments in other types of difficult financial situations, so Beck’s bill is to some extent a variation on an existing practice. The state’s current rainy day fund balance is fairly robust at around \$519 million.

“Indiana’s not unique in being one of the states that have had multiple ongoing lawsuits related to the big-box stores,” Beck noted during an interview on Friday. She said she hopes her bill will spark further discussion about how to assist places affected by the tax appeals.

“We hope it’s not the final help that we’re going to give to these communities,” she added.

The issues that the legislation seeks to address arise from a tax-avoidance strategy that some people refer to as “dark-store theory.”

In a nutshell, this involves retailers and others appealing property tax assessments on the grounds that their active stores should be valued in line with similar property that is vacant.

The thinking goes that even though a big-box store may be valuable to its current owner, it’s worth far less on the resale market.

Among the reasons that this argument can gain traction is that the stores are often built for a

business' specific needs and aren't easily repurposed, and because there's a growing abundance of empty retail space available around the country.

In other words, a Home Depot, Best Buy or Walmart shouldn't be taxed based on its value as an operational store, but instead by factoring in what it would be worth as a vacant hulk.

Clashes over assessed value have played out in Lake County with a large mall and a nearby Kohl's building. The current draft of Beck's bill appears geared toward these specific circumstances.

For a locality to access a loan under the bill, it would need to have an estimated drop in tax revenue of at least \$1 million—one that stems from a court judgement requiring Lake County to refund property taxes to a taxpayer whose property in the county is worth \$100 million or more. So, for now at least, the bill is narrowly tailored.

"We're not looking at making anybody the bad guy here," Beck said. "We're not out against any of these box stores." But she also said that she thinks the strategy that retailers are pursuing to lower their local property tax bills is unfair to the communities where they're located.

"We cannot run our communities, with the police service, fire service and all the other amenities that we've been able to provide, with the proposed amount of tax assessments," she added.

If a local government in Indiana takes a hit to its revenues when a retail property owner wins a tax appeal, state property tax caps make it difficult to simply offset the loss by raising taxes on other taxpayers. This ups the odds that cuts will be needed to balance the budget.

While rainy day fund loans do not promise a permanent way to backfill the losses from the appeals, they would at least provide localities with some breathing room to rework their finances.

A different bill dealing with retail store tax assessments passed out of Indiana's state Senate last year, but later stalled.

That legislation would have created a way for local governments to ask the state to assess the value of retail properties in certain cases, and outlined guidelines for those appraisals that factor in a building's costs. Beck said Friday that she'd heard the sponsor of that Senate bill was planning to introduce legislation on the topic again this year.

But even if the state, instead of local governments, conducts the assessments, businesses could still choose to challenge them.

Route Fifty

By Bill Lucia,

JANUARY 10, 2020