REPRESENTATIVES FOR PETITIONERS:
Timothy J. Vrana, Timothy J. Vrana, LLC
Milo E. Smith, Certified Tax Representative

REPRESENTATIVE FOR THE RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CHARWOOD LLC, et. al.	)	Appeals from the Bartholomew County Property Tax Assessment Board of Appeals
Petitioners,	)	
v.	)	Petitions for Review of Assessments
BARTHOLOMEW COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS	)	Petition Numbers: Numerous [Attached]
Respondent.[1]	)	Parcel Numbers: Numerous [Attached]
	)	Assessment Year: 2003

April 4, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

[1] During the earlier proceedings before the Board, there had been some question regarding the proper responding party(ies) to these appeal petitions. Marilyn Meighen filed appearances on behalf of the Columbus Township Assessor and the Bartholomew County Property Tax Assessment Board of Appeals. The stipulated facts, however, show that the Bartholomew County PTABOA made the original determinations under review. Thus, under the statutory language existing at the time these cases were filed, the Bartholomew County PTABOA is the proper responding party. *See* IND. CODE § 6-1.1-15-3 (a)(2004)(making the "township assessor, county assessor, member of a county [PTABOA], or [PTABOA] that made the original determination under appeal" a party to an appeal before the Board).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. This case involves 27 properties owned by 21 different Petitioners.[2] The Petitioners do not actively dispute the subject properties' values; they instead claim solely that the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") lacked authority to increase their properties' assessments from 2002 to 2003 because the properties did not change during that period. But Ind. Code § 6-1.1-9-1, among other statutes, plainly authorizes a PTABOA to change assessments in interim years between general reassessments without the limitation that the Petitioners urge. While the Petitioners cite to language in several Indiana Tax Court cases to support their claims, those cases largely address questions unrelated to the one at hand. To the extent that one of those cases, *K.P. Oil v. Madison Twp. Assessor*, does address the question at hand, it must be read narrowly in light of its unique facts and the plain language of Ind. Code § 6-1.1-9-1 and similar statutes. We therefore deny the Petitioners' claims.

PROCEDURAL HISTORY

2. The PTABOA issued Form 115 notifications to the Petitioners between June 11, 2004, and June 16, 2004. Each Petitioner then timely filed a Form 131 petition to the Board. The Board has jurisdiction over the Petitioners' appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

3. The Petitioners moved for summary judgment, which the Board's administrative law judge denied on March 22, 2007. After conducting discovery, the parties agreed to try the cases on stipulated facts. On September 14, 2007, the parties filed their Stipulation. They also filed briefs under an agreed briefing schedule.

[2] The Board lists the Petitioners and their respective petition and parcel numbers on Exhibit A.

4. Neither the administrative law judge nor the Board inspected the subject properties.

5. The parties offered the following agreed exhibits with their Stipulation:

Exhibit A:	List of petition numbers and parcel numbers for appealed properties
Exhibits B – BB:	Property record cards for tax years 2002 and 2003
Exhibit CC:	Chart comparing 2002 and 2003 assessments
Exhibit DD:	Notice of PTABOA meeting

6. The Board also incorporates into the record (1) all pleadings and motions filed by the parties, and (2) all orders, notices and other documents issued by the Board or its administrative law judge.

FINDINGS OF FACT

7. The parties have stipulated to the facts. After each Petitioner received its tax bill for tax year 2002 pay 2003, the Bartholomew County Assessor mailed a notice indicating that the Bartholomew County PTABOA would be holding a meeting to review the assessed value of the Petitioner's property. *Stipulations, ¶ 5; Ex. DD.* None of the Petitioners received any intervening notice from the county assessor. *Id.*

8. On April 15-16, 2004, the Bartholomew County PTABOA held hearings on the subject properties. *Id. at ¶ 6.* Following those hearings, a Form 115 notice was sent to each Petitioner indicating that the assessed value of its property was being increased. *Id. at ¶ 4, 7; Ex. CC.* Those Form 115 notices were the first written notices to the Petitioners informing them that their assessments had increased from 2002 to 2003. *Id. at ¶ 8.* None of the Petitioners received a Form 11 Notice of Reassessment or a Form 113 Notice of Assessment by Assessing Officer for tax year 2003 pay 2004. *Id. at ¶10.*

9. None of the subject properties had changed since the 2002 general reassessment. *Id. at ¶¶ 2.*

CONCLUSIONS OF LAW AND DISCUSSION

10. Under Indiana's statutory system for assessing and taxing real property, local officials periodically determine individual property values with a general reassessment. IND. CODE § 6-1.1-4-4 (2006). And until the March 1, 2006, assessment date when assessors began annually adjusting assessments, a property's general-reassessment value normally carried forward each year until the next general reassessment. *Williams Industries v. State Bd. of Tax Comm'rs* 648 N.E.2d 713, 715 (Ind. Tax Ct. 1995); *see also* IND. CODE § 6-1.1-4-4.5 (2006)(requiring assessed values to be annually adjusted for each non-general-reassessment year beginning with the March 1, 2006 assessment date).

11. The general rule that values simply roll forward between general reassessments, however, had certain exceptions. And this case turns on the scope of those exceptions. The Petitioners believe that the statutes and case law allowed an exception only where a property had experienced an intervening change to its physical characteristics or use. The Bartholomew County PTABOA, by contrast, takes a much broader view. It argues that, with certain procedural limitations, it could increase the assessment of any property that it believed was undervalued.

12. We agree with the Bartholomew County PTABOA. Several statutes give assessing officials the power to increase assessments for undervalued properties outside the context of a general reassessment. For example, Indiana Code § 6-1.1-13-3 directs a PTABOA "on its own motion or on sufficient cause shown by any person" to add to the assessment lists the correct assessed value of any undervalued property. IND. CODE § 6-1.1-13-3. And it can do that for assessments made "with respect to the last preceding assessment date." IND.

CODE § 6-1.1-13-1; *see also*, IND. CODE § 6-1.1-13-5 (requiring that assessments be increased or decreased to attain a just and equal basis of assessment between taxpayers); IND. CODE § 6-1.1-4-30 ("[i]n making any assessment or reassessment of real property in the interim between general reassessments, the rules, regulations, and standards for assessment are the same as those used in the preceding general reassessment.").

13. Indiana Code § 6-1.1-9-1, however, states that authority most explicitly by authorizing a PTABOA to increase an undervalued property's assessment "for any year or years":

> If a township assessor, county assessor, or county property tax assessment board of appeals *believes that any taxable tangible property has been* omitted from or *undervalued* on the assessment rolls or the tax duplicate *for any year or years*, the official or board shall give written notice under . . . IC 6-1.1-4-22 of the assessment or increase in assessment. The notice shall contain a general description of the property and a statement describing the taxpayer's right to a preliminary conference and to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1.

IND. CODE § 6-1.1-9-1(2006)(emphasis added). To be sure, a PTABOA must believe that a property is undervalued, but the statute does not otherwise substantively limit the PTABOA's authority.

14. Indeed, the Petitioners recognize that neither Indiana Code § 6-1.1-9-1 nor any other section within the same chapter of the Indiana Code expressly limits a PTABOA's authority in the manner they suggest. But they argue that we must harmonize Ind. Code § 6-1.1-9-1 with Ind. Code § 6-1.1-4-25, which they contend does prohibit a PTABOA from increasing a property's assessment without the property having changed.

15. Indiana Code § 6-1.1-4-25, however, does not contain the limitation that the Petitioners ascribe to it. That statute generally describes township assessors' record-keeping duties. For example, it requires assessors to maintain and transmit

electronic files in an approved format. IND. CODE § 6-1.1-4-25(b)(2006). It also directs township assessors to keep their "reassessment data and records current by securing the necessary field data and by making changes in the assessed value of real property *as changes occur in the use of the real property*." IND. CODE § 6-1.1-4-25(a) (2006) (emphasis added).

16. In the Petitioners' view, that last clause expressly limits an assessing official's authority to change a property's assessment in the years between general reassessments. But that clause simply directs a township assessor to change a property's assessment for one specific reason; it does not purport to bar an assessor from changing a property's assessment for other reasons. And it speaks only to a *township assessor's* duties; it says nothing about a *PTABOA's* duties or authority.

17. Interestingly, the Petitioners' argument—that by listing only one instance where a township assessor can change an assessment, the General Assembly intended to prohibit township assessors from changing assessments for any other reason—would also logically prohibit an assessor from changing a property's assessment to reflect any intervening physical changes to the property. But the Petitioners do not, and cannot, dispute a township assessor's authority to change a property's interim assessment under those circumstances.

18. Also, as the Petitioners themselves point out, we must construe statutes as a whole and attempt to harmonize conflicting provisions. *Burd Mgmt., LLC, v. State,* 831 N.E.2d 104, 108 (Ind. 2005). When faced with an ambiguous provision that is susceptible to alternative constructions—one of which would conflict with the plain meaning of a different provision—we must read the first provision to conform to the second, not the other way around. Thus, even if we were to agree that the Petitioners' suggested construction of Ind. Code § 6-1.1-4-25(a) was reasonable, it is still a construction. The language at issue also reasonably lends itself to the opposite construction—that it merely identifies one non-exclusive

circumstance where an assessor must change a property's assessment in the interim years between general reassessments. Indiana Code § 6-1.1-9-1, by contrast, plainly authorizes an assessor to increase a property's assessment in "any year or years" with no substantive limitation other than a required belief that the property is undervalued. Thus, to the extent that we were to harmonize the two statutes, we would construe Ind. Code § 6-1.1-4-25(a) as not substantively limiting an assessor's power to increase an undervalued property's assessment.

19. Indeed, to hold otherwise would lead to results that the General Assembly could not have intended. Under the Petitioners' asserted construction, a township assessor could grossly underestimate a property's value by millions of dollars. But unless the taxpayer changed its property, local officials would be powerless to correct that mistake until the next general reassessment. The benefited taxpayer would gain a windfall at the expense of all other taxpayers in the same taxing unit.

20. The Petitioners' asserted construction also conflicts with the General Assembly's statutorily expressed (and constitutionally mandated) goal of creating a uniform and equal assessment system. *See* IND. CONST. ART. X § 1 ("The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation. . . ."); IND. CODE § 6-1.1-2-2 (2006) ("All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner."). Taxpayers can appeal their assessments. Thus, properties that are over-assessed can be corrected through the appeals process. Under the Petitioners' construction, however, assessors would be bound to under-assessments until the following general reassessment because taxpayers benefiting from those under-assessments would be unlikely to appeal.

21. Nonetheless, the Petitioners claim that the Indiana Tax Court has definitively interpreted Indiana Code § 6-1.1-4-25 in the manner that they urge. They cite four cases to support that proposition: *K.P. Oil v. Madison Twp. Assessor,* 818 N.E.2d 1006 (Ind. Tax Ct. 2004); *Lindemann v. Wood,* 799 N.E.2d 1230 (Ind. Tax

Ct. 2003); *Wetzel Enterprises, Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1259 (Ind. Tax Ct. 1998); and *Williams Industries v. State Bd. of Tax Comm'rs,* 648 N.E.2d 713 (Ind. Tax Ct. 1995). As discussed below, however, *Williams Industries, Wetzel Enterprises* and *Lindemann* simply did not address the issue at hand. And while *K.P. Oil* rejected a PTABOA's interim assessment on grounds that there had been no change to the appealed property, the PTABOA in that case apparently did not act under Ind. Code § 6-1.1-9-1 in making its interim assessment. Also, unlike this case, the parties in *Lindemann* and *K.P. Oil* had already litigated the correctness of the appealed property's general reassessment value.

22. We turn first to *Williams Industries*. In that case, Williams did not appeal its properties' 1989 general-reassessment values after receiving Form 11 notices. *Williams Industries*, 648 N.E.2d at 714. It later filed Form 130 petitions appealing the properties' 1991 assessments. At the times relevant to the appeal, the Form 130/131 review process was available only where a taxpayer received notice of a change in its property's assessment. *Id*. at 716-17. And the taxpayer had to file its Form 130 petition within 30 days of receiving that notice. *Id.* at 717. Because actions requiring notice did not occur every year, taxpayers were allowed to file a Form 134 petition with the State Board of Tax Commissioners in non-general-reassessment years. *Id*. The Tax Court therefore addressed whether Williams could appeal its 1991 assessments using the Form 130/131 review process instead of filing Form 134 petitions. *Id*. at 714.

23. In an attempt to justify using the Form 130/131 process, Williams argued that the assessor had actually assessed its properties in 1991 and determined that no changes should be made. 648 N.E.2d at 716. The court rejected Williams's argument, explaining that Williams confused an assessor's act in valuing a property with its ministerial function in carrying values forward between general reassessments. *Id*. Williams had simply received tax bills for 1991, which carried the properties' 1989 assessed values forward. *Id.* Thus, the court held that

Williams was not entitled to use the Form 130/131 process to challenge its 1991 assessments. *Id*. at 716-17.

24. The Petitioners, however, seize on isolated language where the court described how an assessment that is carried forward differs from an interim assessment requiring an official to give a taxpayer notice:

> In 1989, a general reassessment of all the property in Indiana took effect. IND. CODE 6-1.1-4-4(a)(prior to amendment by P.L. 332-1989, § 3). Thus the property values assigned in the 1989 general reassessment are carried forward from year to year until the next general reassessment takes effect. *See id*. Nevertheless, assessing officials may assess or reassess real property between general reassessments. IND. CODE 6-1.1-4-30. *Interim assessments are made to reflect changes to the property which may increase or decrease its general reassessment value*. *See* IND. CODE 6-1.1-4-25. . . . When no changes occur to the property to affect its general reassessment value, the general reassessment values are merely carried over.

Williams Industries, 648 N.E.2d at 715 (emphasis added). Read in context, however, the quoted language simply describes how the assessment system typically operated in years between general reassessments; it does not purport to restrict an assessing official from changing a property's assessed value in interim years. Indeed, neither the local assessing officials nor the State Board had attempted to change Williams's general reassessment values.

25. The Petitioners' reliance on *Wetzel Enterprises* fails for similar reasons. Once again, the Petitioners point to isolated language regarding how assessed values generally carry forward in years between general reassessments. But like *Williams Industries*, *Wetzel Enterprises* dealt with an issue different from the one at hand. The *Wetzel Enterprises* court addressed whether the State Board could, *sua sponte*, review a Vanderburgh County Board of Review (BOR) determination that lowered a property's 1989 assessment. *Wetzel Enterprises*, 694 N.E.2d at

1261-63. The court recognized that Ind. Code § 6-1.1-14-10[3] authorized the State Board to review assessments *sua sponte*. *Id*. at 1262. But the court noted that the State Board could only do so within a three-year window. *Id*. Thus, the court found that the State Board erred in issuing its 1996 determination purporting to change the BOR's 1989 assessment. *Id*. The court also found that the State Board's actions were invalid because it had failed to provide the taxpayer with notice of its hearing. *Id*. at 1262-63.

26. *Lindemann v. Wood* likewise dealt with an issue different from the one at hand. There, the Tax Court expressly based its holding on the doctrine of *res judicata*. More specifically, the court held that, absent a change to the taxpayer's property, the Marion County BOR's prior adjudication that the grade assigned to the taxpayer's home should be B-1 estopped the Washington Township Assessor from later raising the home's grade to B+2. *Lindemann,* 799 N.E.2d at 1231-33.

27. The Petitioners, however, point to a footnote in which the court cited to *Wetzel Enterprises* for two propositions: (1) that, absent an interim assessment, general-reassessment values carried forward from year-to-year; and (2) that under Ind. Code § 6-1.1-4-25, interim assessments were made to reflect changes to a property that increased or decreased its value. 799 N.E.2d at 1233 n. 4. In a separate footnote, the court also explained that its holding did not conflict with the oft-stated principle that each tax year stands alone, because "a real property assessment valuation 'rolls' from year to year unless there is a change to the property justifying an interim assessment." *Id.* at n. 6. According to the Petitioners, the footnoted language shows that the court rested its holding on alternate grounds— *res judicata* and the fact that an assessing official can make an interim assessment only to reflect intervening changes to a property.

[3] The Indiana General Assembly amended that statute when it dissolved the State Board and divided its functions between the Department of Local Government Finance ("DLGF") and the Indiana Board of Tax Review. P.L. 90-2002, SEC 136. Thus, Ind. Code § 6-1.1-14-10 now authorizes the DLGF to review assessments *sua sponte*. IND. CODE § 6-1.1-14-10 (2006).

28. We disagree. The court rested its decision solely on *res judicata* grounds. The footnoted language simply clarifies that the general principle that each tax year stands alone does not trump the doctrine of *res judicata*. Thus, once a valuation issue, such as a property's grade, has been litigated, the parties cannot continue to dispute it without the relevant circumstances having changed. Plus, the *Lindemann* court did not address a PTABOA's authority under Ind. Code § 6-1.1-9-1 to increase assessments for undervalued property.

29. The *K.P. Oil* decision presents a closer question. There, the taxpayer originally appealed from the 1995 general reassessment of its property on the grounds that the assessor had valued its land using a base rate of $900 per front foot. *K.P. Oil*, 818 N.E.2d at 1007. According to the taxpayer, its land was unplatted and consequently should have been assessed at the rate of $24,750 per acre. *Id*. The assessor was prevented from seeking judicial review of the State Board's determination in the taxpayer's favor because the resulting refund did not meet the minimum jurisdictional requirements existing at the time. *Id.* at 1009 n. 5. In 1999, the county board of review reassessed the land using a rate of $900 per front foot on grounds that the lot actually was platted. *Id.* at 1007.

30. On reviewing the taxpayer's appeal of that reassessed land value, the Tax Court rejected the Respondent's claim that the property underwent a change from unplatted to platted status. Relying on Ind. Code § 6-1.1-4-4 and its decisions in *Wetzel Enterprises* and *Williams Industries*, the Tax Court held that the value assigned from the 1995 reassessment should carry forward because there had been no changes to the property between the 1995 general reassessment and the 1999 interim assessment. *Id.* The court therefore found the Board had abused its discretion in affirming the interim assessment. *Id*. at 1008-09.

31. *K.P. Oil*, however, must be read narrowly in light of Ind. Code § 6-1.1-9-1, which authorizes the PTABOA to increase a property's assessment in "any year or years" without first requiring a change in the property's physical make-up or use.

The court did not address Ind. Code § 6-1.1-9-1. Indeed, nothing in the court's written decision indicates that the Jefferson County PTABOA even relied on that statute to justify reassessing K.P.'s land. We therefore do not read *K.P. Oil* as precluding a PTABOA from acting under Ind. Code § 6-1.1-9-1 to increase the assessment of a property that it believes has been undervalued. Absent a court decision expressly interpreting Ind. Code § 6-1.1-9-1 in a contrary manner, we cannot depart from that statute's plain language.

32. The Tax Court itself did not read such a limitation into Ind. Code § 6-1.1-9-1 when faced with a claim that a county board of review could conduct an interim reassessment under that statute. *See Lakeview Country Club v. State Bd. of Tax Comm'rs,* 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991). Although the *Lakeview* court ultimately decided the case on different grounds, it explicitly recognized that Ind. Code § 6-1.1-9-1 gives assessing officials authority to increase assessments for undervalued real property between general reassessments. And it did so in a case where (1) the property's use had not changed, and (2) the purported basis for the increase was that the property had been undervalued in the 1979 general reassessment. 565 N.E.2d at 393-94.

33. The Petitioners, however, contend that the Tax Court's later decisions in *Williams Industries, Wetzel Enterprises,* and *K.P. Oil* implicitly overruled *Lakeview.* We disagree. As a tribunal that must follow the Tax Court's decisions, we strive to harmonize those decisions. And we believe that the Tax Court's later decisions can be reconciled with *Lakeview*. As already explained, *Williams Industries* and *Wetzel Enterprises* simply did not address claims that an assessing official lacked authority to make an interim assessment. And none of the identified cases even purports to address Ind. Code § 6-1.1-9-1.

34. Plus, *K.P. Oil* involved a unique set of facts. The PTABOA made its interim assessment after the State Board had already reviewed the appealed property's 1995 general-reassessment value and issued a determination reducing that value.

Although the Bartholomew County PTABOA explains the Tax Court's holding in terms of *res judicata*, the court did not expressly base its decision on that doctrine. Nonetheless, the prior adjudication in *K.P. Oil* is a significant fact distinguishing that case from both *Lakeview* and this case.

35. *K.P. Oil* also must be read in light of Indiana's real property assessment system at the time. Before 2002, Indiana determined assessments on the basis of a specific cost methodology prescribed in an assessment manual. The practice under that system had been to promulgate an assessment manual that was used for general statewide reassessments and to continue using that manual for all the interim years until the next general reassessment. Thus, assuming that a property's assessed value was correctly determined under the manual, that value necessarily carried forward until the next reassessment unless the property had experienced some change to its physical characteristics or use. *K.P. Oil's* outcome therefore relates to this old system and the fact that an administrative adjudication had already determined the property's "correct" assessment.

36. Our current system, which governs the assessments in this case, departs significantly from the system providing the backdrop to *K.P. Oil*. It no longer focuses on the methodology that an assessor employed in valuing a property; it instead looks to whether the assessment actually reflects the property's market value-in-use. *P/A Builders & Developers v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *see also* IND. ADMIN. CODE tit. 50, r. 2.3-1-1(d);[4] 2002 REAL PROPERTY ASSESSMENT MANUAL 2.[5] While the Department of Local Government Finance promulgated guidelines that assessors may use as a starting point, assessors may also use other generally accepted valuation methods. They

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[4] "The purpose of this rule is to accurately determine True Tax Value as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed. . . .[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of True Tax Value as defined in the 2002 Real Property Assessment Manual." 50 IAC 2.3-1-1(d).

[5] The Manual defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2.

no longer are tied to a specific set of classifications, models, cost tables, or depreciation tables comparable to the old assessment manual. *See id*.

37. Finally, we cannot ignore the policy concerns implicated by the Petitioners' suggested interpretation of *K.P. Oil* and the other cited cases. As explained above, the Petitioners' interpretation would allow taxpayers whose properties were mistakenly under-assessed to gain windfalls at the expense of all other taxpayers in the same taxing unit. And it would play havoc with the statutorily and constitutionally mandated goal of achieving a uniform and equal assessment system.

38. For all the reasons explained above, we find that the Bartholomew PTABOA was not prohibited from increasing the subject properties' assessments from 2002 to 2003 simply because the properties had not changed during that interval.

SUMMARY OF FINAL DETERMINATION

39. The Petitioners failed to demonstrate that the Bartholomew County PTABOA lacked authority to increase their assessments for 2003. Because the Petitioners did not present any valuation evidence to contest whether the assessments were correct, the Board finds for the Respondent, Bartholomew County PTABOA.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>