
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions

FROM: Dan Jones, Assistant Budget Director

SUBJECT: Procedures for the Establishment of Cumulative Funds

DATE: June 13, 2016

INTRODUCTION

The Department of Local Government Finance (“Department”) issues this memorandum, which applies to the following Cumulative Funds established under IC 6-1.1-41, and which supersedes all previous memoranda on the subject. **PLEASE NOTE:** This memorandum is intended to be an informative bulletin; it is not a substitute for reading the law.

| <u>Fund</u> | <u>Statutory Authority</u> |
|---|----------------------------|
| Cumulative Voting System Fund | Ind. Code § 3-11-6-9 |
| Cumulative Channel Maintenance Fund | Ind. Code § 8-10-5-17 |
| Cumulative Bridge Fund | Ind. Code § 8-16-3 |
| Major Bridge Fund | Ind. Code § 8-16-3.1 |
| Airport Cumulative Fund | Ind. Code § 8-22-3-25 |
| Cumulative Levee Fund (Vanderburgh Co.) | Ind. Code § 14-27-6-48 |
| Cumulative Improvement Fund | Ind. Code § 14-33-21 |
| Cumulative Hospital Sinking Fund | Ind. Code § 16-22-4 |
| Cumulative Hospital Fund | Ind. Code § 16-22-8-41 |
| Cumulative Fire Fund ¹ | Ind. Code § 36-8-14 |
| Cumulative Transportation Fund | Ind. Code § 36-9-4-48 |
| Cumulative Courthouse Fund | Ind. Code § 36-9-14 |
| Cumulative Capital Development (County Unit) | Ind. Code § 36-9-14.5 |
| Cumulative Jail Fund | Ind. Code § 36-9-15 |
| Cumulative Capital Development (Municipality) | Ind. Code § 36-9-15.5 |
| Cumulative Building, Sinking, or Capital Improvement Fund | Ind. Code § 36-9-16-5 |
| Cumulative General Improvement Fund | Ind. Code § 36-9-17-3 |
| Cumulative Township Vehicle and Building Fund | Ind. Code § 36-9-17.5 |
| Cumulative Building Fund for Municipal Sewers | Ind. Code § 36-9-26 |
| Cumulative Drainage Fund | Ind. Code § 36-9-27-99 |
| Cumulative Park Fund (County and Municipality) | Ind. Code § 36-10-3-21 |
| Cumulative Park Fund (Certain Cities) | Ind. Code § 36-10-4-36 |
| Township Cumulative Park Fund | Ind. Code § 36-10-7.5-19 |
| Fire Protection Territory Equipment Replacement Fund ² | Ind. Code § 36-8-19-8.5 |

¹ Before this fund may be established by a Fire Protection District, the county legislative body that appoints the trustees of the District must approve the establishment of the fund.

² The process for establishing a Fire Protection Territory Equipment Replacement Fund is governed by both IC 36-8-19-8.5 and IC 6-1.1-41.

In addition to complying with the budget, tax rate, and tax levy requirements of IC 6-1.1-17, the following steps must be taken when establishing a cumulative fund or increasing the rate of an established fund. If the establishment of a fund is not in compliance with IC 6-1.1-41, a tax to finance the fund may not be levied in the ensuing year.

STEP 1: PUBLICATION OF NOTICE TO TAXPAYERS

A political subdivision (“unit”) desiring a new cumulative fund or to increase the property tax rate for an existing cumulative fund must hold a public hearing on a proposal to establish or reestablish the fund. **To be clear, a unit seeking to increase the tax rate for an existing cumulative fund must formally reestablish the fund.** The hearing must be publicized through a Notice to Taxpayers that describes the tax levy to be imposed (see Appendix A) and must be published two times, at least seven days apart, with the first publication being at least ten days before the public hearing and the second publication at least three days before the public hearing, in accordance with IC 5-3-1-2(f). The notice must be published in two newspapers published within the unit, as applicable, in accordance with IC 5-3-1-4 (see Appendix D). If the fund is for a Cumulative Voting System (IC 3-11-6) or Cumulative Channel Maintenance (IC 8-10-5-17), notice of the proposal and the public hearing must also be posted in three public places within the unit.

STEP 2: PUBLIC HEARING & ADOPTION OF RESOLUTION/ORDINANCE

The adopting body for the unit must conduct a public hearing on the proposed cumulative fund on the date, time, and location as indicated in the Notice to Taxpayers. At this hearing, taxpayers of the affected taxing district(s) have the right to be heard. Subsequent to the public hearing, the adopting body can vote to pass a resolution/ordinance (see Appendix B) adopting the proposed cumulative fund and rate as presented, or at a lower tax rate. **Please note that it is generally the county commissioners who establish a county cumulative capital development fund and it is the county commissioners who establish a cumulative bridge fund.** Units should pay close attention to whether statute requires the unit’s fiscal body or legislative body to establish a cumulative fund.

STEP 3: PUBLICATION OF NOTICE OF ADOPTION

The unit must publish a Notice of Adoption to the affected taxpayers (see Appendix C). The unit must publish the Notice of Adoption one time within 30 days after the date of the adoption in two newspapers published within the unit, as applicable, in accordance with IC 5-3-1-4 (see Appendix D). If the fund is for a Cumulative Voting System (IC 3-11-6) or Cumulative Channel Maintenance (IC 8-10-5), the notice must also be posted in three public places in the political subdivision. The publication of this Notice begins a 30-day remonstrance period for the taxpayers affected by the cumulative fund.

OBJECTION PETITIONS

Taxpayers who are affected by the proposed cumulative fund may file an objection petition with the county auditor, not later than noon 30 days after the publication of the Notice of Adoption, setting forth their objections to the proposed fund. Exceptions to the 30-day remonstrance period are limited to the Cumulative Building and Capital Improvement Fund (IC 36-9-16-5) and the Cumulative Building for Hospitals Fund (IC 16-22-5-4). Only these two funds require a ten-day remonstrance period. Pursuant to IC 6-1.1-41-6, the number of signatures required for a valid objection petition is specific to each type of cumulative fund as follows:

| <u>Fund</u> | <u>Minimum Number of Taxpayers</u> | |
|--|------------------------------------|-----|
| Cumulative Voting System Fund | Ind. Code § 3-11-6 | 100 |
| Cumulative Channel Maintenance Fund | Ind. Code § 8-10-5 | 10 |
| Cumulative Bridge Fund | Ind. Code § 8-16-3 | 10 |
| Major Bridge Fund | Ind. Code § 8-16-3.1 | 10 |
| Airport Cumulative Fund | Ind. Code § 8-22-3 | 50 |
| Cumulative Levee Fund (Vanderburgh Co.) | Ind. Code § 14-27-6 | 10 |
| Cumulative Improvement Fund | Ind. Code § 14-33-21 | 10 |
| Cumulative Hospital Sinking Fund | Ind. Code § 16-22-4 | 20 |
| Cumulative Hospital Fund | Ind. Code § 16-22-5 | 25 |
| Cumulative Fire Fund | Ind. Code § 36-8-14 | 10 |
| Cumulative Transportation Fund | Ind. Code § 36-9-4 | 10 |
| Cumulative Courthouse Fund | Ind. Code § 36-9-14 | 50 |
| Cumulative Capital Development (County Unit) | Ind. Code § 36-9-14.5 | 50 |
| Cumulative Jail Fund | Ind. Code § 36-9-15 | 50 |
| Cumulative Capital Development (Municipality) | Ind. Code § 36-9-15.5 | 50 |
| Cumulative Building and Capital Improvement Fund | Ind. Code § 36-9-16 | 50 |
| Cumulative General Improvement Fund | Ind. Code § 36-9-17 | 50 |
| Cumulative Township Vehicle and Building Fund | Ind. Code § 36-9-17.5 | 50 |
| Cumulative Bldg. Fund for Municipal Sewers | Ind. Code § 36-9-26 | 50 |
| Cumulative Drainage Fund | Ind. Code § 36-9-27 | 50 |
| Cumulative Park Fund (County and Municipality) | Ind. Code § 36-10-3 | 30 |
| Cumulative Park Fund (Certain Cities) | Ind. Code § 36-10-4 | 10 |
| Township Cumulative Park Fund | Ind. Code § 36-10-7.5 | 30 |
| Fire Protection Territory Equipment Replacement Fund | Ind. Code § 36-8-19-8.5 | 10 |

The county auditor must immediately certify the objection petition(s) to the Department by verifying:

- (a) the number of taxpayers on the petition and counterparts who are property owners within the taxing district(s) where the proposed cumulative fund will be levied;
- (b) that the proper number of qualified signatures appears on the petition and counterparts; and
- (c) the petition(s) was filed within the proper number of days after the publication of the Notice of Adoption.

If a petition is certified by the county auditor to the Department, the Department must fix a date for a hearing within a reasonable time after receipt of the objection. Notice of the hearing, under the signature of the Commissioner of the Department, must be given to the county auditor and the first ten taxpayers whose names appear on the petition at least five days before the date of the hearing. A hearing will be conducted in the county by a hearing officer of the Department, at which time all affected taxpayers will have the right to be heard. Testimony will be accepted from those in opposition to, as well as those in favor of, the proposed cumulative fund. The hearing officer will submit a report on the hearing to the Commissioner. The Department must certify approval, disapproval, or modification of the proposal to the county auditor. The action of the Department with respect to the proposed fund is final.

In the years following the year of adoption of the cumulative fund, and pursuant to IC 6-1.1-41-12, taxpayers of the taxing district(s) where the rate is levied may file with the county auditor a petition for reduction or revision of the cumulative fund levy. Such petitions must be filed by noon of August 1 of the year following the imposition of the levy.

STEP 4: SUBMISSION TO THE DEPARTMENT

A unit that adopts a proposed cumulative fund pursuant to IC 6-1.1-41 must submit the proposal to the Department for approval **on or before August 1** (postmarked not later than August 1) of the year preceding the year in which the proposed levy takes effect. **In other words, to levy a tax in 2017, the fund must be properly adopted in 2016 and the petition timely submitted to the Department in 2016 (a unit seeking to levy a cumulative fund tax starting in 2018 should not adopt the cumulative fund until 2017).** The following must be submitted to the Department:

- Procedure Checklist (see Appendix E);
- Resolution/Ordinance of adopting body (Appendix B);
- proofs of publication (and proofs of posting, if required) of the Notice to Taxpayers (a clipping from the newspaper(s) would suffice if the proofs are not yet available);
- proofs of publication (and proofs of posting, if required) of the Notice of Adoption (a clipping from the newspaper(s) would suffice if the proofs are not yet available), if available*;
- county auditor's Certificate of No Remonstrance, when available*; and
- any other relevant documentation.

***NOTE: A proposal must be postmarked to the Department on or before August 1. In order for the proposal to be complete, the Department must be able to determine whether a Notice of Adoption was properly published. Thus, a unit must at least have properly *published* a Notice of Adoption on or before August 1. Proofs of publication of this Notice, if available, must be included with the proposal. If proofs of publication are not available on or before August 1, a newspaper clipping of the actual Notice will suffice (the clipping should also show the date and name of the newspaper). Failure to document that a Notice of Adoption was published on or before August 1 will result in denial of the proposal. The Department notes that while IC 5-3-1-2(i) requires a Notice to be published within 30 days of the date of adoption, IC 6-1.1-41-4 requires that a proposal be submitted to the Department on or before August 1. This means that although a unit can potentially advertise a Notice of Adoption 30 days from the date of adoption, publication of this Notice must still occur on or before August 1. Thus, a unit that adopts a cumulative fund in mid-July will not have a full 30 days to publish the Notice of Adoption. Ideally the proposal will include the Auditor's Certificate of No Remonstrance, but the Department will accept this Certificate even if it is issued after August 1. The Department will strictly enforce the above.**

STEP 5: REVIEW BY THE DEPARTMENT

The proposal will be reviewed by the Department for completeness. If the proposal contains errors or proper procedure has not been followed, the packet will be returned to the fiscal officer of the adopting unit for correction.

STEP 6: CUMULATIVE FUND IS LEVIED

An approved cumulative fund may be levied beginning with the first annual tax levy imposed following approval of the proposal or in the year stated in the Department's order. Cumulative funds, with the exception of the Cumulative Building or Cumulative Capital Improvement Fund under IC 36-9-16-4, do not expire and may be levied from year to year as long as they are advertised annually with the annual budget or are not time-limited by the establishing resolution/ordinance.³ **Please note that if a unit adopts a rate for a cumulative fund as part of its budget adoption that is less than the rate at which the fund had been initially established, the unit will be held to that lesser rate**

³ Cumulative funds established under IC 16-22-5-2 and IC 16-23-1-40 also expire by statute, but they are not governed by IC 6-1.1-41.

the following year unless the unit reestablishes the fund at a higher rate. Again, to levy a tax in 2017, the fund must be properly adopted in 2016 and the petition timely submitted to the Department in 2016 (a unit seeking to levy a cumulative fund tax starting in 2018 should not adopt the cumulative fund until 2017).

If the appropriate fiscal body wishes to increase the rate in subsequent years, the fund must be reestablished and presented to taxpayers (a unit establishing a municipal or county cumulative development fund may adopt three years' rates upon establishment of such fund). The fund must also be reestablished if the use of the cumulative fund is changed. The tax rate may not exceed the rate specified by the statute authorizing the fund. The Department will apply the rate cap calculations to all cumulative funds as listed in this bulletin. The maximum property tax rate levied must be adjusted each time a reassessment or annual adjustment of property values take effect. When a cumulative fund is established, the Department order will reflect the (statutory) rate approved by the Department. The Budget Order will reflect the cap rate adjustment pursuant to IC 6-1.1-18.5-9.8.

ADDITIONAL INFORMATION

Taxes collected for a cumulative fund must be deposited in that same fund and may only be used for the purposes authorized by the corresponding statute and the resolution/ordinance as adopted. All funds must be appropriated before expenditure. The Department must approve all appropriations, except for those involving the Cumulative Bridge Fund or Cumulative Levee Fund. Appropriations may be included in the unit's annual budget or may be performed through the additional appropriation process under IC 6-1.1-18-5. Levies and rates, however, must be approved in the annual budget process.

If the unit establishing the fund decides that the need for which the fund was established has been satisfied or no longer exists or the unit rescinds the tax levy for the fund, the fiscal body shall, pursuant to IC 36-1-8-5, order the balance of the fund to be transferred as follows, unless a statute provides that it be transferred otherwise:

- (1) funds of a county, to the general fund or rainy day fund of the county;
- (2) funds of a municipality, to the general fund or rainy day fund of the municipality;
- (3) funds of a township for redemption of township assistance obligations, to the township assistance fund of the township or rainy day fund of the township; and
- (4) funds of any other political subdivision, to the general fund or rainy day fund of the political subdivision.

State Board of Accounts ("SBOA") has taken the position that transfers from cumulative funds are governed by specific statutory language and SBOA would take exception to cumulative funds under IC 6-1.1-41 being transferred to the rainy day fund. SBOA would not take exception to the transfer of funds if the purpose for which the fund was established had been accomplished, the need for the fund no longer existed, or the unit rescinded the tax levy.

Please note that the Fire Protection Territory Equipment Replacement Fund is subject to both IC 36-8-19-8.5 and IC 6-1.1-41. Thus, the legislative bodies of each participating unit must adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township), and the following requirements must be met:

- (1) The ordinance or resolution is identical to the ordinances and resolutions adopted by the other participating units.
- (2) Before adopting the ordinance or resolution, each participating unit must comply with the notice and hearing requirements of IC 6-1.1-41-3.
- (3) The ordinance or resolution authorizes the provider unit to establish the fund.

- (4) The ordinance or resolution includes at least the following:
 - a. The name of each participating unit and the provider unit.
 - b. An agreement to impose a uniform tax rate upon all of the taxable property within the territory for the equipment replacement fund.
 - c. The contents of the agreement to establish the fund.
- (5) A Notice of Adoption is published in accordance with IC 5-3-1-4, which begins a 30-day remonstrance period.
- (6) Objection petitions are processed as described on pages 2 and 3 of this Memorandum.
- (7) All materials are submitted to the Department on or before August 1.

See IC 36-8-19-8.5 for more information. Appendix B(2) features a template ordinance/resolution.

Please also note that before a Cumulative Firefighting Building and Equipment Fund may be established by a Fire Protection District, the county legislative body that appoints the trustees of the District must approve the establishment of the fund. Proof of this approval must be included with the District's proposal and submitted to the Department by August 1.

QUESTIONS?

Questions regarding this memorandum or matters pertaining to the establishment of a cumulative fund should be directed to Dan Jones, Assistant Budget Director, at (317) 232-0651 or djones@dlgf.in.gov (or faxed to (317) 974-1629).