

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE
Room 1058, IGCN – 100 North Senate
Indianapolis, IN 46204

IN THE MATTER OF THE PETITION)
FOR REVIEW ALLEGING ARTIFICIAL) CP019-001
DIVISION OF A CONTROLLED)
PROJECT BY HANCOCK COUNTY)

1. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 provide that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. A controlled project is, with some exceptions, any project financed by bonds or a lease that will cost a political subdivision more than the lesser of \$5,170,000 or an amount equal to 1% of the total gross assessed value of property within the political subdivision on the last assessment date, if that amount is at least \$1,000,000. IC 6-1.1-20-1.1.

2. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 also provide that a person that owns property within a political subdivision or a person that is a registered voter residing within a political subdivision may file a petition with the Department of Local Government Finance (“Department”) objecting that the political subdivision has artificially divided a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. The petition must be filed not more than ten days after the political subdivision makes the preliminary determination to issue the bonds or enter into the lease for the project. If the Department receives such a petition, it must, not later than 30 days after receiving the petition, make a final determination on the issue of whether the capital projects were artificially divided.

3. On May 29, 2019, George R. Langston, who owns property within the jurisdiction of Hancock County, submitted a petition (“Petition”) to the Department alleging that following a failed property tax referendum in May 2018 on a proposed jail project, the City of Greenfield’s mayor and city council “let it be known that they did not want the new criminal justice center project inside the city limits. So the county decided to place it on the county farm property . . . using the 0.20 Special LIT for construction of the correctional facility.” Mr. Langston alleges that the proposed \$5 million bond is an artificial division of a controlled project because they would go toward water, sewer, and the construction of a county road, items without which the jail cannot be built. Mr. Langston then states that “the General Assembly forbids breaking up projects so the county can use multiple G.O. Bonds to fund a project to get around the public referendum.” *Petition.*

4. The Petition contained the following supplemental documents:

- Copy of Resolution 2019-5-7.
- Copy of Ordinance 2019-5-C.
- Copy of Ordinance-5-D.
- Copy of a petition form prescribed by State Board of Accounts for the request of a referendum on the 2018 Safety and Security Project.

- Printout of a May 29, 2019, article in the *Greenfield Daily Reporter* by Ben Middelkamp entitled “City, county discussing jail utilities.”
- Written statement from the County Board of Commissioners made before the County Council at a November 8, 2017, meeting of the County Council.
- Printout of a proposed local income tax (“LIT”) ordinance. (“Proposed LIT Ordinance”)

Petition.

5. On June 4, 2019, the Department contacted several officials for Hancock County, asking it to respond to the contentions made in the Petition. *E-mail from David Marusarz to Debra Carnes, William Bolander, and Brad Armstrong, June 4, 2019, 5:19 p.m. EDT.*

6. In response to the Petition, the Hancock County Attorney, Scott Benkie, stated that the Council has not made a formal decision on the proposed ordinances prior to the submission of the Petition. *E-mail from Scott Benkie to David Marusarz, June 14, 2019, 2:40 p.m. EDT.* He later provided minutes from the Council’s meetings on May 23, June 5, and June 12, showing that Ordinances 2019-5-C and 2019-5-D, and Resolution 2019-5-7, were only introduced and not formally adopted by the Council. *E-mail from Scott Benkie to David Marusarz, June 18, 2019, 3:04 p.m. EDT; Minutes of the May 23, 2019, Council Meeting; Minutes of the June 5, 2019, Council Meeting; Minutes of the June 12, 2019, Council Meeting.*

7. On May 23, 2019, the Hancock County Council (“Council”) introduced and adopted a resolution whereby the Council determined a need exists for a project “regarding the construction of a new jail facility, together with all necessary appurtenances, related improvements and[sic]” (“Jail Project”). In its resolution, the Council “determine[d] . . . that a need exists for the construction of the Project and that funds needed therefor exceed the fund available to the County,” and that a lease agreement will be entered into with the Hancock County Building Corporation for the financing and construction of the Jail Project. *Petition; Resolution 2019-5-7.*

8. The Council also introduced Ordinance 2019-5-C on May 23, 2019. This ordinance states that it is necessary for the Council “to provide funds for the construction of water, sewer, road and other necessary utility infrastructure and for the renovation and additions to the Hancock County Courthouse, Hancock County Courthouse Annex and the Hancock County Prosecutor’s Office, together with all necessary appurtenances, equipment, and incidental expenses and costs of issuance in connection therewith” (“Courthouse Project”). The Courthouse Project would be financed by a general obligation bond “in an aggregate principal amount not to exceed Five Million Dollars (\$5,000,000).” *Petition; Ordinance 2019-5-C.*

9. The Council also introduced Ordinance 2019-5-D on May 23, 2019. This ordinance provides for an additional appropriation to the County’s 2019 budget in the amount of five million dollars (\$5,000,000) to be applied to the costs of the Courthouse Project. *Petition; Ordinance 2019-5-D.*

10. The Petition was submitted to the Department on May 29, 2019, six days after the Council’s May 29 meeting. At this meeting, public comment was held on the proposed LIT ordinance. Ordinances 2019-5-C and 2019-5-D were also introduced at this meeting and read into the minutes, but their adoption was not put to a vote by the Council. The Council approved Resolution 2019-5-7 by a vote of 6-0. *Minutes of the May 23, 2019, Council Meeting.*

11. At the June 5, 2019, Council meeting, Ordinances 2019-5-C and 2019-5-D were re-introduced and read into the minutes, but again their adoption was not put to a vote. *Minutes of the June 5, 2019, Council Meeting.*

12. At the June 12, 2019, Council meeting, the Council approved tabling Ordinances 2019-5-C and 2019-5-D and rescheduling a public hearing to adopt them at a later time. *Minutes of the June 12, 2019, Council Meeting.*

13. The Petition did not include a notice of preliminary determination dated on or before May 29, 2019. Moreover, the provided copies of the ordinances do not have any vote tallies, signatures of councilmembers, or any other evidence indicating an actual vote was held. *Petition.*


14. Based on the evidence obtained, the Department believes that the County has not made a decision regarding the issuance of bonds or entering into leases regarding the Courthouse Project, and has not given notice of same pursuant to IC 6-1.1-20-5, as of May 29, 2019, when the Department received the Petition. By virtue of IC 6-1.1-20-3.1(c) and IC 6-1.1-20-3.6(j), the Department can only act on a petition when that petition has been submitted no later than ten (10) days after the publishing and posting of notice of the decision to issue bonds or enter into leases. As no such notice has been given prior to the submission of any of the petitions to the Department, the Department has no statutory authority to act on the petitions that have been submitted.

15. The Department acknowledges the concerns of the petitioner that the Council is apparently taking action against their interests or without having a petition and remonstrance or a referendum on the matter. In not acting on the petition submitted, the Department is not regarding the claims the petitioner is making as frivolous or unwarranted. A petition on whether a capital project is artificially divided, however, still must be submitted within the timeframe allotted by statute, and this petition was not.

16. Therefore, the Department declines to make a determination on this matter at this time. Should, subsequent to this Order, the Council make a decision to issue bonds or enter into a lease on the proposal, a person owning property within the County or a registered voter residing within the County may submit a petition to the Department no later than ten (10) days after the Council gives notice of the decision. Per IC 6-1.1-20-3.1(c) and IC 6-1.1-20-3.6(j), only one (1) petition is needed to trigger the Department's review of proposed projects for artificial division.

Dated this 25 day of June, 2019.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE


for Wesley R. Bennett, Commissioner