

CITIES AND TOWNS BULLETIN AND UNIFORM COMPLIANCE GUIDELINES

If the owner of real property fails to pay a bill issued under IC 6-7-10.1-3 within the time specified in the ordinance, the department specified in the ordinance shall certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipality. [IC 36-7-10.1-4]

Notwithstanding IC 36-7-10.1-4, the municipality may provide that the amounts collected shall be disbursed to the general fund of the department specified to enforce the ordinance. [IC 36-7-10.1-5]

APPROPRIATION REQUIREMENTS

Cities

Unless a statute provides otherwise, IC 36-4-8-2 requires an appropriation to be made before money can be paid out of the city treasury upon a warrant of the fiscal officer.

Towns

IC 36-5-4-2 states that unless a statute provides otherwise, town monies may be disbursed only after an appropriation made by ordinance of the town legislative body.

APPROPRIATIONS – WHEN NOT REQUIRED

In some instances statutory authority is given to the city or town fiscal officer to make disbursements without an appropriation having been previously made for the specific purpose. Examples are as follows:

1. Premiums on official bonds. (IC 5-4-5-3)
2. Purchased meals, lodging, and mileage for conferences called by the State Board of Accounts. (IC 5-11-14-1)
3. Federal and State grants, if advanced and not received as a reimbursement of expenditures.
4. Refund of money erroneously received. (IC 6-1.1-18-9)
5. Correction of errors in posting. (IC 6-1.1-18-9)
6. Investment of funds.
7. Repayment of temporary loans.
8. Transfer from a city or town user fee fund to a program fund listed in IC 33-37-8-3.
9. Establishment of a cash change fund. (IC 36-1-8-2)
10. Establishment of a petty cash fund. (IC 36-1-8-3)

Funding and Refunding Indebtedness

Any city or town whose indebtedness is evidenced by bonds, notes, judgments or other obligations issued, rendered, or negotiated by the city or town, may, for the purpose of funding or refunding the indebtedness, or any part thereof, reducing the rate of interest thereon, extending the time of payment and canceling so much thereof as may be or become due, by the vote of two-thirds (2/3) of members of the fiscal body of the city or town, issue its bonds, for an amount not exceeding in the aggregate the whole amount of the indebtedness of the city or town (IC 5-1-9-1).

Temporary Transfers to Depleted Funds

IC 36-1-8-4(a) states:

“The fiscal body of a political subdivision may, by ordinance or resolution, permit the transfer of a prescribed amount for a prescribed period, to a depleted fund in need of money for cash flow purposes from another fund of the political subdivision if all these conditions are met:

- (1) It must be necessary to borrow money to enhance the depleted fund that is in need of money for cash flow purposes.
- (2) There must be sufficient money on deposit to the credit of the other fund that can be temporarily transferred.
- (3) Except as provided in subsection (b), the prescribed period must end during the budget year of the year in which the transfer occurs.
- (4) The amount transferred must be returned to the other fund at the end of the prescribed period.
- (5) Only revenues derived from the levying and collection of property taxes or special taxes or from operation of the political subdivision may be included in the amount transferred.”

IC 36-1-8-4(b) states:

“If the fiscal body of a political subdivision determines that an emergency exists that requires an extension of the prescribed period of a transfer, the prescribed period may be extended for not more than six (6) months beyond the budget year of the year in which the transfer occurs if the fiscal body does the following:

- (1) Passes an ordinance or a resolution that contains the following:
 - (A) A statement that the fiscal body has determined that an emergency exists.
 - (B) A brief description of the grounds for the emergency.
 - (C) The date the loan will be repaid that is not more than six (6) months beyond the budget year in which the transfer occurs.
- (2) Immediately forwards the ordinance or resolution to the State Board of Accounts and Department of Local Government Finance.”

Funds advanced shall be derived from taxes on property, special taxes or any other revenue received from any operation of the municipal corporation.

Such temporary transfers should be effected by issuing a warrant and receipt for the amount of the transfer. The warrant should be endorsed and deposited in the depository account designated for the depleted fund. No appropriation is required either for the transfer or the repayment. Also, no interest should be charged on any such temporary transfer.

Grant Anticipation Notes

IC 5-19-1.5 authorizes municipalities to borrow funds for a period of not to exceed three years and may pledge for the payment of principal and interest therefore, the proceeds of a grant and any revenue which may be derived from the facility being constructed or improved by the proceeds of the note or notes.

The maximum amount of any loan shall not exceed eighty percent (80%) of the estimated amount of the grant in anticipation of which the loan is made.

Your city or town attorney should review the provisions of IC 5-19-1.5 for legal guidance of the municipality prior to utilizing this type of temporary loans.

Loans from Municipally Owned Utilities (Water, Gas, and Electric Utilities)

IC 8-1.5-3-12 states:

- “(a) A municipality may, by ordinance of its legislative body, borrow money from a utility owned by the municipality for current purposes in anticipation of taxes levied and to be collected during the current or following year.
- (b) The board may by resolution lend money to the municipality if the utility has on hand: (1) a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year; (2) the amount necessary to meet current expenses during the year; and (3) the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.
- (c) A loan may not be made for the sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes. The loan; (1) must be evidenced by an obligation of the municipality; (2) must be signed by the executive; (3) is due on or before thirty (30) days after the last day for the payment of anticipated taxes; and (4) may bear interest at any rate as determined by the board, payable at maturity.”

IC 8-1.5-3-11(f) states:

“A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the reserve fund.”

Note: A municipality could borrow money from or loan money to its wastewater utility under the provisions of the Home Rule statute contained in IC 36-1-3.

**OFFICE SPACE – CITY CLERKS – CITY CLERK-TREASURERS AND
TOWN CLERK-TREASURERS**

IC 36-4-10-2.5 and IC 36-5-6-5.1 provide that if:

“office space exists in a building owned or leased by a city or town, the city executive and city legislative body, or town legislative body shall provide office space for : (1) the clerk or clerk-treasurer; and (2)the staff and records of the clerk or clerk-treasurer.”

**ATTORNEYS AND LEGAL RESEARCH ASSISTANTS –
CITY CLERKS AND CITY AND TOWN CLERK-TREASURERS**

IC 36-4-10-5-5.5 and IC 36-5-6-8 state that a Clerk or Clerk-Treasurer may hire or contract with competent attorneys or legal research assistants on terms the Clerk or Clerk-Treasurer considers appropriate. Appropriations for salaries of attorneys and legal on research assistants employed shall be approved in the annual budget and must be allocated to the Clerk or Clerk-Treasurer for payment of attorneys and legal research assistant’s salaries.

Furthermore, IC 36-4-10-5.5 states that employment of an attorney by a City Clerk or City Clerk-Treasurer does not affect a city department of law established under IC 36-4-4.

REIMBURSEMENT GRANTS - APPROPRIATION

City and town councils may appropriate any funds received as a grant from the state or federal government without using the additional appropriation procedures under IC 6-1.1-18-5, if the funds are provided or designated by the state or federal government as a reimbursement of expenditures. (IC 6-1.1-18-7.5)

COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT)-USES

IC 6-3.5-7-13.1 allows such tax revenues to be used for any lawful purpose. If county economic development income tax revenues have been pledged to pay off economic development debt, then it must be used to pay off the debt.

PUBLIC CONSTRUCTION LAW - OVERVIEW

Whenever the cost of a public work project will be:

- (1) At least \$75,000 in:
 - a. A consolidated city or second class city; or
 - b. A county containing a consolidated city or second class city;
- (2) At least \$50,000 in:
 - a. A third class city with a population of more than 5,000; or
 - b. A county containing a third class city or town with a population of more than 5,000; or
- (3) At least \$25,000 in political subdivision or an agency not described in subdivision 1 or 2;

The board shall prepare general plans and specification describing the kind of public work required, but shall avoid specifications which might unduly limit competition. [IC 36-1-12-4(b)(1)] The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required. [IC 36-1-12-4(b)(2)] All plans and specifications for public buildings must be approved by the State Board of Health, State Fire Marshal, State

**CITIES AND TOWNS BULLETIN
AND UNIFORM COMPLIANCE GUIDELINES**

Page 10

June 2011

2011 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 171 - SENATE ENROLLED ACT 590 – EFFECTIVE JULY 1, 2011

IMMIGRATION MATTERS – Adds IC 12-32, IC 22-4-39.5, IC 22-5-1.7, IC 22-5-6, IC 34-28-8.2 and IC 35-33-8-4.5 – Makes numerous changes to the laws governing immigration. Requires employers to use the Federal E-Verify Program to verify the work eligibility status of employees hired after June 30, 2011. Requires employees hired with no employment agreement, where the term of employment is to be more than three (3) days, to sign a form, under penalty of perjury, that states they are legally authorized to work. Requires subcontractors to certify they are using the E-Verify Program. Requires contracts entered into after June 30, 2011, to contain provisions that the contractor has verified the eligibility of its newly hired workers and requires such contractors to sign an affidavit stating they have not hired unauthorized aliens. Sets out similar requirements on grants awarded by cities and towns over \$1, 000.

PUBLIC LAW 172 – HOUSE ENROLLED ACT 1004 – EFFECTIVE VARIOUS DATES

INTERIM STUDY COMMITTEE ON ECONOMIC DEVELOPMENT – Adds IC 2-5-31.8 – Establishes an interim study committee to study local economic development policies and activities.

BUDGET APPROVAL – DLGF – Amends IC 5-11-1-4 and IC 5-11-13-1 – States that the Department of Local Government Finance (DLGF) may not approve the budget of a city or town or a supplemental appropriation for a city or town until the city or town files a CTAR and Form 100-R for the preceding calendar year.

PUBLIC WORKS PROJECTS – BID THRESHOLDS – Amends IC 36-1-12-4 and IC 36-1-12-4.7 – Raises the bid threshold for public works projects to \$150,000. For projects of \$50,000 to \$150,000, a city or town must obtain at least three (3) quotes by mail.

PUBLIC WORKS PROJECTS – USE OF OWN WORKFORCE – Amends IC 5-11-1-26 and IC 36-1-12-3 – Raises the amount of a project which may be constructed by means of a city or town's own workforce to \$150,000. States that if a city or town performs a public work by means of its own workforce under IC 36-1-12-3, The state board of accounts shall include the following in each examination report concerning the city or town: (1) opinion concerning compliance with IC 36-1-12-3, (2) a brief description of the project including a calculation of actual cost of the public work, and (3) an opinion concerning whether the city or town has complied with IC 36-1-12-19 in calculating the actual costs of the project. For projects where a city or town uses its own work force which are greater than \$100,000 but less than \$150,000, a public hearing is required.

LOCAL INDIANA BUSINESS PRICE PREFERENCE – Adds IC 5-22-15-20.9 – Provides for a price preference to local Indiana businesses.

LOIT – PUBLIC SAFETY – Amends IC 6-3.5-1.1-25 – Allows a fire department, volunteer fire department, or emergency medical service provider to apply for a distribution of LOIT - Public Safety money from the County. States that a city or town may not receive a LOIT – Public Safety distribution if it does not provide public safety services.