

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

SEPTEMBER 2013

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BIDS AND CONTRACTS - PETROLEUM PRODUCTS

IC 5-22-17-10 allows a purchasing agent to award a contract for petroleum products to:

1. the lowest responsible and responsive offeror, or
2. all responsible and responsive offerors.

The contract may allow for the escalation and de-escalation of price.

Where a contract is awarded to all responsible and responsive offerors, the purchasing agent must purchase the petroleum products from the lowest of the responsible and responsive bidders. The contract must provide that the bidder from whom petroleum products are being purchased shall provide five (5) business days written notice of any change in price. Upon receipt of written notice, the purchasing agent shall request current price quotes in writing based upon terms and conditions of the original offer (as awarded) from all successful responsible and responsive offerors. The purchasing agent shall record the quotes in minutes or memoranda. The purchasing agent shall purchase the petroleum products from the lowest responsible and responsive offeror, taking into account the price change of the current supplier and the price quotes of the other responsible and responsive offerors.

IC 5-22-17-10(a) defines "petroleum products" to mean, gasoline, fuel oils, lubricants, or liquid asphalt.

CUMULATIVE FUNDS FOR PARKS IN CITIES OPERATING UNDER IC 36-10-4

In those cities where the common council has adopted all or a part of IC 36-10-4, a cumulative building and sinking fund may be established pursuant to IC 36-10-4-36. A tax levy not to exceed three and thirty-three hundredths cents (\$.0333) on each one hundred dollars (\$100) of taxable personal and real property in the district may be levied annually. Various advertisements, public hearings, and approval by the Department of Local Government Finance are required.

FIREFIGHTERS AND POLICE OFFICERS WORKER'S OCCUPATIONAL DISEASE INSURANCE

IC 22-3-7-2 authorizes the common council of a city to include firefighters and police officers, who are members of their respective pension funds, under worker's occupational disease insurance coverage for medical benefits only. A listing is included in the statute as to the benefits included within the term "medical benefits."

LOCAL LAW ENFORCEMENT CONTINUING EDUCATION FUND
SOURCES OF REVENUE

The following types of revenue shall be deposited into the local law enforcement continuing education fund established under IC 5-2-8-2:

1. Law Enforcement Continuing Education fees (IC 33-37-5-8)
2. Inspection of Motor Vehicles fees (IC 9-29-4-2)
3. Vehicle Accident Report fees (IC 9-29-11-1)
4. Handgun Licenses fees (IC 35-47-2-3)
5. Proceeds from the Sale of Confiscated Weapons (IC 35-47-3-2)

LAW ENFORCEMENT CONTINUING EDUCATION PROGRAM FEES

1. Each Court is to assess a four dollar (\$4) law enforcement continuing education program fee in each action in which a defendant is found to have:
 - A. committed a crime;
 - B. violated a statute defining an infraction; or
 - C. violated an ordinance of a municipal corporation. (IC 33-37-5-8(c))
2. Monthly, a county, city, or town court clerk is to transmit the law enforcement continuing education fees collected to the county, city, or town fiscal officer. (IC 33-37-4-1, IC 33-37-4-2, IC 33-37-4-3)
3. The fiscal officer shall deposit the fees into either the County User Fee Fund or the City or Town User Fee Fund. (IC 33-37-4-1, IC 33-37-4-2, IC 33-37-4-3)
4. A law enforcement agency may receive funds from a County User Fee Fund or a City or Town User Fee Fund by filing a claim with the county, city, or town fiscal officer. The claim shall include a "verified statement" of cause numbers for fees collected that are attributable to the law enforcement efforts of the agency. Payment of the claimed amount from a County User Fee Fund or a City or Town User Fee Fund may be made without appropriation. (IC 5-2-8-2)
5. Claims may be filed as often as monthly, quarterly, or semiannually.
6. On receipt of the amount claimed by the law enforcement agency, the city or town fiscal officer shall place the amount received into the Local Law Enforcement Continuing Education Fund. (IC 5-2-8-2(b))
7. Funds received by a law enforcement agency shall be used for the continuing education and training of law enforcement officers employed by the agency and for equipment and supplies for law enforcement purposes. (IC 5-2-8-6)
8. Amounts claimed for expenditures from the Local Law Enforcement Continuing Education Fund must have been appropriated prior to expenditure either through the normal budget process or by additional appropriation.
9. Any funds remaining in the Local Law Enforcement Continuing Education Fund at year end do not revert.

INSPECTION OF MOTOR VEHICLES PRIOR TO REGISTRATION

IC 9-17-2-12 concerns certificates of title of any motor vehicle or recreational vehicle. This statute states in part:

“. . . an application for a certificate of title for a motor vehicle or recreational vehicle may not be accepted by the bureau unless the motor vehicle or recreational vehicle has been inspected by one (1) of the following:

1. An employee of a dealer designated by the secretary of state to perform an inspection.
2. A military police officer assigned to a military post in Indiana.
3. A police officer.
4. A designated employee of the bureau.
5. An employee of a qualified person operating under a contract with the commission under IC 9-16-1-4 for operation of a full service license branch.
6. An employee of a qualified person operating under a contract with the commission under IC 9-16-1-4.5 for the operation of partial service license branch.”

A person inspecting such vehicle shall make a record of inspection upon the application form prepared by the bureau and verify the facts set out in said application.

The following procedures are recommended for a municipality to impose an inspection fee.

1. If the legislative body of a municipality wishes to authorize the imposition of a fee for inspecting motor vehicles, the city or town attorney should be consulted for his or her guidance in preparing and enacting an ordinance listing the inspection fee to be charged and how such revenues should be handled. IC 9-29-4-2 states that the fee may not exceed five dollars (\$5).
2. In the enabling ordinance, it is suggested a procedure for handling the fees be established similar to those prescribed by the State Board of Accounts for accident report copy fees and handgun license applications.
 - A. Issue a receipt, General Form Number 352, for each fee collected.
 - B. Remit the receipts to the clerk-treasurer or controller at least once each week.
 - C. The clerk-treasurer or controller shall issue an official receipt for remittance specifying on such receipt the number of general receipts included. (For instance: General Receipts Numbers 1-4, four at \$5.00, \$20.00.)
 - D. The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund. Such receipts shall be deposited in the municipality's general bank account. A separate depository account is not required.

VEHICLE ACCIDENT REPORTS

The following is a list of statutes that apply to accident reports and fees that may be charged.

IC 9-26	Accidents and Accident Reports
IC 9-26-1	Duties of Drivers, Owners, and Passengers
IC 9-26-1-7	City or Town Ordinances; filing of Accident Reports; Confidentiality
IC 9-26-2	Duties of Law Enforcement Officers and Accident Reports
IC 9-29	Fees
IC 9-29-11	Fees Under IC 9-26

IC 9-29-11-1 states that the main department, office, agency, or other person under whose supervision a law enforcement officer carries on the law enforcement officers' duties may charge a fee that is fixed by ordinance of the fiscal body in an amount not less than five dollars (\$5) for each report. The fee collected shall be deposited in the local law enforcement continuing education fund.

VEHICLE ACCIDENT REPORTS (CONTINUED)

The following procedure is prescribed for accounting for vehicle accident report fees.

1. If not already done, the legislative body should adopt an ordinance authorizing a fee for furnishing duplicate accident reports of not less than five dollars (\$5).
2. When the fee is charged, the official should issue a receipt, General Form Number 352, for each fee collected.
3. The receipts and fees collected should be remitted to the clerk-treasurer or city controller at least once each week.
4. The clerk-treasurer or controller shall issue an official receipt for the remittance specifying on such receipt the number of general receipts accounted for. (For example: general receipts numbers 1-20, \$100.00.)
5. The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund. A separate depository account is not required.

HANDGUN LICENSES

IC 35-47 states in part:

"The law enforcement agency which accepts an application for a handgun license shall collect the following application fees:

- (1) From a person applying for a four (4) year handgun license, a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued.
- (2) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar (\$50) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued.
- (3) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar (\$40) application fee, thirty dollars (\$30) of which shall be refunded if the license is not issued."

"The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection." (IC 35-47-2-3(b))

In keeping with the provisions of this statute, the following procedure is prescribed for accounting for such application fees:

1. Issue a Receipt, General Form Number 352, for each fee collected.
2. Remit receipts to the clerk-treasurer or controller at least once each week.
3. The clerk-treasurer or controller shall issue an official receipt for remittance specifying on such receipt the number of general receipts accounted for. (For example: General Receipt Numbers 1-4, \$40.00)
4. The clerk-treasurer or controller shall receipt the fees to the local law enforcement continuing education fund and deposit such receipts in the municipality's general corporation bank account. A separate depository account is not required.
5. If the application is turned down, a refund shall be made from the local law enforcement continuing education fund without appropriation upon the basis of the claim filed, allowed, and paid in the proper legal manner. No refunds are to be made from any other fund of the unit.

DISPOSAL OF CONFISCATED WEAPONS

All firearms confiscated pursuant to statute shall, upon conviction of the person for the offense for which the confiscation was made, be disposed of in accordance with IC 35-47-3.

IC 35-47-3-2 states as follows:

“(a) This section applies only to firearms which are not required to be registered in the National Firearms Registration and Transfer Record.

(b) Firearms shall be returned to the rightful owner at once following final disposition of the case if a return has not already occurred under the terms of IC 35-33-5. If the rightful ownership is not known the law enforcement agency holding the firearm shall make a reasonable attempt to ascertain the rightful ownership and cause the return of the firearm. However, nothing in this chapter shall be construed as requiring the return of firearms to rightful owners who have been convicted for the misuse of firearms. In such cases, the court may provide for the return of the firearm in question or order that the firearm be at once delivered:

- (1) except as provided in subdivision (2), to the sheriff's department of the county in which the offense occurred; or
- (2) to the city or town police force that confiscated the firearm, if:
 - (A) a member of the city or town police force confiscated the firearm; and
 - (B) the city or town has a population of more than two thousand five hundred (2,500) and less than six hundred thousand (600,000).

(c) The receiving law enforcement agency shall dispose of firearms under subsection (b), at the discretion of the law enforcement agency, not more than one hundred twenty (120) days following receipt by use of any of the following procedures:

- (1) Public sale of the firearms to the general public as follows:
 - (A) Notice of the sale shall be:
 - (i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and
 - (ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days prior to the sale.
 - (B) Disposition of the firearm shall be by public auction in a place convenient to the general public, with disposition going to the highest bidder. However, no firearm shall be transferred to any bidder if that bidder is not lawfully eligible to receive and possess firearms according to the laws of the United States and Indiana.
 - (C) All handguns transferred under this subdivision shall also be transferred according to the transfer procedures set forth in this article.
 - (D) Money collected pursuant to the sales shall first be used to defray the necessary costs of administering this subdivision with any surplus to be:
 - (i) deposited into the receiving law enforcement agency's firearms training fund, if the law enforcement agency is a county law enforcement agency, or into a continuing education fund established under IC 5-2-8-2, if the law enforcement agency is a city or town law enforcement agency;
 - (ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties, if the law enforcement agency is a county law enforcement agency, or for law enforcement purposes, if the law enforcement agency is a city or town law enforcement agency.

DISPOSAL OF CONFISCATED WEAPONS (CONTINUED)

- (2) Sale of the firearms to a licensed firearms dealer as follows:
- (A) Notice of the sale must be:
 - (i) posted for ten (10) days in the county courthouse in a place readily accessible to the general public; and
 - (ii) advertised in the principal newspaper of the county for two (2) days in an advertisement that appears in the newspaper at least five (5) days before the sale.
 - (B) Disposition of the firearm shall be by auction with disposition going to the highest bidder who is a licensed firearms dealer.
 - (C) Money collected from the sales shall first be used to defray the necessary costs of administering this subdivision and any surplus shall be:
 - (i) deposited into the receiving law enforcement agency's firearms training fund or other appropriate training activities fund; and
 - (ii) used by the agency exclusively for the purpose of training law enforcement officers in the proper use of firearms or other law enforcement duties.
- (3) Sale or transfer of the firearms to another law enforcement agency.
- (4) Release to the state police department laboratory or other forensic laboratory administered by the state or a political subdivision (as defined in IC 36-1-2-13) for the purposes or research, training, and comparison in conjunction with the forensic examination of firearms evidence.
- (5) Destruction of the firearms.
- (d) Notwithstanding the requirement of this section mandating disposal of firearms not more than one hundred twenty (120) days following receipt, the receiving law enforcement agency may at its discretion hold firearms it may receive until a sufficient number has accumulated to defray the costs of administering this section if a delay does not exceed one hundred eighty (180) days from the date of receipt of the first firearm in the sale lot. In any event, all confiscated firearms shall be disposed of as promptly as possible.
- (e) When a firearm is delivered to the state police department laboratory or other forensic laboratory under subsection (c)(4) and the state police department laboratory or other forensic laboratory determines the laboratory has no further need for the firearm in question, the laboratory shall return the firearm to the law enforcement agency for disposal under subsection (c)."

BUY MONEY

The following procedures should be followed if a municipality wishes to obtain an appropriation and make expenditures for buy money or payments to informants:

1. under IC 36-1-3 an ordinance should be passed allowing this type of program and associated expenditures;
2. an appropriation for such purpose must be obtained in the manner authorized by state statutes;
3. petty cash fund procedures are to be followed as authorized by IC 36-1-8-3; and
4. a minimum documentation procedure must be followed, similar to either:
 - A. "Guidelines for the Expenditure of Confidential Funds," published by the U. S. Department of Criminal Justice.
 - B. "Guidelines for Obtaining and Accounting For Confidential Funds Used in Support of Criminal Investigations," (Revised S.O.P. INV-009), by the Indiana State Police Department.

If you do not have copies of these two guidelines, please contact our office.

COMPENSATION OF OFFICERS AND EMPLOYEES**City Officers and Employees****Elected City Officials**

IC 36-4-7-2 states:

"(a) As used in this section, "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money was paid.

(b) The city legislative body shall, by ordinance, fix the annual compensation of all elected city officers.

(c) The compensation of an elected city officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year."

Appointive Officers, Deputies, and Other Employees (Except Police Officers and Firefighters)

IC 36-4-7-3 states:

"(a) This section does not apply to compensation paid by a city to members of its police and fire departments.

(b) Subject to the approval of the city legislative body, the city executive shall fix the compensation of each appointive officer, deputy, and other employee of the city. The legislative body may reduce but may not increase any compensation fixed by the executive. Compensation must be fixed under this section, not later than November 1 of each year for the ensuing budget year.

(c) Compensation fixed under this section may be increased or decreased by the executive during the budget year for which it is fixed.

(d) Notwithstanding subsection (b), the city clerk may, with the approval of the legislative body, fix the salaries of deputies and employees appointed under IC 36-4-11-4."

COMPENSATION OF OFFICERS AND EMPLOYEES (CONTINUED)

City Officers and Employees (Continued)

Additional Compensation From Utilities or Functions

IC 36-4-7-4 states

“(a) Subject to the approval of the city legislative body, the city executive may provide that city officers and employees receive additional compensation for services that:

- (1) are performed for the city,
- (2) are not governmental in nature; and
- (3) are connected with the operation of a municipally owned utility or function.

(b) Subject to the approval of the executive and legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

In accordance with the provisions of IC 36-4-7-4, the award of compensation shall plainly specify both the amount and the recipient, shall establish that the services performed are other than governmental, shall be awarded by the administrative authority in charge of the utility, and shall be approved by both the common council and the mayor.

It is our audit position that if the official records of the utility or function do not show the award of this additional compensation and the official records of the civil city do not show approval of the mayor and common council by ordinance or resolution as the statutes regulating the utility might provide, then there is no authority to make any payment.

Police Officers and Firefighters

IC 36-8-3-3(d) states:

“The annual compensation of all members of the police and fire departments and other appointees shall be fixed by ordinance of the legislative body not later than November 1 of each year for the ensuing budget year. The ordinance may grade the members of the departments and regulate their pay by rank as well as by length of service. If the legislative body fails to adopt an ordinance fixing the compensation of members of the police or fire department, the safety board may fix their compensation, subject to change by ordinance.”

Salary Schedules

IC 36-4-7-5 states:

“Salaries of city officers and employees shall be scheduled as provided in the budget classifications prescribed by the State Board of Accounts.”

COMPENSATION OF OFFICERS AND EMPLOYEES (CONTINUED)Town Officers and Employees

IC 36-5-3-2 states:

“(a) As used in this section, “compensation” means the total of all money paid to an elected town officer for performing duties as town officer, regardless of the source of the funds from which the money is paid.

(b) The town legislative body shall, by ordinance, fix the compensation of its own members, the town clerk-treasurer, and the town marshal. The legislative body shall provide reasonable compensation for other town officers and employees.

(c) The compensation of an elected town official may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

(d) The legislative body may provide that town officers and employees receive additional compensation for services that:

- (1) are performed for the town;
- (2) are not governmental in nature; and
- (3) are connected with the operation of a municipally owned utility or function.

Subject to the approval of the legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.”

Compensation of all town officers and employees shall be fixed by an ordinance of the town council, and for other than elected town officials, this compensation may be changed by another ordinance of the town council at any time. There is no limitation upon the amount fixed, only to the extent of available appropriations where tax funds are involved.

The approval of a claim for increased compensation does not authorize the town clerk-treasurer to pay such increase unless it is specifically provided for by ordinance of the town council.

We recommend a salary ordinance for officials and employees for the next succeeding year be enacted by the town council annually in the Fall of each year and made a part of the minutes of the town council. This action is recommended in order for town officials to have such information available prior to making out the annual budget for the next year's costs of operations.

BANK/CREDIT CARD PAYMENT TO CITIES AND TOWNS AND UTILITIES

A payment to a city or town or a municipally owned utility may be made by any of the following financial instruments that the fiscal body of the city or town or the board of a municipally owned utility authorizes for use:

1. Cash
2. Check
3. Bank Draft
4. Money Order
5. Bank card or credit card
6. Electronic funds transfer
7. Any other financial instrument authorized by the fiscal body

If there is a charge to the city or town or municipally owned utility for the use of a financial instrument, the city or town or municipally owned utility may collect a sum equal to the amount of the charge from the person who uses the financial instrument.

If authorized by the fiscal body of the city or town or the board of the municipally owned utility, the city or town or municipally owned utility may accept payments with a bank card or credit card. However, the procedure authorized for a particular type of payment must be uniformly applied to all payments of the same type.

The city or town or municipally owned utility may contract with a bank card or credit card vendor for acceptance of bank cards or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the city or town or municipally owned utility or charged directly to the city or town or municipally owned utility account, the city or town or municipally owned utility may collect from the person using the card either or both of the following:

1. An official fee that may not exceed the transaction charge or discount fee charged to the city or town or municipally owned utility by bank or credit card vendors.
2. A reasonable convenience fee:
 - A. that may not exceed three dollars (\$3); and
 - B. that must be uniform regardless of the bank card or credit card used.

The fees described in subdivisions 1. and 2. may be collected regardless of retail merchant agreements between the bank and credit card vendors that may prohibit such fees. These fees are permitted additional charges under IC 24-4.5-3-202.

The city or town or municipally owned utility may pay any applicable bank card or credit card service charge associated with the use of a bank card or credit card. (IC 36-1-8-11)

BANK/CREDIT CARD PAYMENTS TO CITY AND TOWN COURTS

The clerk of a city or town court may contract with a bank or credit card vendor for acceptance of bank or credit cards in payment of bail, fines, civil penalties, court fees, court costs, user fees imposed by the court, or fees for the preparation, duplication, or transmission of documents. However if there is a vendor transaction charge or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk shall collect a fee from the person using the bank or credit card. (IC 33-37-6-2)

The court clerk shall forward credit card service fees collected to the city or town fiscal officer. These fees may be used without appropriation to pay transaction charges or discount fees charged by the bank or credit card vendor. (IC 33-37-6-3)

HAZARDOUS MATERIALS EMERGENCY FEES

A fire department imposing a charge for hazardous materials cleanup costs may bill the responsible party for the total value of the assistance provided, as determined from the State Fire Marshal's schedule of service charges issued under IC 36-8-12-16(h).

Money collected must be deposited in a hazardous materials response fund or the general fund of the city or town that established the fire department under IC 36-8-2-3 or IC 36-8-13-3(a)(1) and may be used only for the following:

1. Purchase of supplies and equipment used in providing hazardous materials emergency assistance.
2. Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance.
3. Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department.

A fire department may not bill for services provided that duplicate services provided by another governmental entity.

The responsible party billed for services may elect to reimburse the fire department by providing replacement materials that are of equal or greater value than those expended by the fire department in responding to the emergency.

A fire department that imposes a service charge and maintains an action for reimbursement under IC 13-25-6-5 may recover all costs of the action, including attorney's fees.

A responsible party is subject to a penalty for failure to pay the full amount of a charge made within sixty (60) days after the issuance of the bill for payment by the fire department. The amount of the penalty is ten percent (10%) of the amount of the charge that remains unpaid on the due date.

The fiscal body of each city or town that establishes a fire department under IC 36-8-2-3 may, by ordinance or resolution, establish a hazardous materials response fund.

The hazardous materials response fund shall be administered by the unit's fiscal officer, and the expenses of administering the fund shall be paid from money in the fund. Money in the fund not currently needed to meet the obligations of the fund may be invested in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a particular fiscal year does not revert to the unit's general fund. (IC 36-8-12.2)

LIENS ON NUISANCE PROPERTIES

If a condition violating an ordinance of a municipal corporation exists on real property, employees or contractors of a municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of a least ten (10) days but not more than sixty (60) days to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

1. ten thousand dollars (\$10,000) for real property that:
 - A. contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or
 - B. is unimproved; or
2. twenty thousand dollars (\$20,000) for all other real property.

The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs. A bill is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

1. a list of delinquent fees and penalties that are enforceable, including:
 - A. the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;
 - B. a description of the premises, as shown on the records of the county auditor; and
 - C. the amount of the delinquent fees and the penalty; or
2. an instrument for each lot or parcel of real property on which the fees are delinquent.

The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation. (IC 36-1-6-2)

PROBATION USER'S FEES - CITY AND TOWN COURTS

IC 35-38-2-1 authorizes a clerk of a city or town court to collect probation user fees. It also authorizes a clerk of a city or town court to keep not more than three percent (3%) of the fees to defray the administration costs of collecting the fee and shall deposit such fees in the clerk's record perpetuation fund.

If requested to do so by the county auditor, city fiscal officer or town fiscal officer, the clerk of a city or town court may transfer not more than three percent (3%) of the probation user fees to:

1. the county auditor, who shall deposit the money transferred into the county general fund;
2. the city general fund, when requested by the city fiscal officer; or
3. the town general fund, when requested by the town fiscal officer.

Additionally, the probation department or clerk of the city or town court shall collect a clerk's administrative fee of one hundred dollars (\$100) for felony cases or fifty dollars (\$50) for misdemeanor cases. Such probation administrative fees shall be placed in the city or town local supplemental adult probation services fund. (IC 35-38-2-1)

RAINY DAY FUND

IC 36-1-8-5.1 states, as follows:

- (a) "A political subdivision may establish a rainy day fund by the adoption of:
 - (1) an ordinance, in the case of county, city, or town; or
 - (2) a resolution, in the case of any other political subdivision.
- (b) An ordinance or a resolution adopted under this section must specify the following:
 - (1) The purposes of the rainy day fund.
 - (2) The sources of funding for the rainy day fund, which may include the following:
 - (A) Unused an unencumbered funds under:
 - (i) section 5 of this chapter;
 - (ii) IC 6-3.5-1.1-21.1;
 - (iii) IC 6-3.5-6-17.3; or
 - (iv) IC 6-3.5-7-17.3.
 - (B) Any other funding source;
 - (i) specified in the ordinance or resolution adopted under this section; and
 - (ii) not otherwise prohibited by law.
- (c) The rainy day fund is subject to the same appropriation process as other funds that receive tax money.

RAINY DAY FUND (CONTINUED)

- (d) In any fiscal year, a political subdivision may, at any time, do the following:
- (1) Transfer any unused and unencumbered funds specified in subsection (b)(2)(A) from any fiscal year to the rainy day fund.
 - (2) Transfer any other unobligated cash balances from any fiscal year that are not otherwise identified in subsection (b)(2)(A) or section 5 of this chapter to the rainy day fund as long as the transfer satisfies the following requirements:
 - (A) The amount of the transfer is authorized by and identified in an ordinance or resolution.
 - (B) The amount of the transfer is not more than ten percent (10%) of the political subdivision's total annual budget adopted under IC 6-1.1-17 for that fiscal year.
 - (C) The transfer is not made from a debt service fund.
- (e) A political subdivision may use only the funding sources specified in subsection (b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.
- (f) The department of local government finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.
- (g) A county, city, or town may at any time, by ordinance or resolution, transfer to:
- (1) its general fund; or
 - (2) any other appropriated funds of the county, city, or town;
- money that has been deposited in the rainy day fund of the county, city, or town."

WEED CUTTING ASSESSMENTS

The legislative body of a municipality may by ordinance require the owners of real property located within the municipality to cut and remove weeds and other rank vegetation growing on the property. The term "weeds and other rank vegetation" does not include agricultural crops, such as hay and pasture.

An ordinance adopted must specify the following:

1. The department of the municipality responsible for the administration of the ordinance.
2. The definitions of weeds and rank vegetation.
3. The height at which weeds or rank vegetation becomes a violation of the ordinance, specifying the appropriate heights for various types of weeds and rank vegetation.
4. The procedure for issuing notice to the owner of real property of a violation of the ordinance.

WEED CUTTING ASSESSMENTS (CONTINUED)

5. The procedure under which the municipality, or its contractors, may enter real property to abate a violation of the ordinance if the owner fails to abate the violation.
6. The procedure for issuing a bill to the owner of real property for the costs incurred by the municipality or county in abating the violation, including administrative costs and removal costs. The cost of sending notice is an administrative cost that may be billed to the owner.
7. The procedure for appealing a notice of violation or a bill issued under the ordinance. (IC 36-7-10.1-3)

An ordinance adopted must provide that a notice sent to the property owner must be sent by first class mail, or an equivalent service permitted under IC 1-1-7-1. The notice must be sent to:

1. the owner of record of real property with a single owner; or
2. at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice.

If the owner of real property fails to pay a bill issued under IC 36-7-10.1-3 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.

If the owner of real property fails to pay a bill issued under IC 36-7-10-3 within the time specified in the ordinance, the municipality may bring an action in an appropriate court to collect the amount of the bill, plus any additional costs incurred in the collection, including court costs and reasonable attorney's fees. If the municipality obtains a judgment, the municipality may obtain a lien in the amount of the judgment on any real or personal property of the owner. (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)

We understand that in most counties the county auditor will require a lien to be recorded before the county auditor will place the amount certified on the tax duplicate. In those counties where this is required, it is permissible to record such liens.

QUESTIONS FROM THE JUNE 2013 CITIES AND TOWNS TRAINING SCHOOL

Question Number 1: Do you have to send a certified letter after you file a sewer lien?

Answer: No. IC 36-9-23-33(c) only requires the proper officer to mail a notice to each owner stating that a lien has been recorded against the owner's property.

Question Number 2: Can you add a service charge to the delinquent fees, penalties, the five dollar (\$5) service charge fee, recording fees, or certification fees when filing a sewer lien?

Answer: No. You can only certify those fees that are allowed in IC 36-9-23-33.

Question Number 3: Does a violation of a nuisance ordinance (accumulation of junk) require notification by certified mail?

Answer: No. There is no certified mailing requirement for this type of violation mentioned in IC 36-1-6-2.

Question Number 4: Who can do a background check on new employees?

Answer: IC 10-13-3 states that local law enforcement agencies are to do this.

Question Number 5: If you allow persons to use golf carts on town streets, do you have to place signs on the streets where the golf carts will be allowed to travel?

Answer: Yes. IC 9-21-1-3(b) states that an ordinance or regulation adopted under IC 9-21-1-3(a)(14) is effective when signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part of the highway that is affected.

Question Number 6: Are we to include volunteer firefighters, council members, the fire chief, and building inspector in the 100-R report?

Answer: All compensation paid to city and town employees for the preceding calendar year is to be included on the 100-R.

Question Number 7: Where is the Indiana Code that talks about the lowest, responsible bid?

Answer: IC 36-1-12-4(b)(10) and IC 36-1-12-4(b)(11) describe the terms "responsive bidder" and "responsible bidder."

QUESTIONS FROM THE JUNE 2013 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question Number 8: Our department heads were issued a town credit card tied to the department head's personal credit history. One card had a late fee assessed because the department head paid the required payment late. Who should pay the late fee?

Answer: We believe the department head should pay the late fee under these circumstances.

Question Number 9: Are pension payments made to retirees of the 1925 Police Pension Plan to be included in the 100-R report?

Answer: No. Only employees of a city or town are to be included on the 100-R.

Question Number 10: When asking for bids for the paving of streets, does this need to be advertised in the newspaper? If so, how many times?

Answer: If the project is estimated to cost at least \$150,000, IC 36-1-12-4 requires the board to publish notice in accordance with IC 5-3-1 calling for sealed proposals. IC 5-3-1-2 requires the advertisement to be made two times at least one week apart, with the second publication made at least seven days before the date the bids will be received.

Question Number 11: What if we advertise for bids and only receive one response?

Answer: IC 36-1-12-4 states that the board shall award a contract to the lowest responsible and responsive bidder or reject all bids submitted.

Question Number 12: Would unclaimed funds in the City User Fee Fund be allowed to be transferred to the Rainy Day Fund?

Answer: No. These monies are being held in an agency fund on behalf of another governmental unit.

Question Number 13: Why does SRF money go on the Federal Schedule on the Annual Financial Report? It is a bond and we have to pay it back.

Answer: SRF money is Federal money that has been granted to your city or town.

Question Number 14: Do you consider SRF money to be shown as Bonds Payable or Notes Payable?

Answer: We consider SRF loans to be Notes Payable. The State Revolving Fund Loan Programs provide low-interest loans to Indiana communities for projects that improve wastewater and drinking water infrastructure. The Indiana Finance Authority administers the SRF Loan Programs, which protect both the environment and public health. Recently, the SRF Loan Programs have also implemented a program to fund nonpoint source projects.

QUESTIONS FROM THE JUNE 2013 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question Number 15: Can a town waive a delinquent water or sewer bill?

Answer: We are not aware of any statute or regulation that would allow a town to waive such charges if such services were provided to a customer.

Question Number 16: Is there a time frame to hold a hearing for someone whose water utility service is going to be shut off?

Answer: The ruling in the Wayt v. Town of Crothersville case held that a customer has a right to a hearing before a shutoff of service can occur. The Court did not specify a time frame.

Question Number 17: Can we notify a water utility customer who is going to have his water shut off of his right to a hearing by telephone?

Answer: No. We recommend a separate disconnect notice be sent with information concerning the customer's right to a hearing.

Question Number 18: Can a sewage utility bill quarterly for sewage service in advance?

Answer: While it is unusual to bill for such service in advance, we would not take exception to this method if it is provided for in your rate ordinance.

Question Number 19: Do we have to report the 77 Fund and any 457 deferred compensation on the Gateway portal to the DLGF?

Answer: Public Law 47, Acts of 2013, would not require reporting of those two retirement plans. However, if your city or town provided a separate retirement plan under IC 8-1.5-3-7 for your utility workers, such plan would be required to be reported.

Question Number 20: Would you recommend budgeting utility funds?

Answer: IC 8-1.5-3-4 allows a city or town council to require a water, gas, or electric utility to submit a budget of its financial needs for the next year in the detail the council requires.

Question Number 21: Can a council suspend the rules and pass an ordinance at one meeting?

Answer: Yes. IC 36-4-6-13 (cities) and IC 36-5-2-9.8 (towns) allow an ordinance to be passed on the same day it is introduced as long as there is a two-thirds (2/3) vote of all elected members after unanimous consent of all members present to consider the ordinance.

QUESTIONS FROM THE JUNE 2013 CITIES AND TOWNS TRAINING SCHOOL (Continued)

Question Number 22: We have an elected councilmember who also services as office manager of our water and sewer utilities. How will the new Nepotism law affect her?

Answer: IC 3-5-9-7(a)(2) states that a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee until his term of office expires. It is our position that at the end of the term of office, this person would have to resign as an employee or not run for re-election.

Question Number 23: Can a city or town enter into a contract if the contractor refuses to use (or be enrolled in) E-Verify even if the contractor has provided a statement claiming they didn't hire illegal workers and follow the law?

Answer: No. IC 22-5-1.7-11 states that a political subdivision may not enter into or renew a public contract for services with a contractor unless;

1. the public contract contains:
 - A. a provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program; and
 - B. a provision that provides that a contractor is not require to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exist; and
2. the contractor signs an affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

Question No. 24: We have reserve police officers who we provide uniforms for. Are the uniforms a taxable benefit to the reserve officers?

Answer: We would not consider the cost of uniforms provided to reserve officers as a taxable benefit. However, if you were providing a uniform allowance to the reserves, such amounts could be considered taxable income to the reserves, depending on the type of uniform allowance which is provided. We recommend you contact the IRS at (812) 231-6502 for further discussion on this topic.

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