CHAPTER 7 - OTHER GUIDELINES

SECTION A - PRESCRIBED FORMS, TAXES, AND GENERAL INFORMATION

PRESCRIBED FORMS

The State Board of Accounts is charged by law with the responsibility of prescribing and installing a system of accounting and reporting which shall be uniform for every public office and every public account of the same class. [IC 5-11-1-2]

A prescribed form is one which is put into general use for all offices of the same class, whereas an approved form is a computerized form for special use in a particular office.

All governmental units are required by law to use the forms prescribed by this department; however, if it is desirable to use a different form or to have a prescribed form modified to conform for computer applications, a letter and three copies of the proposed form may be submitted to the State Board of Accounts for approval. No form should be printed and placed into use, other than a prescribed form, without prior approval.

Although the State Board of Accounts prescribes forms, the forms must be purchased from a public printer or other source.

Exact Replica

As a result of advances in computer technology, some computer hardware, software, and application systems can now produce exact replicas of the forms prescribed by the State Board of Accounts.

The State Board of Accounts prescribes the required accounting system forms, but does not specify the source from which the forms must be obtained. Therefore, the State Board of Accounts will not take exception to the use of forms which provide exact replications of the prescribed forms created by computer printer or utilizing continuous form computer paper. These exact replications must be identical to the prescribed forms in format, titles and locations of data. The exact replicas are not required to be submitted to the State Board of Accounts for approval and each form should be identified as “Prescribed By the State Board of Accounts” in the same location as is printed on the prescribed forms.

The use of computer-generated prescribed forms should be brought to the attention of the Field Examiner during the next regularly scheduled audit. The forms and computer system generating the forms are subject to a technical computer audit based upon the results of the Field Examiner's risk assessment.

Use of Prescribed Forms

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed.

STATE AND FEDERAL TAXES

Federal and State Agencies - Compliance Requirements

Political subdivisions are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings, and filing requirements concerning reports and other procedural matters of federal and state agencies, including opinions of the Attorney General of the State of Indiana, and court decisions. Governmental units should file accurate reports required by federal and state agencies. Noncompliance may require corrective action.

Federal Income Taxes

All political subdivisions are exempt from federal income taxes under the Internal Revenue Code.

Federal Excise Taxes

As a general rule, governmental units are exempt from and should not pay any federal excise tax. To obtain the exemption, a properly executed exemption certificate must be filed with the vendor from whom the purchase is made. This exemption certificate may be prepared at the time the order is placed or at the time payment is made. The exemption certificate may be a printed or mimeographed form and should be substantially in the form currently used. For information concerning the form of exemption certificate, contact the Internal Revenue Service.

Claims and invoices should be carefully audited to see that no federal excise taxes are included and paid. Disbursing officers should require that invoices show separately the gross price, the amount of the excise tax, and the final price to the governmental unit.

Any questions concerning federal excise tax should be directed to the Internal Revenue Service.

Tax Refunds

In some instances, governmental units may have erroneously paid the excise taxes from which they are exempt. In such instances, the unit has three years from the date tax was paid to the federal government in which to file for a refund.

To obtain a refund, the governmental unit should submit to the seller an exemption certificate for each item on which excise tax was paid accompanied with documentary evidence that the exemption had not been claimed or received. Such evidence may be copies of invoices, affidavits, records, etc.

The Internal Revenue Service will provide forms on which the original taxpayer may claim reimbursement for excise tax erroneously paid by a governmental unit.

Sales Tax

Governmental units are eligible for an exemption from the state sales tax on purchases. To obtain the exemption for a Sales Tax Exemption Certificate, application should be made to the Sales Tax Division of the Department of Revenue. This certificate must be presented at the time a purchase is made to avoid paying sales tax. If sales tax is paid erroneously, a refund application may be obtained from the Sales Tax Division.

Lodging for individuals in hotels and motels is not exempt from state sales tax. Therefore, reimbursements for lodging in approved travel status may include state sales tax. However, it should be kept in mind that claims for all such reimbursements must be supported by a fully itemized receipt showing date(s) of lodging, the name(s) of the person(s) occupying the room and the amount paid.

Governmental funds generally are exempt from the payment of sales tax on qualifying purchases. Respective tax agencies should always be contacted concerning tax exemptions and payments.

Federal and State Regulations

Each governmental unit is responsible for compliance with all rules, regulations, guidelines, and directives of the Internal Revenue Service and the Indiana Department of Revenue. All questions concerning taxes should be directed to these agencies.

Penalties, Interest, and Other Charges

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit. Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee.

GENERAL INFORMATION

Advance Payments

Compensation and any other payments for goods and services should not be paid in advance of receipt of the goods or services unless specifically authorized by statute. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee.

Alcohol Purchases

Purchases of alcoholic beverages may be the personal obligation of the responsible official or employee.

Asset Ownership

Assets purchased by a governmental unit(s) should be titled proportionately in the name of the governmental unit(s).

Audit Costs

Audit costs incurred because of theft and shortage may be the personal obligation of the responsible official or employee.

Audit costs or other costs incurred because of poor records, nonexistent records or other inadequate bookkeeping practices may be the personal obligation of the responsible official or employee of the governmental unit.

Any outside audit costs paid, not authorized by statute, may be considered a duplication of service and an unnecessary expense. These payments may be the personal obligation of the responsible official or employee.

Bad Debts and Uncollectible Accounts

The governing body of a governmental unit should have a written policy concerning a procedure for the writing off of bad debts, uncollectible accounts receivable, or any adjustments to record balances.

Documentation should exist for all efforts made by the governmental unit to collect amounts owed prior to any write-offs.

Officials or employees authorizing, directing or executing write-offs or adjustments to records which are not documented or warranted may be held personally responsible.

Break-Ins, Burglaries or Other Crimes

Break-ins, burglaries or other crimes committed against the governmental unit should be documented by the filing of an official police report. Insurance companies should be contacted to request payment for any allowable coverage.

Budgeted Line Items

Disbursements should be paid from properly authorized line items.

Capital Assets

Every governmental unit should have a complete inventory of all capital assets owned which reflects their acquisition value. Such inventory should be recorded on the applicable Capital Asset Ledger. A complete inventory should be taken every year for good internal control and for verifying account balances carried in the accounting records.

Cash Disbursements

Disbursements, other than properly authorized petty cash disbursements, shall be by check or warrant, not by cash or other methods unless specifically authorized by statute, federal or state rule.

Collection of Amounts Due

Governmental units have a responsibility to collect amounts owed to the governmental unit pursuant to procedures authorized by statute.

Commuting Mileage

Reimbursed mileage shall not include travel to and from the officer's or employee's home and the governmental office in which he works, unless otherwise authorized by statute.

Compensation

All compensation and benefits paid to officials and employees must be included in the salary ordinance adopted by the legislative body unless otherwise authorized by statute. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements.

Payments for services provided by an organization should go directly to the organization and not to an individual employee of the organization. All payments for services should be supported by a written contract. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements.

Computer Output

Public records, financial statement information and supporting information generated through a computer system should be printed out on paper, printed to disk or maintained on-line at the end of each reporting year and retained for audit. Information must be maintained in a manner that will allow access for audit and public inquiry on equipment of the governmental unit.

Condition of Records

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund.

Contracts

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts.

Correction of Errors

Receipt and disbursement corrections or other errors should be corrected by memorandum entry with the issuance of a check and receipt to document the flow of the transactions.

Credit Cards

The State Board of Accounts will not take exception to the use of credit cards by a governmental unit provided the following criteria are observed:

1. The governing board must authorize credit card use through an ordinance or resolution, which has been approved in the minutes.

2. Issuance and use should be handled by an official or employee designated by the board.

3. The purposes for which the credit card may be used must be specifically stated in the ordinance or resolution.

4. When the purpose for which the credit card has been issued has been accomplished, the card should be returned to the custody of the responsible person.

5. The designated responsible official or employee should maintain an accounting system or log which would include the names of individuals requesting usage of the cards, their position, estimated amounts to be charged, fund and account numbers to be charged, date the card is issued and returned, etc.

6. Credit cards should not be used to bypass the accounting system. One reason that purchase orders are issued is to provide the fiscal officer with the means to encumber and track appropriations to provide the governing board and other officials with timely and accurate accounting information and monitoring of the accounting system.

7. Payment should not be made on the basis of a statement or a credit card slip only. Procedures for payments should be no different than for any other claim. Supporting documents such as paid bills and receipts must be available. Additionally, any interest or penalty incurred due to late filing or furnishing of documentation by an officer or employee should be the responsibility of that officer or employee.

8. If properly authorized, an annual fee may be paid.

Crime Insurance Policies

Crime Insurance policies permitted by statute should be recorded in the same manner as official bonds under IC 5-4.

Deposit of Accountable Items

Tickets, goods for sale, billings, and other collections, are considered accountable items for which a corresponding deposit must be made in the bank accounts of the governmental unit.

The deposit ticket or attached documentation must provide a detailed listing of the deposit, which includes at a minimum, check numbers and corresponding names of the payers.

Donations

Governmental funds should not be donated or given to other organizations, individuals, or governmental units unless specifically authorized by statute. IC 36-10-2-4 and 5 allow cities and towns to establish, aid, maintain, and operate libraries, museums, cultural, historical and scientific facilities and programs, community service facilities and programs, neighborhood centers, community centers, civic centers, convention centers, auditoriums, arenas, and stadiums.

Excessive or Unreasonable Costs

Every effort should be made by the governmental unit to avoid unreasonable or excessive costs.

Expenditures by Holding Corporations

Property and equipment provided by holding corporations to a governmental unit should only be in accordance with the original project as presented to the public and approved by the Department of Local Government Finance, or by subsequent written approval of the Department of Local Government Finance.

Expense Reimbursement Itemization

All claims, invoices, receipts, accounts payable vouchers, including those presented to the governing body for approval in accordance with IC 5-11-10, should contain adequate detailed documentation. All claims, invoices, receipts, and accounts payable vouchers regarding reimbursement for meals and expenses for individuals must have specific detailed information of the names of all individuals for which amounts are claimed, including the nature, name, and purpose of the business meeting, to enable the governing body to authorize payment. Payments which do not have proper itemization showing the business nature of the claim, may be the personal obligation of the responsible official, employee or other person for whom the claim is made.

Federal and State Agencies - Compliance Requirements

Political subdivisions are required to comply with all grant agreements, rules, regulations, bulletins, directives, letters, letter rulings and filing requirements concerning reports and other procedural matters of federal and state agencies, including opinions of the Attorney General of the State of Indiana, and court decisions. Governmental units should file accurate reports required by federal and state agencies. Noncompliance may require corrective action.

Fees

Fees should only be collected as specifically authorized by statute or properly authorized resolutions or ordinances, as applicable, which are not contrary to statutory or Constitutional provisions.

Financial Report Opinion Modifications

Accounting records and other public records must be maintained in a manner that will support accurate financial statements. Anything other than an unqualified opinion on the Independent Auditors Report on the financial statements may have adverse financial consequences with the possibility of an increase in interest rate cost to the taxpayers of the governmental unit.

Fundraisers

Governmental units which conduct fund raising events should have the express permission of the governing body for conducting the fund raiser as well as procedures in place concerning the internal controls and the responsibility of employees or officials.

Fund Sources and Uses

Sources and uses of funds should be limited to those authorized by the enabling statute, ordinance, resolution, or grant agreement.

Indebtedness

A governmental unit may not incur indebtedness unless specifically allowed by statute.

Interest on Investments

Interest on investments should not be automatically added into the investment. Instead, interest on investments should be paid to the governmental unit at each maturity date and posted to the appropriate fund.

Internal Controls

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making.

Investments Not Authorized by Statute

Investments should only be made in accordance with statute. Expenses related to any unauthorized investments may be the personal obligation of the responsible official or employee.

Losses related to investments and investment procedures which are not authorized by statute may be the personal obligation of the responsible official or employee.

Leave and Overtime Policy

Each governmental unit should adopt a written policy regarding the accrual and use of leave time and compensatory time and the payment of overtime. Negotiated labor contracts approved by the governing board would be considered as written policy. The policy should conform to the requirements of all state and federal regulatory agencies.

Lucrative Office

Article 2, Section 9 of the Constitution of Indiana, states in part: ". . . no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution." Any person holding two offices which have been or may be deemed lucrative should obtain the written opinion of the attorney for the unit or units served to determine compliance with Article 2, Section 9 of the Constitution of Indiana.

Malfeasance, Misfeasance or Nonfeasance

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or nonfeasance in office of any officer or employee may be the personal obligation of the responsible officer or employee.

Ordinances and Resolutions

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts.

Overdrawn Cash

The cash balance of any fund may not be reduced below zero. Routinely overdrawn funds could be an indicator of serious financial problems which should be investigated by the governmental unit.

Overdrawn Funds

The fund balance of any fund may not be reduced below zero. Routinely overdrawn funds could be an indicator of serious financial problems which should be investigated by the governmental unit.

Overpayment Collections

Governmental units should collect any overpayments made.

Penalties, Interest and Other Charges

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit.

Additionally, officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit.

Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee.

Personal Expenses

Public funds may not be used to pay for personal items or for expenses which do not relate to the functions and purposes of the governmental unit. Any personal expenses paid by the governmental unit may be the personal obligation of the responsible official or employee.

Personal Property Use

Assets of the governmental unit may not be used in a manner unrelated to the functions and purposes of the governmental unit.

Whenever an item or other asset owned by the political subdivision is entrusted to an officer or employee, to be used at times outside the normal work time for business purposes, such as a cellular phone, or vehicle, a log should be maintained which clearly shows the business use.

Political Expenditures

Expenditures for political purposes, contributions to political campaigns, directly or indirectly, which are not authorized by statute may be the personal obligation of the responsible official or employee.

Prescribed Forms

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed.

Pre-Signing Documents

Checks and receipts should be prepared timely and not signed in advance of the event or transaction.

Private Property

Generally, public funds may not be used to make improvements to property not owned by the governmental unit, unless permitted by statute, federal or state requirements, or safety concerns.

Public Records Retention

IC 5-15-6-3(f) concerning destruction of public records, states in part: "Original records may be disposed of only with the approval of the commission according to guidelines established by the commission."

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee.

Purchasing Bonuses

Any compensation, premium, bonus, or product earned as a result of the purchase of goods or services by the governmental unit becomes the property of the governmental unit.

Receipt Issuance

Receipts shall be issued and recorded at the time of the transaction; for example, when cash or a check is received, a receipt is to be immediately prepared and given to the person making payment.

Repayments and Refunds

Persons, companies or governmental units that have overpaid amounts to a governmental unit are entitled to a repayment or refund by check or warrant.

Repayments and Transfers

Payments or transfers which are not authorized by statute, ordinance, resolution or court order must be reimbursed or transferred to the appropriate fund.

Risk of Loss

The governmental unit should ensure it is adequately protected for all risks of loss.

Sale and Rental Proceeds

Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise authorized by statute.

Sales Tax

Governmental funds generally are exempt from the payment of sales tax on qualifying purchases. Respective tax agencies should always be contacted concerning tax exemptions and payments.

Separate Bank Accounts

When two or more governmental units are authorized by statute to have the same fiscal officer, there should be separate bank accounts and accounting records for each governmental unit unless authorized by statute, appropriate federal or state rule or regulation.

Severance Pay

Unless specifically authorized by statute, severance pay, or other payments to employees upon separation from employment, must be supported by the written opinion of the attorney for the governmental unit stating that the payments are in accordance with all federal laws and regulations and state laws, including IC 35-44.1-1-3, and a properly enacted Home Rule ordinance or resolution, as applicable.

Signature Stamps

The decision on whether the number of items to be signed justifies the use of a rubber stamp or other device, including computer image signatures, for affixing a signature must be made by each public official responsible for signing warrants, claims, and other official documents.

A rubber stamp or other signing device should be used only under the personal direction of the public official and should be properly safeguarded when not in use since each official is responsible for his or her own signature.

Suspension With Pay

Suspension with pay must be supported by the written opinion of the attorney for the governmental unit stating that the suspension is in accordance with all federal laws and regulations, and state laws, including IC 35-44.1-1-3, and a properly enacted Home Rule ordinance or resolution, as applicable.

Timely Recordkeeping

All documents and entries to records should be done in a timely manner to ensure that accurate financial information is available to allow the governmental unit to make informed management decisions and to help ensure compliance with IC 5-15-1-1 et seq., commonly referred to as the Public Records Law.

Transaction Recording

All financial transactions pertaining to the governmental unit should be recorded in the records of the governmental unit.

Travel Policies

Each governmental unit should adopt a written travel policy in conformity with applicable statutes.

Reimbursement for lodging and meals should be based upon actual receipts for amounts paid unless otherwise authorized by statute.

Trusts and Endowments

Each governmental unit is responsible for complying with any requirements of trust agreements or endowments received which are not contrary to state statute or constitutional provisions.

Various Accounting Guides, Manuals and Other Publications

Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governmental Accounting Standards Board, Financial Accounting Standards Board, and other standards setting bodies and also with various accounting guides, manuals and other publications.

Vending, Concessions or Other Sales Controls

Internal controls over vending operations, concessions or other sales should include, at a minimum, a regular reconcilement of the beginning inventory, purchases, distributions, items sold and ending inventory to the amount received. Any discrepancies noted should be immediately documented in writing to proper officials. The reconcilement should provide an accurate accounting.

Persons with access to vending should be properly designated and access should be limited to those designated.

Vending Machine Commissions and/or Profits

There should be a clearly defined procedure adopted by the governmental unit concerning placement, use, maintenance, and commissions and/or profits of vending machines on their property.

All revenues generated and costs incurred in operating vending machines located on the government premises should be accounted for through the governmental unit's records.

If vending machines are located in restricted areas (areas other than those available to the public) and if the governmental body and chief executive officer wish for those revenues to be restricted for the use and benefit of those employees who use the machines and generate the revenues, the State Board of Accounts takes no exception to such action in an audit. The decisions must be authorized by proper resolution or ordinance of the governing body.

If vending machines are located in areas where the public makes use of the machines and generates the resulting revenues, we advise officials to place the revenues in the general fund for the benefit of the general public, the machine users. Any alternative procedure should be authorized by resolution or ordinance of the governing body.

In the event personnel other than the governmental unit's personnel maintain, stock, and clean up around vending machines, we take no audit exception when such persons are paid for these services. A written agreement should be entered into listing the services to be rendered, the amount to be paid for such services, timing of payments, and any other areas deemed necessary by the governmental unit.

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SECTION B – INFORMATION TECHNOLOGY SERVICES CONTROLS

INTRODUCTION

In accordance with Statements on Auditing Standards Numbers 78 and 94, issued by the American Institute of Certified Public Accountants (AICPA), the State Board of Accounts may review applicable computers that process accounting data. Consideration in the selection of the computer systems to be reviewed includes but is not limited to total dollars processed by the computer system, the complexity of the processing, the availability of alternate sources for audit information, and the criticality of non-financial information processed. The Information Technology Services (ITS) controls reviewed will be based primarily on the Control Objectives for Information Technology and other publications of the Information Systems Audit and Control Association. Additional sources of information used in State Board of Accounts' ITS reviews include but are not limited to publications of the AICPA, the Institute of Internal Auditors, the Government Accountability Office, the Department of Defense, the National Computer Security Association, and hardware and software vendors.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of managements' objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control.

The following requirements have been established for all computer systems processing accounting information. In the event these requirements are not met by the computer environment of the accounting system, compensating manual controls must be implemented.

DISASTER RECOVERY

A written Disaster Recovery Plan is required to ensure that critical accounting information will be processed in the event of interruption of computer processing capability. The plan must be updated and tested annually or when significant modifications to computer hardware, software or application systems occur. One copy of the Plan must be retained off site.

BACK UP PROCESSING

All computer application programs and operating system software must be backed up on a periodic basis and after modification. Accounting information must be backed up on a periodic basis sufficient to allow restoration of the information in a timely manner. Periodically the backup media must be tested to assure restoration will occur accurately. One copy of the backup information must be retained off site.

PHYSICAL SECURITY

The computer system and the associated telecommunications equipment must be adequately protected from environmental damage including, but not limited to, fire, water, and physical damage by individuals. In addition, the computer must be protected from unauthorized access, terminals must be inoperable when not attended by an authorized employee, and terminals utilized to enter sensitive commands must not be positioned where unauthorized individuals may view the contents of the video display terminal.

LOGICAL SECURITY

Effective logical security prohibits unauthorized access and restricts the computerized resources each authorized user may utilize. Access to accounting information and processes must be controlled by operating system software and by the computerized accounting application through user identification codes (user IDs) and passwords. User IDs are unique identifiers assigned to each authorized user, which remain constant for that user. Passwords are confidential keywords associated with the user ID to provide verification of the user's identity. Each user must have a unique user ID and password which must not be shared. Passwords must meet the following criteria:

- Passwords must be changed every 30 days.
- Passwords must be a minimum of six (6) characters in length.
- Passwords must be a combination of alphabetic and numeric characters.
- Passwords may not be the same for a user ID as the last five (5) passwords used by this user ID.
- Individuals must assign their own passwords.
- Passwords must be encrypted while stored on the computer.

Additional Logical Security requirements include:

- Reporting of security definitions and user access rights to information must be available to, and easily understood by, Management and State Board of Account Field Examiners during the course of a regularly scheduled audit. These security definitions and user access rights must enforce adequate segregation of duties for the accounting system.
- Users other than System Administrators and Security Administrators must be prevented from accessing sensitive operating system commands.
- The number of System Administrators and Security Administrators must be limited.
- Computer programmers must not have update access to production accounting information.
- Users must not be allowed to be active on multiple terminals at the same time with the same user ID.
- User IDs must be deactivated after three unsuccessful attempts to sign on to the computer.
- For inactive terminals, the user must be automatically prevented from accessing the computer after 15 minutes of no activity until the user's password is entered.
- Users must be prevented from modifying or deleting operating system and computer program files.
- Users must be prevented from updating accounting information except through authorized transactions within the computerized accounting application system.
- User access rights must be eliminated or revised upon termination of employment and transfers of employee responsibility.

CHANGE CONTROLS

Changes to the accounting system's computer programs must be adequately controlled including the following requirements:

- Computer source (human readable) and load (machine readable) modules must be protected from unauthorized modification.
- Modifications to computer source code must occur in a test environment and not affect production source code.
- All modifications to computer source code must be adequately tested. Modifications must be approved by management.
- Individuals responsible for modifying computer source code in a test environment must be prevented from updating computer code in the production environment. Movement of computer source and load modules from the test to production environments must be completed by authorized employees not responsible for modification of computer source or load modules.

AUDIT TRAILS

The computerized accounting system must maintain electronic audit trails sufficient to trace all trans-actions from original source of entry into the system, through all system processing, and to the results produced by the system. The audit trails must also maintain sufficient information to trace all transactions from the final results produced by the system, through all system processing, and to the original source of entry into the system. Audit trials must also identify the user that processed the transaction or updated the information. These audit trails must be protected from modification and deletion.

INPUT CONTROLS

The computerized accounting system must provide input edits and controls to assure that information entered into the system is accurate, that all appropriate information is entered into the system, and that information is entered into the system only once. All information entered into the system must be authorized through effective manual or electronic controls. Transaction dates should be based upon system generated dates which cannot be modified by the user. If necessary, the system may provide an additional effective date of the transaction that is user controlled.

SEGREGATION OF DUTIES

Segregation of duties is the concept of having different people do different tasks within the organization. It provides the foundation of good internal control by assuring that no one individual has the capability to perpetuate and conceal errors or irregularities in the normal course of their authorized duties. Segregation of duties is achieved within information technology systems by appropriate assignment of security profiles that define the data the users can access and the functions that they can perform. Access must be restricted to the minimum required for the user to perform their job function. Access rights must be periodically reviewed and approved by management.

OUTPUT CONTROLS

The computerized accounting system must incorporate features that assure all accounting information is reported accurately and completely. Procedures must also exist to assure that only authorized individuals have access to computer generated output. All receipts or payments generated by the accounting system must include unique document identification numbers either preprinted on the form or printed on the form by the application system. If the numbers are printed on the form by the application system, adequate security must be implemented to prevent unauthorized modification of the number sequence. Preprinted receipt and check stock must not include preprinted signatures, must be securely stored, and usage must be logged and reconciled. If the report content can be modified via user selection of various criteria such as account codes, department codes, transaction codes, status codes, etc., the report heading should contain sufficient information regarding the selection criteria to allow another user to understand what information is being reported and recreate the report. All output reports must clearly indicate the effective dates of the information in addition to the report generation date. Output reports must have appropriate subtotals to allow reconcilement to other reports and to external documentation.

INTERFACE CONTROLS

Information generated in one computer application system and transferred to another computer application system must be accurate and complete. Both systems should generate reports documenting record counts and the dollar value totals of the information transferred to enable prompt identification of discrepancies.

INTERNAL PROCESSING

Written verification procedures and actual verification results must be provided to the State Board of Accounts' Field Examiners which document accurate calculating, summarizing, categorizing, and updating of accounting information on a periodic basis and after the modification of accounting system computer programs.

ERROR CORRECTION

Accounting information must not be modified by computer utility programs which are not contained in the accounting application system. The accounting application system must be supported by computerized and manual procedures to assure the following error correction controls are implemented:

- The type of error condition is recorded.
- The original transaction creating the error is retained within the system.
- A reversing transaction to eliminate the effect of the error is entered and retained within the system.
- The correct transaction is entered into the system and recorded.
- Management approval for error correction is documented.

PROGRAMMING DOCUMENTATION

Documentation must be available to the State Board of Accounts' Field Examiners which provide adequate information on the functions performed by each computer program, the definitions of all computer files and records utilized by the computer programs, and a description of the computer processing which relates each computer program to other computer programs to accomplish accounting functions. The documentation must be adequate for the Field Examiners to determine the accuracy of accounting processes by the computer.

OPERATIONS DOCUMENTATION

For each computerized accounting system, procedures must be adequately documented to ensure all processing and maintenance is performed. Examples include instructions, checklists, and logs to ensure:

- Daily, monthly and year-end processes are performed correctly and completely.
- Required reports are generated and balanced.
- Backups are completed successfully and cycled appropriately.
- Virus definitions are updated regularly.
- Security patches and upgrades are installed.

USER DOCUMENTATION

Written procedures must be available for all computerized accounting systems which provide instructions on the requirements for the approval of information prior to entry into the computer, as well as the accurate entry, processing, and reporting of information from the accounting system.

COMPUTER OUTPUT

Public records, financial statement information and supporting information generated through the computer system must be maintained in a manner that will allow access for audit and public inquiry on equipment of the governmental unit.

PURCHASE OF DATA PROCESSING HARDWARE and/or SOFTWARE

The following is a general outline of steps to follow when contemplating the purchase of data processing hardware and/or software. The State Board of Accounts has an Information Technology Section available to help answer questions about IT requirements.

Basic Questions

- Is this purchase cost effective?
- Are sufficient funds available to purchase desired hardware and software?
- What applications are needed? Payroll? Financial and Appropriation Ledger? Accounts Payable?
- What is the current and future volume of transactions to be processed per application?
- Are qualified personnel available to operate the new system? How will they be trained?
- How will software be maintained?
- Can the vendor provide a list of users as references?
- Where is hardware/software maintenance staff located?
- What services are provided by the vendor when the system is down? How long before these services are available?
- What are the estimated maintenance costs?
- What is the cost to upgrade the system in the future?
- If the source code is not purchased, the vendor must allow access to the source code by representatives of the State Board of Accounts.

Software

- The accounting application should provide extensive editing of data and change capability upon input and before a transaction is posted to an account, but no ability to change data after it is posted. If an error is discovered after the transaction is posted, a separate correcting transaction must be made.
- The system should be capable of exporting electronic files of transactions and other data.
- A detailed transaction history (similar to a manually posted ledger page) must be maintained supporting each account. At least the last twelve months of transactions must be accessible on-line. Additional transactional history must be retained back to the date of the last audit. This additional history must be retained on-line or otherwise archived and easily accessible by State Board of Accounts Field Examiners.
- Copyright restrictions and documentation of all programs should be reviewed before purchase.
- If purchased separately, software must be compatible with hardware.

Hardware

- If purchased separately, hardware must be compatible with software.
- The hardware should have expansion capability to meet possible additional applications and future growth.
- Review vendor service agreements carefully for cost and completeness.

Steps to Take Prior to Bidding

- Communicate with all potential in-house users to insure that their business process requirements for the system are fully understood and the system will meet their needs.

- Verify that the system will provide the same information as the forms prescribed by the State Board of Accounts and fulfill the State Board of Accounts' Information Technology Services Controls.

- Observe hardware and software in operation at other units within the state and discuss with their users possible problems and/or suggestions, particularly service and maintenance.

Other Requirements

- Provisions must be made to backup the operating system, application software, and the data files. A copy of the backup should be stored offsite. In addition, a Disaster Recovery Plan should be developed when the system is installed.

- Review temperature, humidity and dust control requirements at the computer location.

- Review insurance coverage for hardware, software and file reconstruction.

- Appropriate procedures should be used in implementing the new system. For example, control totals during conversion of data and a parallel processing period. The results of conversion testing and reconcilements should be retained for audit.

POSSIBLE APPLICATIONS

The following is a list of possible applications with generalized minimum requirements.

Basically, minimum output requirements in an IT environment are the same as the forms prescribed by the State Board of Accounts.

Payroll

- Properly authorized, edited and extended before input.

- Individual time, earnings and deduction records should be maintained for each employee.

- Year-to-date totals available.

- Generate monthly, quarterly and annual reports.

- Totals by department.

- Overtime kept separately.

- Generation of State and Federal reports such as: W-2's, WH-3's, 1099's, etc.

Purchase Orders

- Properly authorized, edited and extended before input.
- Reduce purchase order balance when claim paid.
- Adjust for partial paid claim.
- Adjust for change in purchase order.
- Update appropriation ledger for encumbrances and payments.
- Update vendor record if applicable.

SECTION C - PUBLIC PROCEEDINGS AND PUBLIC RECORDS

ACCESS TO PUBLIC PROCEEDINGS

Indiana Open Door Law

Board meetings are governed by the Open Door Law, IC 5-14-1.5. Under the Open Door Law all meetings of governing boards must be open to the public except for executive sessions.

Executive Sessions. IC 5-14-1.5-6.1(b) lists the circumstances under which an executive session may be held, including the following:

1. Where authorized by federal or state statute.

2. For discussion of strategy for: collective bargaining; initiation of litigation or litigation which is either pending or has been threatened specifically in writing; implementation of security systems; or purchase or lease of real property up to the time a contract or option to purchase or lease is executed by the parties. Litigation is defined as any judicial action or administrative law proceeding under federal or state law.

3. To receive information about, and interview, prospective employees.

4. With respect to any employee's status or alleged misconduct.

5. For discussion of confidential records.

6. To discuss job performance evaluations of individual employees.

Final action on matters discussed in executive session must be taken at a meeting open to the public. Minutes of executive sessions must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The board must certify by a statement in its memoranda and minutes that it discussed no subject matter in the executive session other than the subject matter specified in the public notice. [IC 5-14-1.5-6.1]

Public Notice

Public notice of the date, time, and place of regular meetings, executive sessions, or rescheduled or reconvened meetings must be given at least 48 hours before the meeting (excluding Saturdays, Sundays, and legal holidays). Reconvened meetings may be held with less than 48 hours notice if the new date, time, and place is announced at the time of the original meeting and recorded in the minutes, and there is no change in the agenda. Public notice is given by posting a notice of the meeting at the office of the political subdivision and delivering notice to all news media who have filed a written request to receive such notices. Notice to the news media may be made by depositing the notice in the United States mail with postage prepaid, by transmitting the notice by electronic mail, or by transmitting the notice by facsimile (fax). If an agenda is used, it should be posted at the entrance to the meeting place. Notice of regular meetings need be given only once each year unless the date, time or place is changed. In case of an emergency, the 48 hour requirement may be disregarded. [IC 5-14-1.5-5]

Minutes

Memoranda (minutes) of the meeting shall include the following items:

1. date, time, and place of the meeting;

2. members present and absent;

3. the general substance of all matters proposed, discussed or decided; and

4. a record of all votes taken, by individual members if there is a roll call. The memoranda should be available to the public within a reasonable period of time after the meeting. [IC 5-14-1.5-4]

ACCESS TO PUBLIC RECORDS [IC 5-14-3]

Public Policy

Access to public records is governed by IC 5-14-3. The official policy of the State is: "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." [IC 5-14-3-1]

Definition of Public Record

A public record is defined as any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material regardless of form or characteristics. [IC 5-14-3-2]

Request for Access to Public Records

Any person may inspect and copy the public records of a public agency during regular business hours. A request for inspection or copying must identify with reasonable particularity the record being requested; and be, at the discretion of the public agency, in writing or on a form provided by the public agency. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. [IC 5-14-3-3(a)]

The public agency shall either: (a) provide the requested copies to the person making the request; or (b) allow the person to make copies on the political subdivision's equipment or on the person's own equipment. [IC 5-14-3-3(b)]

The denial of access to a public record is covered in IC 5-14-3-9.

Access to Electronic Data Storage Systems

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. [IC 5-14-3-3(d)]

The public agency may adopt an ordinance or resolution prescribing the conditions under which a person who receives information on disk or tape may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of this information in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to the ordinance or resolution may be prohibited by the public agency from obtaining a copy or any further data. [IC 5-14-3-3 (e)]

A public agency may not enter into or renew a contract or an obligation (a) for the storage or copying of public records or (b) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute; if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records. [IC 5-14-3-3(g)]

Enhanced Access

As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency. A public agency may provide a person with enhanced access to public records if any of the following apply:

1. The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records.

2. The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party’s computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records.

A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

1. Unauthorized enhanced access to public records.

2. Unauthorized alteration of public records.

3. Disclosure of confidential public records.

A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

A public agency may provide enhanced access to public records through the computer gateway administered by the Indiana Office of Technology established under IC 4-13.1-2-1. [IC 5-14-3-3.6]

Records Which May Be Excepted From Disclosure

Pursuant to IC 5-14-3-4(b), the following public records may be excepted from the disclosure requirements if the governing board approves a policy to that effect:

1. Personnel files of employees and files of applicants for employment, except for:

   a. The name, compensation, job title, business address, business telephone number, job descriptions, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the public agency.

   b. Information relating to the status of any formal charges against the employee.

   c. Information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

   However, all personnel file information shall be made available to the affected employee or employee's representative. General personnel information on all employees or for groups of employees, without individual names, may not be excepted from disclosure.

2. Administrative or technical information that would jeopardize a record keeping or security system.

3. Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

4. Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1.

5. The identity of a donor of a gift made to a public agency if the donor requires nondisclosure of the donor's identity as a condition of making the gift; or after the gift is made, the donor, or the donor's family, requests nondisclosure.

6. A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack.

7. The telephone number, address, and social security number of a customer of a municipally owned utility (as defined in IC 8-1-2-1).

Names and addresses of employees (including electronic mail account addresses) may not be disclosed to commercial entities for commercial purposes or to any individual or entity for political purposes. [IC 5-14-3-3(f)]

Fees

The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars ($5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents ($0.10) per page for copies that are not color copies or twenty-five cents ($0.25) per page for color copies; or
(2) the actual cost to the agency of copying the document.

A fee established under this subsection must be uniform throughout the public agency and uniform to all purchases. "Actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. [IC 5-14-3-8(d)]

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Policy

The governing board is charged with the duty to preserve, keep, maintain, or file all the official records of the political subdivision pursuant to IC 5-15-1-1. The final decision as to the destruction or disposition of such records rests with the local public records commission. A local public records commission is established in each county pursuant to IC 5-15-6-1.

IC 5-15-6-3(f) concerning destruction of public records, states in part: "Original records may be disposed of only with the approval of the commission according to guidelines established by the commission."

Definition of Public Record

A public record is defined as all documentation of the informational, communicative or decision-making processes of the political subdivision in connection with the transaction of public business or governmental functions, which documentation is created, received, retained, maintained, or filed by the political subdivision as evidence of its activities or because of the information value of the data in the documentation, and which is generated on paper or paper substitutes; photographic or chemically based media; magnetic or machine readable media; or any other materials, regardless of form or characteristics. [IC 5-15-5.1-1]

For purposes of IC 5-15-6, the terms "public record" or "record" refer to local government documentation. [IC 5-15-6-1.5]

County Public Records Commission

IC 5-15-6-1 creates in each county a commission known as the "County Commission of Public Records of _____ County." IC 5-15-6-2 sets out the duties and responsibilities of the commission. It is the duty of the commission to determine the following:

1. Which public records, if any, are no longer of official or historical value.

2. Which public records are of current official value and should be retained in the office where they are required to be filed.

3. Which public records are of official value but are consulted and used so infrequently that they are no longer of appreciable value to the officer with whom they are required to be filed.

4. Which public records are of no apparent official value, but which do have historical value.

5. Adopt and implement retention schedules for use by local governmental officials as part of a records management program for local government public records at the first meeting of the county commission after the commission receives a retention schedule for the local government approved by the oversight committee on public records as established by IC 5-15-5.1-18.

The following officers make up the commission:

1. Judge of the Circuit Court (Ex Officio);

2. President of the Board of County Commissioners;

3. County Auditor;

4. Clerk of the Circuit Court (Secretary);

5. County Recorder;

6. Superintendent of Schools of the school district in which county seat city is located.

7. City Controller or Clerk-Treasurer of the county seat city or town.

Suggested Procedures

As a starting point for disposing of old records, an inventory of the office and the storerooms should be taken. The inventory should list the type of record and the year such record was made.

After the inventory is completed and a decision is made as to the records to be destroyed, a request and approval for destruction of records should be submitted to the County Commission of Public Records of the county in which the public agency is located.

The State Commission has furnished each Clerk of the Circuit Court, who serves as secretary of the County Commission of Public Records, a supply of Form PR1 entitled “Request for Permission to Destroy and Transfer Certain Public Records” to be used by local officials in submitting requests to the County Commissions.

Removal of Records - Time Restriction

IC 5-15-6-3 concerning the removal and destruction of records states:

a. As used in this section, “original records” includes the optical image of a check or deposit document when:

    1. the check or deposit document is recorded, copied, or reproduced by an optical imaging process described in subsection (e); and

    2. the drawer of the check receives an optical image of the check after the check is processed for payment or the depositor receives an optical image of the deposit document after the document has been processed for the deposit.

b. All public records which, in the judgment of the commission, have no official or historical value, and which occupy space to no purpose in the offices and storerooms of the local government of a county, shall be destroyed or otherwise disposed of. Except as provided in this section, such records shall not be destroyed until a period of at least three (3) years shall have elapsed from the time when the records were originally filed, and no public records shall be destroyed within a period of three (3) years if the law provides that they shall be kept for a longer period of time, or if the law prohibits their destruction.

c. Subject to this section, records may be destroyed before three (3) years elapse after the date when the records were originally filed if the destruction is according to an approved retention schedule.

d. No financial records or records relating thereto shall be destroyed until the earlier of the following actions:

   1. The audit of the records by the State Board of Accounts has been completed, report filed, and any exceptions set out in the report satisfied.

   2. The financial record or records have been copied or reproduced as described in subsection (e).

e. As used in this section, “public records” or “records” includes records that have been recorded, copied, or reproduced by a photographic, photostatic, miniature photographic, or optical imaging process that correctly, accurately, and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material. Original records may be disposed of in accordance with subsection (f), if the record has been copied or reproduced as described in this subsection. The copy must be treated as an original. Copies, recreations, or reproductions made from an optical image of a public record described in this subsection shall be received as evidence in any court in which the original record could have been introduced, if the recreations, copies, or reproductions are properly certified as to authenticity and accuracy by an official custodian of the records.

f. Original records may be disposed of only with the approval of the commission according to guidelines established by the commission. However, the guidelines established by the commission concerning the disposal of financial records must be approved by the State Board of Accounts before the guidelines become effective.

The decision as to the disposition or destruction or any record rests entirely upon the commission; however, there are certain records which appear to be sufficient value to require that they be retained permanently, and there are other records which should not be disposed of for a period of longer than three years, due to limitations imposed under other statutes. Among these records are:

<u>Retained Permanently</u>

All minutes due to their historical value and their value in determining titles of property, appointments, etc.

Ledgers of Receipts and Disbursements as permanent financial records.

Bond Records, as evidence of indebtedness and payment.

<u>Retained for Longer Periods Than Three (3) Years</u>

All contracts, claims and paid warrants for minimum of six (6) years due to statute of limitations in civil actions. [IC 34-1-2-1 and IC 34-1-2-2]

Barrett Law records for a minimum of 15 years.

Public Records Retention - Audit

IC 5-15-6-3(f) concerning destruction of public records, states in part: “Original records may be disposed of only with the approval of the commission according to guidelines established by the commission.”

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee.

Order to Destroy Public Records

A copy of any order to destroy public records shall be delivered to the State Archivist, Indiana State Library, any active genealogical society of the county and any active historical society of the county not later than sixty days before the destruction date accompanied by a written statement that they may procure such records at their own expense subject to the provisions enumerated in the law. [IC 5-15-6-7]

Penalty

A public official or other person who recklessly, knowingly, or intentionally destroys or damages any public record commits a Class D felony unless:

1. the commission shall have given its approval in writing that public records may be destroyed;

2. the commission shall have entered its approval for destruction of the public records on its own minutes; or

3. authority for destruction of the records is granted by an approved retention schedule. [IC 5-15-6-8]

Public Records Go With the Office

Sometimes it is reported that when an official is replaced by reason of death, resignation, appointment, or election, the records are being withheld from the successor until they are audited.

When an official assumes custody of an office many of the forms and records are continuous. Each official's acts are a matter of record. An official is not responsible for the acts of his successor and a successor is not responsible for the acts of his predecessor.

Regardless of the capacity served by an official, upon completion of his service, all records and forms are to be surrendered to his successor.

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee.

Transaction Recording

All financial transactions pertaining to the governmental unit should be recorded in the records of the governmental unit.

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Timely Recordkeeping

All documents and entries to records should be done in a timely manner to ensure that accurate financial information is available to allow the governmental unit to make informed management decisions and to help ensure compliance with IC 5-15-1-1 et seq., commonly referred to as the Public Records Law

RETENTION SCHEDULES

The State's Oversight Committee on Public Records has approved retention schedules for city and town financial records. The schedules list prescribed forms and the length of time each form is required to be kept. The schedules can be obtained at www.in.gov/icpr.

IC 5-15-6-2.5 requires each local County Commission on Public Records to adopt such retention schedules not more than thirty (30) days after adoption by the State Oversight Committee.

Once the retention schedules are adopted, records may be destroyed in accordance with the schedules and without permission of the local County Commission. However, cities and towns must submit documentation of such destruction to the County Commission and the State Archives and should notify any active genealogical societies and any active historical societies located in the county before destruction.

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SECTION D - CONFLICT OF INTEREST

PUBLIC SERVANTS - STATUTORY CONFLICT OF INTEREST [IC 35-44.1-1-4]

Conflict of Interest

A public servant who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from a contract or purchase connected with an action by the government entity served by the public servant, commits conflict of interest, a Level 6 felony. [IC 35-44.1-1-4(b)]

Exception for Compensation and Expenses

A public servant is not prohibited from receiving compensation for services provided as a public servant or for expenses incurred by the public servant as provided by law. [IC 35-44.1-1-4(c)]

Other Exceptions

IC 35-44.1-1-4 does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

1. If the public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity; the functions and duties the public servant performs for the governmental entity are unrelated to the contract or purchase; and the public servant makes a disclosure as provided in IC 35-44.1-1-4(d). [IC 35-44.1-1-4(c)(6)]

2. If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government. [IC 35-44.1-1-4(c)(3)]

Definition of Pecuniary Interest

A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

1. the public servant; or

2. a dependent of the public servant who:

    a. is under the direct or indirect administrative control of the public servant; or

    b. receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. [IC 35-44.1-1-4(a)(3)]

Definition of Dependent

A dependent means any of the following:

1. The spouse of a public servant.

2. A child, stepchild, or adoptee of a public servant who is:

   a. unemancipated, and

   b. less than 18 years of age.

3. An individual more than one-half of whose support is provided during a year by the public servant. [IC 35-44.1-1-4(a)]

Disclosure Requirements

A disclosure as required above must:

1. Be in writing.

2. Describe the contract or purchase to be made by the governmental entity.

3. Describe the pecuniary interest that the public servant has in the contract or purchase.

4. Be affirmed under penalty of perjury.

5. Be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase.

6. Be filed within fifteen days after final action on the contract or purchase with; (a) the state board of accounts; and (b) with the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase.

7. Contain, if the public servant is appointed, the written approval of the elected public servant (if any) that appointed the public servant.

Defense

It is not an offense in a prosecution under this section that the public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars ($250) or less. [IC 35-44.1-1-4(c)(2)]

Form

A suggested format for the disclosure of conflict of interest for board members and employees is located at the end of this section. The attorney for the governmental entity or a private attorney should be consulted in regard to whether a conflict of interest statement should be filed and whether the format of the disclosure is sufficient.

CONSULTANTS - STATUTORY CONFLICT OF INTEREST [IC 5-16-11]

Conflict of Interest

Pursuant to IC 5-16-11-5.5, a consultant has a conflict of interest if any of the following apply:

1. The entity has given a gift or gifts:

    a. to the consultant, the consultant's spouse, or the consultant's unemancipated children;

    b. that have a total fair market value of more than one hundred dollars ($100); and

    c. within the preceding year.

2. The consultant, the consultant's spouse, or the consultant's unemancipated children have an equitable or a legal interest in real property the value of which:

    a. either is at least $5,000 or comprises at least ten percent (10%) of the net worth of the consultant, the consultant's spouse, or the consultant's unemancipated children; and

    b. has been or would be increased or decreased if a contract were awarded to the entity.

3. The consultant or the consultant's spouse is employed by the entity.

4. The entity is the sole proprietorship or professional practice of the consultant or the consultant's spouse.

5. The consultant or the consultant's spouse is a partner in the entity.

6. The consultant or the consultant's spouse is an officer or a director of the entity.

7. The consultant, the consultant's spouse, or the consultant's unemancipated children own stock or options to purchase stock in the entity and the stock or the options to purchase stock have a fair market value of more than ten thousand dollars ($10,000). This subdivision does not apply to the following:

    a. Time deposits or demand deposits in a financial institution.

    b. An insurance policy.

Definition of Consultant

"Consultant" means an individual who, under a contract with the state or a political subdivision, does either of the following for the state or the political subdivision:

1. Evaluates bids for contracts.

2. Awards contracts.

The term does not include a public employee (as defined in IC 34-6-2-38).

An individual is not required to be a party to the contract with the state or the political subdivision to be a consultant under this section. [IC 5-16-11-2]

Definition of Entity

As used in this chapter, **"entity"** refers to a person that:

1. has submitted a bid to be evaluated by a consultant; or

2. was awarded a contract by a consultant. (IC 5-16-11-3.5)

Disclosure Requirements

A conflict of interest must be disclosed as follows:

1. A consultant shall file a conflict of interest disclosure if the consultant has a conflict of interest under IC 5-16-11-5.5.

2. The disclosure must describe the conflict of interest.

3. The consultant shall file the disclosure within ten (10) days of the earlier of the following events:

   a. The closing day for receipt of bids.

   b. The award of the contract.

4. The consultant shall file the disclosure required by IC 5-16-11-6 with the governing board, if the consultant contracts with the political subdivision. [IC 5-16-11-7]

5. The consultant shall make the disclosure required by IC 5-16-11-6 under affirmation. [IC 5-16-11-6,7,8]

Penalties

A consultant who fails to file a disclosure required by this chapter commits a Class A infraction. [IC 5-15-11-11]

A consultant who files a false disclosure under this chapter is subject to the penalties for perjury under IC 35-44-2-1. [IC 5-16-11-12]

LUCRATIVE OFFICE

Article 2, Section 9 of the Constitution of Indiana, states in part: ". . . no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution. "Any person holding two offices which have been or may be deemed lucrative should obtain the written opinion of the attorney for the unit or units served to determine compliance with Article 2, Section 9 of the Constitution of Indiana.

UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

State Form 54266 (R / 6-12) / Form 236
STATE BOARD OF ACCOUNTS

Indiana Code 35-44.1-1-4

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 in its entirety.

1. **Name and Address of Public Servant Submitting Statement:**_____

   _____

2. **Title or Position With Governmental Entity:** _____

3. a. **Governmental Entity:** _____

   b. **County:** _____

4. **This statement is submitted *(check one)*:**

   a._ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

   b._ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. **Name(s) of Contractor(s) or Vendor(s):** _____

   _____

   _____

6. **Description(s) of Contract(s) or Purchase(s)** *(Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.)*:

   _____
   _____
   _____
   _____
   _____

7. **Description of My Financial Interest** *(Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.)*:

_____
_____
_____
_____
_____
_____

(Attach extra pages if additional space is needed.)

8. **Approval of Appointing Officer or Body** *(To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.)*:

I (We) being the _____of
(Title of Officer or Name of Governing Body)

_____and having the power to appoint
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

9. Effective Dates *(Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.)*:

_____	_____
Date Submitted *(month, day, year)*	Date of Action on Contract or Purchase *(month, day, year)*

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____
(Signature of Public Servant)

Date: _____
(month, day, year)

Within fifteen (15) days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204 and the Clerk of the Circuit Court of the county where the governmental entity took final action on the contract or purchase.

SECTION E - COMPENSATION AND BENEFITS

COMPENSATION AND BENEFITS

Payments in Advance

Salaries and wages of public officers may not be paid in advance. [IC 5-7-3-1]

Compensation

All compensation and benefits paid to officials and employees must be included in the salary ordinance adopted by the legislative body unless otherwise authorized by statute. Compensation should be made in a manner that will facilitate compliance with state and federal reporting requirements.

Compensation - Non-Employees

Payments for services provided by an organization should go directly to the organization and not to an individual employee of the organization. All payments for services should be supported by a written contract. Compensation should be made in such a manner that will facilitate compliance with state and federal reporting requirements.

Employee Benefits

All types of employee benefits should be detailed in a written policy. Payments for expenses not authorized in a written policy cannot be allowed.

The board should adopt policies governing sick leave, vacation leave, and any other types of special leave.

Leave and Overtime Policy

Each governmental unit should adopt a written policy regarding the accrual and use of leave time and compensatory time and the payment of overtime. Negotiated labor contracts approved by the governing board would be considered as written policy. The policy should conform to the requirements of all state and federal regulatory agencies.

RECORD OF HOURS WORKED

IC 5-11-9-4 requires that records be maintained showing which hours are worked each day for employees employed by more than one political subdivision or in more than one position by the same public agency. This requirement can be met by indicating the number of hours worked on each Employee's Service Record, General Form No. 99A and/or General Form No. 99B.

The Federal Fair Labor Standards Act (FLSA) requires that records of wages paid, daily and weekly hours of work, and the time of day and day of week on which the employee's work week begins be kept for all employees. These requirements can be met by use of the following prescribed general forms:

General Form 99A, Employees' Service Record
General Form 99B, Employee's Earnings Record
General Form 99C, Employee's Weekly Earnings Record

General Form 99C is required only for employees who are not exempt from FLSA, are not on a fixed work schedule, and are not paid weekly.

Additional information regarding FLSA rules and regulations may be obtained from the Department of Labor.

UNEMPLOYMENT COMPENSATION

Legislation was passed in 1977 amending the Indiana Employment Security Act, IC 22-4, to include the State and all its political subdivisions as employers under the act, effective January 1, 1978.

Employers may elect payment of a percentage rate on a quarterly basis or to make “payments in lieu of contributions” on a monthly basis for benefits paid out during the month. If the employer chooses the first option they pay an unemployment insurance tax on a fixed sum of wages paid to each employee during a calendar year. The political subdivision's rate will be determined by the size of their credit reserve in relation to past claims. Employers wishing to change their elected option of payment may do so upon giving proper notification to the Department of Workforce Development. Employers under each option are required to file quarterly reports on their payroll and contributions. Each employer must display posters (available from the Department of Workforce Development) where all employees can see them.

PUBLIC EMPLOYEES' RETIREMENT FUND (PERF)

Political Subdivisions may participate in the Public Employees' Retirement Fund.

The benefits specified in IC 5-10.2 provide the retirement, disability, and survivor benefits for public employees. This is the only retirement plan in which political subdivisions may participate unless the following applies:

> This article does not prohibit a political subdivision from establishing and providing before January 1, 1995, and continuing to provide after January 1, 1995, retirement, disability, and survivor benefits for the public employees of the political subdivision independent of this article if the political subdivision took action before January 1, 1995 and was not a participant in the public employee's retirement fund on January 1, 1995. [IC 5-10.2-2-1]

PUBLIC EMPLOYEE DEFERRED COMPENSATION PLANS

A political subdivision may do the following:

1. agree with any employee to reduce and defer any portion of such employee's compensation which under federal law may be deferred under a nonqualified deferred compensation plan and subsequently contract for, purchase, or otherwise procure insurance and investment products appropriate for a nonqualified deferred compensation plan for the purpose of funding a deferred compensation plan for such employee;

2. contribute amounts before January 1, 1995 and continue or begin to contribute amounts after January 1, 1995 to a nonqualified deferred compensation plan on behalf of eligible employees, subject to any limits and provisions under Section 457 of the Internal Revenue Code. [IC 5-10-1.1-1]

TRAVEL POLICY

Each governmental unit should adopt a written travel policy in conformity with applicable statutes.

Reimbursement for lodging and meals should be based upon actual receipts for amounts paid unless otherwise authorized by statute.

COMMUTING MILEAGE

Reimbursed mileage shall not include travel to and from the officer's or employee's home and the governmental office in which he works, unless otherwise authorized by statute.

PRIVATE PROPERTY

Generally, public funds may not be used to make improvements to property not owned by the governmental unit, unless permitted by statute, federal requirements, state requirements, or safety concerns.

PERSONAL PROPERTY USE

Assets of the governmental unit may not be used in a manner unrelated to the functions and purposes of the governmental unit.

Whenever an item or other asset owned by the political subdivision is entrusted to an officer or employee, to be used at times outside the normal work time for business purposes, such as a cellular phone, or vehicle, a log should be maintained which clearly shows the business use.

PERSONAL EXPENSES

Public funds may not be used to pay for personal items or for expenses which do not relate to the functions and purposes of the governmental unit. Any personal expenses paid by the governmental unit may be the personal obligation of the responsible official or employee.

PURCHASING BONUSES

Any compensation, premium, bonus, or product earned as a result of the purchase of goods or services by the governmental unit becomes the property of the governmental unit.

SUSPENSION WITH PAY

Suspension with pay must be supported by the written opinion of the attorney for the governmental unit stating that the suspension is in accordance with all Federal laws and regulations, and State laws, including IC 35-44.1-1-4.

SEVERANCE PAY

Unless specifically authorized by statute, severance pay, or other payments to employees upon separation from employment, must be supported by the written opinion of the attorney for the governmental unit stating that the payments are in accordance with all federal laws and regulations and state laws, including IC 35-44.1-1-3, and a properly enacted Home Rule ordinance or resolution, as applicable.

SECTION F - DEPOSIT AND INVESTMENT OF FUNDS

DESIGNATION OF DEPOSITORIES

Depositing Receipts

IC 5-13-6-1(d) requires cities and towns to deposit all funds not later than the next business day following the receipt of funds in depositories selected by the city or town as provided in an ordinance adopted by the city or town and approved as depositories of state funds.

Public funds deposited should be deposited in the same form in which they were received. This simply means all daily receipts received by the political subdivision should be deposited intact.

Definition of Financial Institution

A depository is a financial institution designated as a depository of public funds. A financial institution is defined to mean:

1. A bank, trust company, or mutual savings bank that:

   a. was incorporated under the law of Indiana or any other state; and

   b. has its principal office or a branch in Indiana.

2. A national banking association with its principal office or a branch in Indiana.

3. A savings association operating as a deposit association incorporated under Indiana law.

4. A federally chartered savings association with its principal office or branch in Indiana.

5. A federally chartered savings bank with its principal office or a branch in Indiana.

6. A state chartered credit union in Indiana that is federally insured or privately insured and that has assets of three million dollars ($3,000,000) or more. [IC 5-13-4-10]

DEPOSITS IN TRANSACTION ACCOUNTS

Definition of Transaction Account

Except as provided in IC 5-13-9-5.3, “Transaction Account” means any of the following:

1. Any account subject to withdrawal by negotiable orders of withdrawal, unlimited as to amount or number, and without penalty, including NOW accounts.

2. Passbook Savings Accounts.

3. Money Market Deposit Accounts.

4. Any interest bearing account that is authorized to be set up and offered by a financial institution in the course of its respective business.

A certificate of deposit is not a transaction account. [IC 5-13-4-24 and IC 5-13-4-7]

CERTIFICATES OF DEPOSIT

Depositories Designated by Local Board of Finance

The following procedures should be used when purchasing certificates of deposit from depositories designated by the local board of finance*:

Obtain Quotes. The investing officer making a deposit in a certificate of deposit shall obtain quotes of the specific rates of interest for the certificate of deposit that each designated depository will pay on the certificate of deposit. Quotes may be solicited and taken by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3. [IC 5-13-9-4(b)]

Highest Rate of Interest. If the deposit is not placed in the designated depository quoting the highest rate of interest, the investing officer shall:

1. place the deposit in the depository quoting the second or third highest rate of interest; and

2. note the reason for placing the deposit on the memorandum of quotes. [IC 5-13-9-4(b)]

Depositories Designated by State Board of Finance

The following procedures should be used when purchasing certificates of deposit from depositories that have not been designated by the local board of finance* but have been designated by the State Board of Finance as a depository for state deposits under IC 5-13-9-5.

NOTE: Cities and towns do not have local boards of finance. City and town councils designate by ordinance the depositories that each city or town will use.

Ordinance or Resolution Required. The board of county commissioners of each county, and the fiscal body of each political subdivision other than a county, may by ordinance or resolution authorize the investing officer of each, respectively, to invest in certificates of deposit of depositories which have not been designated by the local board of finance of either but have been designated by the State Board of Finance as a depository for state deposits under IC 5-13-9.5. The ordinance or resolution must provide that the authority granted in the ordinance or resolution expires on a date that is not later than two years after the date the ordinance or resolution is adopted. [IC 5-13-9-5(a)]

Obtain Quotes. Quotes must be solicited from at least three depositories. If only one depository has been designated for the political subdivision by its local board of finance, a quote must be solicited from that depository. If two or more depositories have been designated for the political subdivision by its local board of finance, at least two quotes must be solicited from the depositories thus designated. The quotes may be taken and solicited by telephone. A memorandum of all quotes solicited and taken shall be retained by the investing officer as a public record of the political subdivision under IC 5-14-3. [IC 5-13-9-5(b)]

Highest Rate of Interest

If a deposit is not placed in the designated depository quoting the highest rate of interest, the investing officer shall follow the procedures and priority for placing deposits that are set forth in IC 5-13-9-4 and note the reason for placing the deposit on the memorandum of quotes.

Selected Depositories

IC 5-13-9-5.3 provides in part under certain requirements and conditions for selected depositories to arrange for the deposit of funds in deposit accounts as defined in IC 5-13-4-7(1)through(4) in one (1) or more federally insured banks or savings and loan associations, wherever located.

***** NOTE: Cities and towns do not have local boards of finance. City and town councils designate by ordinance the depositories that each city or town will use.

ELECTRONIC FUNDS TRANSFERS

The fiscal body may by ordinance or resolution authorize the transaction of business with a financial institution or a retirement fund administered by the public employees' retirement fund through the use of electronic funds transfer. The ordinance or resolution must:

1. specify the types of transactions that may be conducted by electronic funds transfer; and

2. require the proper officers to maintain adequate documentation of the transactions so that they may be audited as provided by law. [IC 5-13-5-5]

Also, see IC 36-1-8-11.5 for procedures for paying claims through electronic funds transfer.

INVESTMENT OF FUNDS

AUTHORITY FOR INVESTMENTS

Each investing officer may invest or reinvest any funds that are held by the officer and available for investment in any investment authorized in IC 5-13-9 under the guidelines established by the fiscal body. [IC 5-13-9-1]

AUTHORIZED INVESTMENTS

United States Government Securities

Securities backed by the full faith and credit of the United States Treasury or fully guaranteed by the United States and issued by any of the following:

a. The United States Treasury.

b. A federal agency.

c. A federal instrumentality.

d. A federal government sponsored enterprise. [IC 5-13-9-2(a)(1)]

Other Federal Securities

Securities fully guaranteed and issued by any of the following:

a. A federal agency.

b. A federal instrumentality.

c. A federal government sponsored enterprise. [IC 5-13-9-2(a)(2)]

Municipal Securities

Municipal securities issued by an Indiana local governmental entity, a quasi-governmental entity related to the state, or a unit of government, municipal corporation, or special taxing district in Indiana, if the issuer has not defaulted on any of the issuer's obligations within the twenty (20) years preceding the date of the purchase

Repurchase Agreements

Repurchase agreements:

a. With depositories designated by the state board of finance as depositories for state deposits under IC 5-13-9.5; and

b. Involving the political subdivision's purchase and guaranteed resale of any interest-bearing obligations issued; or fully insured or guaranteed; by the United States, a United States government agency, an instrumentality of the United States, or a federal government sponsored enterprise. [IC 5-13-9-3(a)]

Definition. A repurchase agreement is defined as an agreement:

1. Involving the purchase and guaranteed resale of securities between two parties; and

2. That may be entered into for a fixed term or arranged on an open or continuing basis as a continuing contract that:

    a. operates like a series of overnight repurchase agreements;

    b. is renewed each day with the repurchase rate and the amount of funds invested determined daily; and

    c. for purposes of this article, is considered to have a stated final maturity of one day. [IC 5-13-9-3(a)]

Collateral. The amount of money in this type of agreement must be fully collateralized by interest-bearing obligations as determined by their current market value. This must be determined daily by the depository. [IC 5-13-9-3(b)]

If the market value of the obligations being held as collateral falls below the level required under IC 5-13-9-3(b) or a higher level established by agreement, the depository shall deliver additional securities to the political subdivision to make the agreement collateralized to the applicable level. [IC 5-13-9-3(c)]

The collateral involved in a repurchase agreement is not subject to the maturity limitation provided by IC 5-13-9-5.6. [IC 5-13-9-3(c)]

Ownership. To insure that ownership of securities acquired under a repurchase agreement is vested in the governmental unit and to meet the requirements of IC 5-13-9, it has been suggested by an attorney for the Federal Deposit Insurance Corporation that repurchase agreements be so written as to:

1. vest title of securities in the name of the governmental unit;

2. described the specific securities acquired; and

3. represent a safekeeping receipt for the securities so acquired.

Money Market Mutual Funds

Investments commonly known as money market mutual funds that are in the form of securities of or interests in an open-end, no load, management-type investment company or investment trust registered under the provisions of the Federal Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.) [IC 5-13-9-2.5(a)]

Depositories. Investments in money market mutual funds, described in IC 5-13-9-2.5(a), shall be made through depositories designated by the State Board of Finance as depositories for state deposits under IC 5-13-9.5. [IC 5-13-9-2.5(c)]

Portfolio. The portfolio of an investment company or investment trust described in IC 5-13-9-2.5 (a) must be limited to the following:

1. Direct obligations of the United States.

2. Obligations issued by any of the following:

   a. A federal agency.

   b. A federal instrumentality.

   c. A federal government sponsored enterprise.

3. Repurchase agreements fully collateralized by obligations described in subdivisions (1) or (2). [IC 5-13-9-2.5(d)]

Rating. The form of securities of or interests in an investment company or investment trust described in IC 5-13-9-2.5(a) must be rated as one of the following:

1. AAAm, or its equivalent, by Standard and Poor's Corporation or its successor.

2. Aaa, or its equivalent, by Moody's Investors Service, Inc., or its successor. [IC 5-13-9-2.5(e)]

Final Maturity. The form of securities of an investment company or investment trust described in IC 5-13-9-2.5(a) is considered to have a stated final maturity of one day. [IC 5-13-9-2.5(f)]

Transaction Confirmations. The State Board of Accounts may rely on transaction confirmations evidencing ownership of the form of securities of or interests in an investment company or investment trust described in IC5-13-98-2.5(a). [IC 5-13-9-2.5(g)]

Other Authorized Investments

1. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Redevelopment or the African Development Bank. [IC 5-13-9-3.3]

2. Participations in loans if the political subdivision is located in a county containing a consolidated city. [IC 5-13-9-3.5]

Prohibited Acts

An investing officer may not purchase securities on margin or open a securities margin account for the investment of public funds. [IC 5-13-9-9]

Maturity Limitation

Investments made under IC 5-13-9 must have a stated final maturity of not more than two years after the date of purchase or entry into a repurchase agreement, unless the political subdivision has adopted an investment policy and ordinance under IC 5-13-9-5.7. [IC 5-13-9-5.6]

Safekeeping Receipts

The investing officer of the political subdivision is the legal custodian of securities under IC 5-13-9. They shall accept safekeeping receipts or other reporting for securities from qualified financial institutions. [IC 5-13-9-2(d)] Safekeeping receipts or other reporting for securities may be received only from:

1. a duly designated depository as prescribed in this article, or

2. a financial institution located either in or out of Indiana having custody of the securities with a combined capital and surplus of at least ten million dollars ($10,000,000) according to the last statement of condition filed by the financial institution with its governmental supervisory body. [IC 5-13-9-2(d)]

The State Board of Accounts may rely on safekeeping receipts or other reporting from any depository or financial institution. [IC 5-13-9-2(e)]

INVESTING FOR MORE THAN TWO (2) YEARS AND NOT MORE THAN FIVE (5) YEARS

The fiscal body of a political subdivision may adopt an investment policy authorizing the investment of public funds of the political subdivision for more than two (2) years and not more than five (5) years. The policy must:

1. be in writing;

2. be adopted at a public meeting;

3. provide for the investment of public funds with the approval of the investing officer;

4. provide that the investments must be made in accordance with this article;

5. limit the total investments outstanding under this section to not more than twenty-five percent (25%) of the total portfolio of public funds invested by the political subdivision, including balances in transaction accounts; and

6. state a date on which the policy expires, which may not exceed four (4) years.

A policy adopted by a fiscal body remains in effect only through the date of expiration established in the policy, which may not exceed four (4) years.

A fiscal body that has adopted a written investment policy may adopt an ordinance authorizing its investing officer to make investments having a stated final maturity that is:

1. more than two (2) years; but

2. not more than five (5) years;

after the date of purchase or entry into a repurchase agreement.

An ordinance adopted by a fiscal body and the power to make an investment expire on the date on which the policy expires, which may not exceed four (4) years.

After an investment of public funds of a political subdivision is made by the investing officer, the total investments of the political subdivision outstanding may not exceed twenty-five percent (25%) of the total portfolio of public funds invested by the political subdivision, including balances in transaction accounts. However, an investment that complies with this section when the investment is made remains legal even if:

1. the investment policy has expired; or

2. a subsequent decrease in the total portfolio of public funds invested by the political subdivision, including balances in transaction accounts, causes the percentage of investments outstanding to exceed twenty-five percent (25%) of the total portfolio of public funds invested by the political subdivision.

An investing officer may contract with a federally regulated investment advisor or other institutional money manager to make investments. [IC 5-13-9-5.7]

INVESTMENTS NOT AUTHORIZED BY STATUTE

Pursuant to IC 36-1-3-8, a unit may only invest funds as expressly provided in the statutes.

Investments should only be made in accordance with statute. Expenses related to any unauthorized investments may be the personal obligation of the responsible official or employee.

Losses related to investments and investment procedures which are not authorized by statute may be the personal obligation of the responsible official or employee.

INTEREST ON INVESTMENTS

Interest is to be credited to the political subdivision funds as indicated below:

1. All interest derived from an investment by a political subdivision under the authority granted by IC 5-13-9-3 shall be deposited, except as otherwise provided by law, in the general fund of the political subdivision or in any other fund the governing board designates specifically or by rule, subject to the modifications and limitations in IC 5-13-9-6. [IC 5-13-9-6(a)]

2. Interest from investments of funds of a political subdivision that are traceable to United States government funds must be receipted to the fund of which they are a part, if required by federal law or regulation. [IC 5-13-9-6(b)]

3. Interest from investments of funds controlled by court orders must be receipted to that fund unless otherwise designated by the court order. [IC 5-13-9-6(b)]

4. A political subdivision may apply the interest derived from the investment of the proceeds from bonded indebtedness or local tax levies to the appropriate redemption bond interest or sinking fund for the bonded indebtedness. [IC 5-13-9-6(e)]

   Note: Regardless of IC 5-13-9-6(e), terms of an existing bond resolution must be followed. The bond resolution should be reviewed and its terms and conditions adhered to without exception.

Interest on investments should not be added automatically to the investment. Instead, interest on investments should be paid to the governmental unit at each maturity date and posted to the appropriate fund.

"Interest from the investment of public finds may not be paid personally or for the benefit of any public officer." [IC 5-13-9-6(g)]

PUBLIC DEPOSIT INSURANCE FUND

Funds deposited in deposit accounts in accordance with IC 5-13-9 and interest earned or accrued on the funds are public funds and are covered by the insurance fund. [IC 5-13-9-8.5]

The definition of a "deposit account" is found in IC 5-13-4-7.

SERVICE CHARGES

Any investing officer of a political subdivision that makes a deposit in any deposit or other account may be required to pay a service charge to the depository in which the funds are deposited, if the depository requires all customers to pay the charge for providing that service.

The service charge imposed must be considered in the computation of the interest rate for determining which depositories are entitled to investments as prescribed by IC 5-13-9-4 and IC 5-13-9-5. If the total service charge cannot be computed before the investment, the investing officer shall estimate the service charge and adjust the interest rate based on this estimate.

The service charge may be paid by direct charge to the deposit or other account or in any other manner mutually agreed upon by the investing officer and the depository. [IC 5-13-9-8]

MANNER OF INVESTING FUNDS

A political subdivision has authority to invest its funds in the following manner:

1. by specific fund;

2. by grouping specific funds; or

3. from total monies on deposit.

Investments by Fund

In consideration of the provisions of the law, as amended, and to Official Opinion No. 6 (1986) of the Attorney General, it is the position of the State Board of Accounts that in the following instances investments must be made from specific funds with the interest on such investments to accrue to the benefit on such funds:

1. Where, under the terms of the statute, bequest, endowment, trust or federal, state, or private grant, earnings on investments must accrue to the benefit of the fund from which the investment was purchased.

2. Where bonds are issued for any purpose and the proceeds are invested, the interest from the investments must be credited to the fund from which invested, to the Bond and Interest Redemption Fund, or to any other fund where directed by terms of the bond resolution.

Investments by Group of Funds or From Total Monies on Deposit

After meeting the foregoing requirements, as to investment “by fund,” the investment of all other monies on deposit, without identifying the fund or funds invested is permitted.

It should be stressed that, although certain funds must be invested “by fund,” this will not preclude investment of any other specific fund, with the interest on such investment to accrue to that fund, if so directed by the governing body.

Summary

To summarize the foregoing, investments should be made in the following manner:

1. By fund, where any statute or the terms of any bequest, federal, state, or private grant, endowment or trust make provisions for investments, with the interest to accrue to the benefit of such fund.

2. By fund, if so determined by the governing board.

3. From the total of monies on deposit, after giving consideration to (1) and (2) above.

PROCEDURES FOR PURCHASING INVESTMENTS

Purchase

When an investment is made the treasurer shall issue a warrant payable to the financial institution from which the investment is purchased. The warrant must show the fund or funds on which it is drawn, if the investment is from a specific fund or funds, or if from “total monies on deposit.” This wording should be entered in lieu of the fund name or names. The warrant should also show the purpose for which it is issued, such as “investment in certificate of deposit” or “investment in United States Governmental Securities.”

Purchase (Continued)

The warrant shall be countersigned by the treasurer, delivered by the treasurer to the financial institution and the certificate of deposit, passbook, securities, or safekeeping receipt for such securities obtained by the treasurer. The treasurer is official custodian of all such investments.

Renewal of Certificates of Deposit

A certificate of deposit may be renewed for an additional term if authorized by the governing board, without the original certificate of deposit being paid by the depository and a warrant being issued for the purchase of a new certificate of deposit. However, if renewed, the interest due the political subdivision shall be paid to the treasurer at each maturity date, or the records should show transactions which will reflect the true financial condition and the amount invested at all times. The interest shall not be added to the original deposit and reinvested by the depository without being recorded in the records.

Reinvestment in Securities

In the case of the United States Government Securities, the amount received from investments must be receipted into the records and a warrant issued for the purchase of new securities. There is no authority for the "rollover" or reinvestment of securities by a depository; the transactions must be handled through the records of the treasurer.

PROCEDURE FOR POSTING RECORDS AT THE TIME INVESTMENTS ARE PURCHASED OR SOLD

1. At the time investments are purchased, the treasurer and/or bookkeeper should enter the full cost of the securities (purchase price plus accrued interest) as a disbursement from the fund or funds from which the investment is made.

   Where an investment is made from "total monies on deposit," the warrant issued will not be posted in the ledger, but a memorandum account should be set up in a separate section of the ledger to which investment transactions will be posted.

2. When an investment is made from a specific fund, a new fund entitled "Investments Fund" should be set up on the records. The net price (purchase price less accrued interest) should be entered as a receipt to this fund.

   The Investment Register, General Form 350, should be used for keeping a record of all investments purchased by the political subdivision.

3. Interest received in such investments by fund should be entered as a receipt to the fund from which the investment was purchased. Interest received from investment of total monies on deposit should be receipted to the general fund or the fund specified by the governing board.

4. When the investments by fund are sold, the full amount of such sale should be entered as receipt to the fund from which the investment was made. The receipt should show separately the principal (purchase price) received and the interest received from the investment. At this time, the net purchase price (purchase price less accrued interest) should also be entered as a disbursement from the "Investments Fund."

   When the investment from total monies on deposit is sold the principal (purchase price) will not be posted as a receipt to the ledger but the interest thereon will be posted as a receipt to the general fund or fund designated by governing board. Proper entry shall be also be made in the memorandum account, as well as in the Investment Register.

INVESTMENT CASH MANAGEMENT

A political subdivision may contract with a depository for the operation of an investment cash management system under IC 5-13-11. A cash management system provides for the management of the political subdivision's investment by a financial institution which is a designated depository.

Contract Requirements

Pursuant to IC 5-13-11-2, a contract must:

1. Be in writing.
2. Provide for the investment of funds by the depository with the approval of the fiscal officer.
3. Provide that the depository keep those records concerning the cash management system as needed for audits by the State Board of Accounts.
4. Provide that investments will be made in accordance with IC 5-13-9.
5. Not have a term of more than two years.
6. Be awarded under the bidding provisions of IC 5-22 (Public Purchases Law).

Service Charge

The contract may also provide for a service charge. The service charge may be paid by direct charge to the deposit or other account or in any other manner mutually agreed upon by the political subdivision and the depository. [IC 5-13-11-3]

Monthly Report

The depository must furnish the political subdivision with at least one report each month of transactions. [IC 5-13-11-4]

Interest on Investments

Any interest from an investment should be credited to the investment account of the political subdivision and become a part of the principal in that account.

Interest on investments should not be added automatically to the investment. Instead, interest on investments should be paid to the governmental unit at each maturity date and posted to the appropriate fund.

No Willing Designated Depository in Political Subdivision District

If no designated depository whose principal office or branch is located within the political subdivision district will provide an investment cash management service, then a contract may be awarded to a financial institution (as defined in IC 5-13-4-10) outside the political subdivision district as provided in IC 5-13-8-9(c). The financial institution must qualify as a depository.

Contract Renewal

A contract may be renewed if the county board of finance for a county subject to IC 5-13-7-1 or the fiscal body of a political subdivision and the investing officer of the political subdivision agree with the depository to renew the contract under the same terms or better terms as the original contract. The term of the renewed contract may not be longer than the term of the original contract. A contract may be renewed any number of times. [IC 5-13-11-2.5]

LOCAL GOVERNMENT INVESTMENT POOL

The investing officer may pay any funds held by the officer into the local government investment pool for the purpose of deposit, investment, and reinvestment of the funds by the treasurer of state on behalf of the unit of government paying the funds into the investment pool. [IC 5-13-9-11]

TRUSTS AND ENDOWMENTS

Each governmental unit is responsible for complying with any requirements of trust agreements or endowments received which are not contrary to state statute or constitutional provisions.

SECTION G
PUBLIC PURCHASES, PURCHASE OF LAND OR STRUCTURES AND INVENTORY OF CAPITAL ASSETS

The "Public Purchasing Law" applies to every expenditure of public funds by a governmental body, unless specifically exempted in IC 5-22. [IC 5-22-1-1]

GENERAL PROVISIONS

Definitions

IC 5-22-2 contains definitions applicable to the public purchasing statutes. Selected definitions are presented in this section and throughout this chapter.

"**Policy**" refers to a governmental body's or purchasing agency's written statement of purchasing procedure or substantive purchasing purposes that does not have the force and effect of law. [IC 5-22-2-21]

"**Public Funds**" means money derived from the revenue sources of the governmental body and deposited into the general or a special fund of the governmental body. [IC 5-22-2-23(a)]

"**Purchase**" includes buy, procure, rent, lease, or otherwise acquire. The term includes the following activities: description of requirements; solicitation or selection of sources; preparation and award of contract; all phases of contract administration; and all functions that pertain to purchasing. [IC 5-22-2-24]

"**Purchasing Agency**" means a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law. [IC 5-22-2-25]

"**Purchasing Agent**" means an individual authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency. [IC 5-22-2-26]

"**Rule**" refers to an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law. [IC 5-22-2-29]

"**Supplies**" means any property. The term includes equipment, goods, and materials. The term does not include an interest in real property. [IC 5-22-2-38]

Rules and Written Policies

A governmental body may adopt rules to regulate purchases of the governmental body which may supplement IC 5-22 and not be inconsistent with IC 5-22.

The purchasing agency of a governmental body may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase as stated in the solicitation for the purchase. A written policy may supplement this article or a rule adopted by the purchasing agency's governmental body and not be inconsistent with this article or a rule adopted by the purchasing agency's governmental body. [IC 5-22-3-3]

COMPETITIVE BIDDING

A purchasing agent shall follow competitive bidding procedures in awarding a contract for supplies, unless another purchasing method is required or authorized by IC 5-22. [IC 5-22-7-1]

Invitation for Bids

A purchasing agent shall issue an invitation for bids, as defined in IC 5-22-2-14. Pursuant to IC 5-22-7-2, an invitation for bids must include the following:

1. A purchase description. IC 5-22-2-27 defines a "purchase description" as the words used in a solicitation to describe the supplies or services to be purchased. The term includes specifications attached to, or made a part of, the solicitation.

2. All contractual terms and conditions that apply to the purchase.

3. A statement of the evaluation criteria that will be used, including any of the following: inspection; testing; quality; workmanship; delivery; suitability for a particular purpose; and the requirement imposed under IC 5-22-3-5 regarding offers submitted by trusts.

   Evaluation criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable. [IC 5-22-7-3]

   Only criteria specified in the invitation for bids may be used in bid evaluation. [IC 5-22-7-4]

4. The time and place for opening the bids.

5. A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with the rules or policies of the governmental body.

6. A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

Notice of Invitation for Bids

The purchasing agency shall give notice of the invitation for bids in a manner required by IC 5-3-1. [IC 5-22-7-5]

The purchasing agency for a political subdivision may also provide electronic access to the notice through the computer gateway administered by the Indiana Office of Technology or any other electronic means available to the city or town. [IC 5-22-7-5(c)]

Public Opening of Bids

The purchasing agency shall open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7-6]

Acceptance and Evaluation of Bids

Bids must be unconditionally accepted without alteration or correction, except as provided in IC 5-22-7-11 through IC 5-22-7-13 and evaluated based on the requirements provided in the invitation for bids. [IC 5-22-7-7]

Change in Bid Prices. A purchasing agency may not permit changes in bid prices or other provisions of bids prejudicial to the interest of the governmental body or fair competition after bid opening. [IC 5-22-7-11]

Additional Terms or Items. If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may do any of the following:

1. Declare the bidder nonresponsive.

2. Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.

3. Accept any of the proposed additions to the contract, subject to IC 5-22-7-13. [IC 5-22-7-12]

Contract Additions. The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition. [IC 5-22-7-13]

Invitation for Bid Requirements. A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency. [IC 5-22-7-13]

Awarding of Contract

A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. [IC 5-22-7-8]

Erroneous Bid or Mistake

The governmental body may adopt rules or establish policies to allow any of the following:

1. Correction or withdrawal of inadvertently erroneous bids before or after award.

2. Cancellation of awards or contracts based on a mistake described in subdivision (1).

Except as provided in rule or policy, a purchasing agency must make a written decision to permit the correction or withdrawal of a bid or cancel awards or contracts based on bid mistakes. [IC 5-22-7-10]

Maintenance of Information by Purchasing Agency

The purchasing agency shall maintain the following information:

1. The name of each bidder.

2. The amount of each bid.

3. Other information required by this article and rules adopted under this article.

This information is subject to public inspection after each contract award. [IC 5-22-7-9]

SPECIFICATIONS

General Provisions

Economy. A specification must promote overall economy for the purposes intended and encourage competition in satisfying the governmental body's needs. [IC 5-22-5-3]

Rules and Policies. A governmental body may adopt rules or establish policies for the preparation, maintenance, and content of specifications. Rules or policies may include a description of requirements for inspecting, testing, or preparing an item for delivery. [IC 5-22-5-1]

Purchasing Agent Responsibility. A purchasing agent shall prepare, issue, revise, maintain, and monitor the use of specifications. [IC 5-22-5-2]

File of Specifications. The purchasing agency shall maintain an indexed file of specifications prepared by or under the authority of its purchasing agents. [IC 5-22-5-4]

Request for Specifications

A request for specifications may be issued if the purchasing agent makes a written determination that the development of specifications by the governmental body is not feasible and the executive of the governmental body approves the use of a request for specifications under IC 5-22-5-5. [IC 5-22-5-5]

A request for specifications must include the following:

1. Factors or criteria that will be used in evaluating the specifications.

2. A statement concerning the relative importance of evaluation factors.

3. A statement concerning whether discussions may be conducted with persons proposing specifications to clarify the specification requirements. [IC 5-22-5-5]

Notice

The purchasing agent shall give notice of the request for specifications under IC 5-3-1. [IC 5-22-5-5]

Discussion and Revision of Specifications

As provided in the request for specifications, the purchasing agent may discuss proposed specifications with persons proposing specifications to clarify specification requirements. Persons proposing specifications must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposed specifications. [IC 5-22-5-5]

REQUEST FOR PROPOSALS

Subject to the policies of the purchasing agency, a purchasing agent may award a contract using the procedures under IC 5-22-9.

Rules and Policies

The governmental body may provide by rule or policy that it is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by competitive sealed bidding and receiving proposals is the preferred method for purchase of that type of supply. [IC 5-22-9-8]

Content of Request for Proposals

The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

1. The factors or criteria that will be used in evaluating the proposals.

2. A statement concerning the relative importance of price and the other evaluation factors.

3. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with the rules of the governmental body.

4. A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-2]

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. [IC 5-22-9-10]

Notice

The purchasing agency shall give public notice of the request for proposals in the manner required by IC 5-3-1. The purchasing agency for a political subdivision may also provide electronic access to the notice through the electronic gateway administered by the Indiana Office of Technology. [IC 5-22-9-3(c)].

Opening of Proposals

Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. [IC 5-22-9-4]

Discussion and Revision of Proposals

As provided in the request for proposals or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-6]

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

Award

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

If provided in the request for proposals, award may be made to more than one offeror whose proposals are determined in writing to be advantageous to the governmental body, taking into consideration price and other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

Register of Proposals

A register of proposals must be prepared and open for public inspection after contract award. The register of proposals must contain the following:

1. A copy of the request for proposals.

2. A list of all persons to whom copies of the request for proposals were given.

3. A list of all proposals received, which must include all the following:

   a. The names and addresses of all offerors.

   b. The dollar amount of each offer.

   c. The name of the successful offeror and the dollar amount of that offeror's offer.

4. The basis on which the award was made.

5. The entire contents of the contract file except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals. [IC 5-22-9-5]

SMALL PURCHASES

General Provisions

The small purchase chapter, IC 5-22-8, applies only to a purchase expected by the purchasing agent to be less than $150,000. [IC 5-22-8-1]

Purchase requirements may not be artificially divided so as to constitute a small purchase under IC 5-22-8. [IC 5-22-8-1]

Quotes

Solicitation of Quotes. If the purchasing agent expects the purchase to be at least $50,000 and not more than $150,000, the purchasing agent may purchase supplies by inviting quotes from at least three persons known to deal in the lines or classes of supplies to be purchased. [IC 5-22-8-3]

The purchasing agent shall mail an invitation to quote at least seven days before the time fixed for receiving quotes. [IC 5-22-8-3]

Award of Contract. If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line or class of supplies required. [IC 5-22-8-3]

Rejection of Quotes. The purchasing agent may reject all quotes. [IC 5-22-8-3]

No Satisfactory Quote Received. If the purchasing agent does not receive a quote from a responsible and responsive offeror, the purchasing agent may purchase the supplies under IC 5-22-10-10. [IC 5-22-8-3]

Small Purchase Policies

If the purchasing agent expects the purchase to be less than $50,000, the purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body. [IC 5-22-8-2]

SPECIAL PURCHASING METHODS

Notwithstanding any other provision of IC 5-22, a purchasing agent may make a purchase under IC 5-22-10 without soliciting bids or proposals. [IC 5-22-10-1]

Administrative Requirements

Listing of Contracts. A governmental body shall maintain a record listing all contracts made under IC 5-22-10 for a minimum of five years. The record must contain the following information:

1. Each contractor's name.

2. The amount and type of each contract.

3. A description of the supplies purchased under each contract. [IC 5-22-10-3]

Contract Files. A purchasing agent shall maintain the contract records for a special purchase in a separate file. A purchasing agent shall include in the contract file a written determination of the basis for the special purchase and the selection of a particular contractor. The contract records for a special purchase are subject to annual audit by the State Board of Accounts. [IC 5-22-10-3]

Competition. A special purchase must be made with competition as is practicable under the circumstances. [IC 5-22-10-2]

Emergency Conditions

A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety. [IC 5-22-10-4]

Savings to Governmental Body

A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body. [IC 5-22-10-5]

Auctions

A purchasing agent may make a special purchase at an auction. [IC 5-22-10-6]

Data Processing Contract or License Agreements

A purchasing agent may make a special purchase of data processing contracts or license agreements for software programs or supplies or services when only one source meets the using agency's reasonable requirements. [IC 5-22-10-7]

Compatibility of Equipment, Accessories, or Replacement Parts

A purchasing agent may make a special purchase when the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase and only one source meets the using agency's reasonable requirements. [IC 5-22-10-8]

Purchasing Method Impairs Functioning of Agency

A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency. [IC 5-22-10-9]

No Offer Received Under Other Purchasing Method

A purchasing agent may make a special purchase when the purchasing agency has solicited for a purchase under another purchasing method described in IC 5-22 and has not received a responsive offer. [IC 5-22-10-10]

Evaluation of Supplies or System Containing Supplies

A purchasing agent may make a special purchase for the evaluation of supplies or a system containing supplies for any of the following reasons:

A. To obtain functional information or comparative data.

B. For a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body. [IC 5-22-10-11]

Governmental Discount Available

A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price. [IC 5-22-10-12]

Single Source for Supply

Subject to IC 5-22-10-14 and IC 5-22-10-15, a purchasing agent may award a contract for a supply when there is only one source for the supply and the purchasing agent determines in writing that there is only one source for the supply. [IC 5-22-10-13]

Efficiency and Economic Advantages

A purchasing agent may make a purchase from a person when the purchasing agent determines in writing that supplies can be purchased from the person or the person's authorized representative at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration; and it is advantageous to the governmental body's interest in efficiency and economy. [IC 5-22-10-14]

Contract With a Federal Agency

A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions. [IC 5-22-10-15]

Contract With a State Agency

A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions. [IC 5-22-10-15]

Transfer From Federal Government

A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals. [IC 5-22-10-16]

Appropriation. A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds to pay the consideration required for one year of the agreement. [IC 5-22-10-16]

Notice. A purchasing agent who purchases or leases surplus federal materials shall, at the time of the purchase or lease, or immediately thereafter, give public notice in accordance with IC 5-3-1. [IC 5-22-10-16]

Acceptance of Gift

A purchasing agent may acquire supplies by accepting a gift for the purchasing agent's governmental body. [IC 5-22-10-17]

Purchase From a Public Utility

A purchasing agent may make a special purchase from a public utility if the purchase or lease price is a negotiated price that considers the results of an independent appraisal that the purchasing agency obtains and an independent appraisal that the public utility obtains. [IC 5-22-10-19]

PURCHASES FROM THE DEPARTMENT OF CORRECTION

Subject to IC 5-22-11-2, a governmental body shall purchase from the department of correction supplies and services produced or manufactured by the department under IC 11-10-6 as listed in the department's printed catalog unless the supplies and services cannot be furnished in a timely manner. [IC 5-22-11-1]

Supplies and services purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market value. [IC 5-22-11-2]

PURCHASE OF REHABILITATION CENTER PRODUCTS

Definitions

"Bureau" refers to the Rehabilitation Services Bureau of the Division of Disability and Rehabilitative Services established under IC 12-12-1-1. [IC 5-22-12-2]

"Rehabilitation Center" refers to the rehabilitation center established under IC 12-12-3-1. [IC 5-22-12-3]

General Provisions

A governmental body shall purchase articles produced by the rehabilitation center under the same conditions as articles produced by the department of correction under IC 5-22-11, unless similar articles are produced by the governmental body. [IC 5-22-12-4]

Whenever a governmental body needs an article listed in the catalog published by the bureau, the governmental body:

1. shall give the Bureau a reasonable time to produce or supply the article; and

2. except for an article produced by the Department of Correction, may not elsewhere contract for, purchase or pay a bill for an article described in the catalog unless the article cannot be furnished by the Bureau. [IC 5-22-12-6]

A governmental body may contract elsewhere for purchase of an article described in the catalog if the bureau gives a written statement that the bureau cannot furnish the article. [IC 5-22-12-6]

Supplies purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market price. [IC 5-22-12-7]

PURCHASES FROM QUALIFIED NONPROFIT AGENCIES FOR PERSONS WITH SEVERE DISABILITIES

The governmental body of a political subdivision may purchase supplies and services without advertising or calling for bids from a qualified agency under the same conditions as supplies produced by the department of correction are purchased under IC 5-22-11. [IC 5-22-13-2]

Supplies and services purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market price. [IC 5-22-13-5]

SMALL BUSINESS SET-ASIDE PURCHASES

Definitions

"Small business" means a business that is independently owned and operated, is not dominant in its field of operation, and satisfies the criteria in the rules adopted under IC 5-22-14-3. [IC 5-22-14-1]

"Small business set-aside" means a purchase in which the solicitation states that offers will be accepted only by small businesses. [IC 5-22-14-2]

Rules

A governmental body may adopt rules to implement IC 5-22-14. The rules must establish criteria for determining qualifications as a small business. IC 5-22-14-3 contains criteria which must be included in the rules. The governmental body may also receive assistance from the Indiana Economic Development Corporation to establish criteria or to implement the rules. [IC 5-22-14-3]

A purchase from a small business under IC 5-22-14 is subject to all other provisions of IC 5-22 and the rules of the governmental body. [IC 5-22-14-10]

Designation as a Small Business Set-Aside

1. A small business designation must be made before the solicitation for the purchase is issued and the public notice of the purchase must state that the purchase is a small business set-aside. [IC 5-22-14-4]

2. If a purchase is designated as a small business set-aside, the solicitation must be confined to small businesses. [IC 5-22-14-6]

3. A governmental body that has adopted rules under IC 5-22-14 may identify as a small business set-aside specific supplies for which purchase has been requested under IC 5-22. [IC 5-22-14-4]

4. A governmental body may not designate a purchase as a small business set-aside unless there is a reasonable expectation that offers will be obtained from at least two small businesses capable of furnishing the desired supplies or service at a fair and reasonable price. [IC 5-22-14-5]

Award of Contract

A contract shall be awarded to the lowest responsible and responsive offeror among the small businesses in accordance with the rules of the governmental body. [IC 5-22-14-7]

Rejection of Offers

If the purchasing agent determines that acceptance of the lowest responsible and responsive offer will result in the payment of an unreasonable price, the purchasing agent shall reject all offers and may withdraw designation of the purchase as a small business set-aside.

Assistance From Indiana Economic Development Corporation

The Indiana Economic Development Corporation may assist a governmental body in doing any of the following:

1. Compiling and maintaining a comprehensive list of small businesses.

2. Assisting small businesses in complying with the procedures for bidding on governmental contracts.

3. Examining requests from governmental bodies for the purchase of supplies to help determine which purchases are to be designated small business set-asides.

4. Simplifying specifications and contract terms to increase the opportunities for small business participation in governmental contracts.

5. Investigations by a governmental body to determine the responsibility of offerors on small business set-asides. [IC 5-22-14-9]

PETROLEUM PRODUCTS

A purchasing agent may award a contract for petroleum products to the lowest responsible and responsive offeror or all responsible and responsive offerors. The contract may allow for the escalation or de-escalation of price.

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 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]

SERVICES

Definitions

"**Services**" means the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance. [IC 5-22-2-30]

General Provisions

The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate. [IC 5-22-6-1]

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts.

Rules and Policies

A governmental body may adopt rules governing the purchase of services for the governmental body. The purchasing agency of a governmental body may establish policies regarding the purchase of services for the governmental body. [IC 5-22-6-2]

Contracts for Collection Services

A unit of local government or an agency of a unit of local government may contract with a collection agency to collect amounts due and authorize the collection agency to collect from the debtor a collection fee. [IC 5-22-6.5-3]

The governmental body shall award a contract for collection services using any procedure authorized by statute. [IC 5-22-6.5-4]

QUALIFICATIONS AND DUTIES OF OFFERORS

Responsibility of Offeror

Written Determination. If the purchasing agent determines that an offeror is not responsible, that determination must be made in writing by the purchasing agent. [IC 5-22-16-1]

Factors. In determining whether an offeror is responsible, a purchasing agent may consider the following factors:

1. The ability and capacity of the offeror to provide the supplies or service.

2. The integrity, character, and reputation of the offeror.

3. The competency and experience of the offeror. [IC 5-22-16-1]

Failure to Provide Information. If an offeror fails to provide information required by the purchasing agent concerning a determination of whether the offeror is responsible, that offeror may not be considered responsible. Information furnished by an offeror shall not be disclosed outside the purchasing agency without the offeror's prior written consent. [IC 5-22-16-1]

Foreign Corporation. An offeror that is a foreign corporation must be registered with the Secretary of State to do business in Indiana in order to be considered responsible. The purchasing agent may award a contract to an offeror pending the offeror's registration with the Secretary of State. If, in the judgment of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. [IC 5-22-16-4]

Responsiveness of Offeror

In determining whether an offeror is responsive, a purchasing agent may consider the following factors:

1. Whether the offeror has submitted an offer that conforms in all material respects to the specifications.

2. Whether the offeror has submitted an offer that complies specifically with the solicitation and the instructions to offerors.

3. Whether the offeror has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. [IC 5-22-16-2]

Prequalified Contractors

Prospective contractors may be prequalified for particular types of supplies. Solicitation mailing lists of potential contractors may include any or all of such prequalified persons. [IC 5-22-16-3]

Evidence of Financial Responsibility

Solicitation. A purchasing agent may specify in a solicitation that an offeror must provide evidence of financial responsibility in order to be considered responsible. The evidence of financial responsibility may be a bond, certified check, or other evidence specified by the purchasing agent in the solicitation. An offeror must file evidence of financial responsibility in the amount, at the time and as specified by the purchasing agent in the solicitation. [IC 5-22-16-5]

Amount. If a bond or certified check is required as the evidence of financial responsibility, the amount of the bond or certified check may not be set at more than ten percent of the contract price. The bond, certified check, or other evidence of financial responsibility shall be made payable to the governmental body. [IC 5-22-16-5]

Check of Successful Offeror. The check of a successful offeror shall be held until delivery or until completion of the contract. [IC 5-22-16-5]

Check of Unsuccessful Offeror. The check of an unsuccessful offeror shall be returned to the offeror by the purchasing agent upon selection of successful offerors. [IC 5-22-16-5]

Performance Bond

A performance bond may be required in addition to the bond, certified check or other evidence of financial responsibility if the amount of the performance bond is stated in the solicitation. [IC 5-22-16-5]

Affirmation by Offeror

An offeror must file with the purchasing agent an affirmation, made under the penalties for perjury, that states in substance the following:

1. The offeror has not entered into a combination or an agreement: relative to the price to be offered by a person; to prevent a person from making an offer; or to induce a person to refrain from making an offer.

2. The offeror's offer is made without reference to any other offer.

The purchasing agent may require the affirmation to be made in the contract documents.

The purchasing agent shall reject an offer that the purchasing agent finds to be collusive.

If after the purchasing agent has awarded the contract, the purchasing agent discovers that the successful offeror's affirmation was false, the purchasing agent shall declare the contract forfeited and award a new contract. [IC 5-22-16-6]

DISQUALIFICATION OF CONTRACTORS DEALING WITH THE GOVERNMENT OF IRAN

IC 5-22-16.5 requires the Indiana Department of Administration to develop and publish a list of vendors that would be disqualified due to dealing with Iran. There are exceptions for vendors that would be disqualified and the steps that political subdivisions must take in order to do business with these vendors. A contractor being awarded a contract must certify in writing that the person is not engaged in investment activities in Iran. The certification is to be placed in the contract file.

PURCHASING PREFERENCES

Rules

A governmental body may adopt rules to implement the statutes governing purchasing preferences. [IC 5-22-15-15]

Allowable Preferences

A offeror may claim one of the following types of preference for which the offeror is eligible:

1. An Indiana business preference under rules adopted under IC 5-22-15-20 or IC 4-13.6-6-2.5.

2. A preference for supplies as provided by sections 16, 18, 19 and 24 of IC 5-22-15.

3. An Indiana small business preferences as provider by section 23 of IC 5-22-15.

An offeror may not claim more than one preference as provided by sections 16, 18, 19 and 24 of IC 5-22-15 for a given supply item. [IC 5-22-15-7]

Claiming a Preference

An offeror who wants to claim a preference provided under this chapter for a given supply item must indicate in the offer what supply item in the offer is a preferred supply. [IC 5-22-15-8]

A purchasing agent may require an offeror who claims a preference for a given supply item under IC 5-22-15-8 to certify that the supply offered meets the qualifications set for preferred supplies. [IC 5-22-15-9]

Computation of Adjusted Offer

If an offeror offers a preferred supply for a given supply item, the purchasing agent shall compute an adjusted offer for that item according to the following formula:

STEP ONE: Determine the price preference percentage for the supply item under this chapter.

STEP TWO: Multiply the offeror's offer for the supply item by the percentage determined under STEP ONE.

STEP THREE: Subtract the number determined under STEP TWO from the offeror's offer for the supply item.

This computation does not apply to an absolute preference, as defined in IC 5-22-15-2. [IC 5-22-15-10]

Contract Award

Notwithstanding any statute requiring the award of a contract to the lowest offeror, but subject to IC 5-22-15-12, a purchasing agent shall award a contract to the offeror whose total adjusted offer is lower than the total adjusted offer of each other offeror. [IC 5-22-15-11]

The award of a contract under IC 5-22-15-11 is subject to the following:

1. A requirement of an applicable statute to award a contract to a responsible and responsive bidder.

2. A requirement of an applicable statute to award a contract to the best bidder or, in the case of a purchase under IC 5-22-9, to the offeror whose offer is most advantageous to the governmental body.

3. The authority of the purchasing agent under IC 5-22-17-12 to award contracts separately or for a combination of a line or class of supplies. [IC 5-22-15-12]

If the purchasing agent awards contracts separately, or for a combination of a line or class of supplies under an applicable law, the purchasing agent shall compute total adjusted offers and award contracts as if each combination of liens or classes of supplies to be awarded a contract had been solicited separately. [IC 5-22-15-13]

The price paid for preferred supplies purchased under a contract shall be the price offered for the supplies and not the adjusted offer price of the supplies. [IC 5-22-15-14]

Price Preferences

1. Price preference for supplies that contain recycled materials or post consumer materials which meet the standards set by rules adopted by the governmental body, policies established by the purchasing agency, or the solicitation. The price preference may not be less than ten percent or exceed fifteen percent. [IC 5-22-15-16]

2. Price preference of ten percent for the purchase of soy diesel/bio diesel which meets the standards set forth in IC 5-22-15-19. [IC 5-22-15-19]

3. Price preference to Indiana Businesses. A governmental body may adopt rules to give a preference to an Indiana Business that submits an offer for a purchase if the requirements of IC A5-22-18-20 are met. [IC 5-22-15-20]

4. Price preference of fifteen percent for supplies to an Indiana small business (as defined in IC 5-22-14-1) that submits an offer for purchase under IC 5-22. [IC 5-22-15-23]

5. High calcium foods and beverages are preferred supplies. This section applies to a governmental entity listed in IC 5-22-15-1 or a business that contracts with a governmental entity listed in IC 5-22-15-1 that purchases food or beverages to be processed and served in a building or room owned or operated by a governmental entity. [IC 5-22-15-24]

6. A purchasing agency may provide for a Local Indiana Business Price Preference under IC 5-22-15-20.9.

Coal Mined in Indiana

Whenever a purchasing agent purchases coal for use as fuel, the purchasing agent shall give an absolute preference to coal mined in Indiana. This does not apply if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased. [IC 5-22-15-22]

"Absolute preference" means a requirement that a governmental body must purchase supplies regardless of price. [IC 5-22-15-22]

Supplies Manufactured in the United States

A governmental body shall adopt rules to promote the purchase of supplies manufactured in the United States. These rules shall provide that supplies manufactured in the United States shall be specified and purchased unless the governmental body determines that the requirements of IC 5-22-15-21(c) are met. [IC 5-22-15-21]

Supplies Made Using Forced Labor

If an offeror offers to furnish supplies made in a county other than the United States, a governmental body may not award a contract to the offeror for those supplies if the supplies were made using forced labor. As used in this section, "forced labor" has the meaning set forth in 19 U.S.C. 1307.

A governmental body shall inform offerors in the solicitation of the provisions of this section. [IC 5-22-15-24.2]

Steel Products

A solicitation must require that if any steel products are used in (1) the manufacture of the supplies required under the contract; or (2) supplies used in the performance of the services under the contract by the contractor or a subcontractor of the contractor; the steel products must be manufactured in the United States. [IC 5-22-15-25(c)]

IC 5-22-15-25(c) does not apply if the: (1) head of the purchasing agency determines in writing that: (A) the cost of the contract with the requirements of subsection (c) would be greater than one hundred fifteen percent (115%) of the cost of the contract without the requirements of subsection (c); and (B) failure to impose the requirements of subsection (c) would not in any way: (I) harm the business of a facility that manufactures steel products in Indiana; (ii) result in the reduction of employment or wages and benefits of employees of facility described in item (i); or (2) purchase is: (A) less than ten thousand dollars ($10,000); and (B) made under the small purchase policies (as described in IC 5-22-8-2(b)) established by the purchasing agency or under rules adopted by the governmental body.

A purchasing agency shall inform offerors in the solicitation of the provisions of this section.

CONTRACT PROVISIONS

Cost Plus a Percentage of Cost Contract

A governmental body may not enter into a cost plus a percentage of cost contract. [IC 5-22-17-1]

Cost Reimbursement Contract

A governmental body may enter into a cost reimbursement contract if the purchasing agent determines in writing that the contract is likely to be less costly to the governmental body than any other contract type, or that it is impracticable to obtain the supplies required except under such a contract. [IC 5-22-17-2]

Time Period

A contract for supplies may be entered into for a period not to exceed four years. However, this does not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity. [IC 5-22-17-3]

Appropriations

The contract must specify that payment and performance obligations are subject to the appropriation and availability of funds. [IC 5-22-17-3]

A political subdivision must have available a sufficient appropriation balance or an approved additional appropriation before a purchasing agent may award a contract. [IC 5-22-17-3]

The foregoing two paragraphs do not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity. [IC 5-22-17-3]

When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled. [IC 5-22-17-5]

Renewal of Contracts

Subject to IC 5-22-17-5, a contract may be renewed any number of times with the agreement of the contractor and purchasing agency. However, the term of a renewed contract may not be longer than the term of the original contract. A contract that contains a provision for escalation of the price of the contract may be renewed under this section if the price escalation is completed using a commonly accepted index named in the contract or a formula set forth in the contract. [IC 5-22-17-4]

Early Performance

The purchasing agent may specify in a contract that early performance of the contract will result in increased compensation at either a percentage of the contract amount or a specific dollar amount determined by the purchasing agent. Notice of inclusion of this contract provision must be included in the solicitation. [IC 5-22-17-6]

Late Performance

The purchasing agent may specify in a contract that completion of the contract after the termination date of the contract will result in a deduction from the compensation in the contract at either a percentage of the contract amount or a specific dollar amount determined by the purchasing agent. Notice of inclusion of this contract provision must be included in the solicitation. [IC 5-22-17-6

Modification of Contracts

A governmental body may establish policies or adopt rules permitting or requiring any of the following:

1. The inclusion of clauses providing for adjustments in prices or time of performance.

2. The inclusion of contract provisions dealing with either of the following:

   A. The unilateral right of the governmental body to order in writing either of the following:

      1. Changes in the work within the scope of the contract.

      2. Temporary stopping of the work or delaying performance.

   B. Variations occurring between estimated quantities of work in a contract and actual quantities. [IC 5-22-20-1]

Adjustments in Price

Adjustments in price must be computed in one or more of the following ways:

1. By agreement on a fixed price adjustment before the beginning of the pertinent performance or as soon after the beginning of the performance as practicable.

2. By unit prices specified in the contract or subsequently agreed upon.

3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.

4. In such other manner as the contracting parties may mutually agree.

5. In the absence of agreements by the parties, by a unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable rules adopted by the governmental body. [IC 5-22-20-2]

OTHER ADMINISTRATIVE REQUIREMENTS

Public Notice

Whenever public notice is required by this article, notice shall be given by publication in the manner prescribed by IC 5-3-1. The purchasing agent may give notice other than as required in IC 5-3-1 that the purchasing agent considers will increase competition. [IC 5-22-18-1]

The purchasing agent shall schedule all notices to provide a reasonable amount of time for preparation and submission of responses after notification. The period between the last publication, mailing, or posting of notices and the final date set for submitting offers must be at least seven calendar days. [IC 5-22-18-1]

Electronic Transmissions of Material

Whenever IC 5-22 requires that notice or other material be sent by mail, the material may be sent by electronic means as stated in any of the following:

1. Rules adopted by the governmental body.
2. Written policies of the purchasing agency.
3. A solicitation.

Electronic Transmissions of Material (continued)

These rules, written policies, and solicitation statements are subject to IC 5-22 and must provide that the transmission of information is at least as efficient and secure as sending the material by mail.

A governmental body may receive electronic offers if both of the following apply:

1. The solicitation indicates the procedure for transmitting the electronic offer to the governmental body.

2. The governmental body receives the offer on a fax machine, by electronic mail, or by means of another system that has a security feature that protects the content of an electronic offer with the same degree of protection as the content of an offer that is not transmitted by electronic means. [IC 5-22-3-4]

Acceptance of Offer

Within thirty days after the acceptance of an offer, the purchasing agent shall deliver in person or by first class mail to the successful offeror the original of each purchase order or lease, retain a copy for the purchasing agent's records, and file a copy for public record and inspection as follows:

1. When a purchase or lease is made for a county or municipality, the copy of the purchase order or lease must be filed with the fiscal officer of the unit.

2. When a purchase or lease is made for a township, the copy of the purchase order or lease must be filed with the fiscal officer of the county.

3. When a purchase or lease is made for a school corporation or a quasi-public corporation, the copy of the purchase order or lease must be filed with the records of the corporation. [IC 5-22-18-5]

Award of Contracts

Award to Different Offerors. A solicitation may provide that offers will be received and contract will be awarded separately or for any combination of a line or a class of supplies or services contained in the solicitation. [IC 5-22-17-12]

If the solicitation does not indicate how separate contracts might be awarded, the purchasing agent may award separate contracts to different offerors under this section only if the purchasing agent makes a written determination showing that the award of separate contracts is in the interest of efficiency or economy. [IC 5-22-17-12]

Award to Other Than Lowest Offeror. If the purchasing agent awards a contract for a line or class of supplies or services, or any combination of lines or classes, to an offeror other than the lowest offeror the purchasing agent must make a written determination stating the reasons for awarding a contract to that offeror. [IC 5-22-17-12]

Unspecified Number of Items. A solicitation may provide that the purchasing agent will award a contract for supplies or services for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price. [IC 5-22-17-13]

Cancellation of Solicitation and Rejection of Offers

When the purchasing agent determines it is in the best interests of the governmental body, a solicitation may be canceled or offers may be rejected in whole or in part as specified in the solicitation. The reasons for a cancellation of a solicitation or rejection of offers must be made a part of the contract file. [IC 5-22-18-2]

Offers Opened After Time Stated in Solicitation

Notwithstanding any other law, offers may be opened after the time stated in the solicitation if both of the following apply:

1. The governmental body makes a written determination that it is in the best interest of the government body to delay the opening.

2. The day, time, and place of the rescheduled opening is announced at the day, time, and place of the originally scheduled opening. [IC 5-22-18-3]

Contract and Purchasing Records

Except as provided by another law, contract and purchasing records are public records subject to public inspection under IC 5-14-3.

A governmental body may establish policies or adopt rules for the protection of documents submitted to the governmental body in response to a solicitation.

Policies or rules may provide procedures for the following:

1. Protection of offers before opening to prevent disclosure of contents.

2. Afford unobstructed evaluation of offers and award of contracts by the purchasing agent after opening.

3. Protection of offers from tampering before and after opening. [IC 5-22-18-4]

ONLINE REVERSE AUCTIONS

Definitions

"Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web. [IC 5-22-2-13.5]

"Internet purchasing site" means an open and interactive electronic environment that is designed to facilitate the purchase of supplies by means of the Internet. The term includes an Internet purchasing site developed under IC 4-13-17. [IC 5-22-2-13.7]

"Reverse auction" means a method of purchasing in which offerors submit offers in an open and interactive environment through the internet. [IC 5-22-2-28.5]

A government body conducting a reverse auction must receive electronic offers for supplies through an Internet purchasing site. [IC 5-22-7.5-1]

A purchasing agency may conduct a reverse auction for the purchase of supplies by using an Internet purchasing site to: (1) issue an invitation for bids; and (2) receive bids. Except as provided in this chapter, a purchasing agency and a bidder must comply with the requirements of this article when participating in a reverse auction. [IC 5-22-7.5-1]

Policy

Before conducting a reverse auction, the purchasing agency must adopt written policies that do the following: (1) Establish procedures for all the following: (A) Transmitting notices, solicitations, and specifications. (B) Receiving offers. (C) Making payments. (D) Protecting the identify of a bidder or an offeror; (E) For a reverse auction, proving for the display of the amount of each offer previously submitted for public viewing. (F) Establishing the deadline by which offers must be received and will be considered to be open and available for public inspection. (G) Establishing the procedure for the opening of offers. (2) Require the purchasing agency to maintain adequate documentation regarding reverse auctions so that the transactions may be audited as provided by law. Written policies that comply with rules for an Internet public purchasing sale adopted by the Indiana department of administration under IC 4-13-17-4 satisfy the requirements of this section. [IC 5-22-7.5-2]

Notice

The purchasing agency shall give notice of the invitation for bids in the manner required by IC 5-3-1. The purchasing agency for a state agency shall also provide electronic access to the notice through the computer gateway administered by the Indiana Office of Technology. The purchasing agency for a political subdivision may also provide electronic access to the notice through; (1) the computer gateway administered by the Indiana Office of Technology; or (2) any other electronic means available to the political subdivision. [IC 5-22-7.5-5]

Bids

If a purchase agency issues an invitation for bids using a reverse auction conducted through an internet purchasing site under this chapter, only bids made: (1) in accordance with the policies described in section 2 of this chapter; and (2) through the Internet purchasing site; may be evaluated by the purchasing entity at the close of bidding. [IC 5-22-7.5-3]

When used for a reverse auction, an internet purchasing site must do the following: (1) Provide information that the purchasing entity considers necessary or beneficial to potential bidders. (2) Display the amount of all bids previously submitted regarding the reverse auction for public viewing. (3) Conceal information that identifies a bidder. (4) Comply with this article. [IC 5-22-7.5-4]

For purposes of IC 5-22-7-6, a bid made through an Internet purchasing site is considered to be opened when a computer generated record of the information contained in all bids for a proposed purchase that were received by the site not later than the posted bid deadline is reviewed publicity by the purchasing agency in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7.5-6]

Fees

The purchasing agency may charge a bidder in a reverse auction a fee set in the written policies adopted under section 2 of this chapter. [IC 5-22-7.5-5]

OVERPAYMENT COLLECTIONS

Governmental units should collect any overpayments made.

ADVANCE PAYMENTS

Compensation and any other payments for goods and services should not be paid in advance of receipt of the goods or services unless specifically authorized by statute. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee.

PURCHASING BONUSES

Any compensation, premium, bonus, or product earned as a result of the purchase of goods or services by the governmental unit becomes the property of the governmental unit.

PURCHASE OF LAND OR STRUCTURES [IC 36-1-10.5]

Application

IC 36-1-10.5 sets out certain procedures to be followed when purchasing real property costing more than $25,000. This applies to political subdivisions and their agencies. However, certain purchases are exempted from the requirements of IC 36-1-10.5. These exemptions are listed in IC 36-1-10.5-1(b). [IC 36-1-10.5-1]

Definition of Structure

Structure is defined to mean:

1. a building used in connection with the operation of a political subdivision; or

2. a parking facility as defined in IC 36-9-1.

The term includes the site, equipment, and appurtenances to the building or parking facility. [IC 36-1-10.5-4]

Required Procedures

The purchasing agent shall purchase the land or structure after the following procedures have been followed:

1. The fiscal body of the political subdivision shall pass an ordinance or resolution to the effect that it is interested in making a purchase of specified land or a structure.

2. The purchasing agent shall appoint two appraisers to appraise the fair market value of the land or structure. The appraisers must be professionally engaged in making appraisals or be trained as an appraiser and licensed as a broker under IC 25-34.1.

3. The appraisers shall return their separate appraisals to the purchasing agent within thirty days after the date of their appointment. The purchasing agent shall keep the appraisals on file in the purchasing agent's office for five years after they are given to the purchasing agent.

4. The purchasing agent shall give a copy of both appraisals to the fiscal body. [IC 36-1-10.5-5]

Limitation

The purchasing agent may not purchase any land or structure for a price greater than the average of the two appraisals received under IC 36-1-10.5-5. [IC 36-1-10.5-6]

CAPITAL ASSETS

Every governmental unit should have a complete inventory of all capital assets owned which reflects their acquisition value. Such inventory should be recorded in the Capital Assets Ledger, City and Town Form 211, or properly approved form, as applicable. A complete inventory should be taken every year for good internal control and for verifying account balances carried in the accounting records.

Capitalization Policy

The governing body should establish a capitalization policy that sets a dollar amount as a threshold to be used in determining which items will be recorded.

Land

The records of each governmental unit should reflect land owned, its location, its acquisition date and the cost (purchase price). If the purchase price is not available, appraised value may be used.

Infrastructure

A capital asset account for the cost of infrastructure should reflect the location of each road, bridge, tunnel, drainage system, stormwater system, dam, or lighting system.

Buildings

A capital asset account for buildings should reflect the location of each building and the cost value (being the purchase or construction cost) and the cost of improvements, if applicable. If a building is acquired by gift, the account should reflect its appraised value at the time of acquisition.

Improvements Other Than Buildings

A capital asset account should reflect the acquisition value of permanent improvements, other than buildings, which have been added to the land. Examples of such improvements are fences, retaining walls, sidewalks, and gutters. The improvements should be valued at the purchase or construction cost.

Equipment

Tangible property of a permanent nature (other than land, buildings and improvements) should be inventoried. Examples include machinery, trucks, cars, furniture, typewriters, adding machines, calculators, bookkeeping machines, data processing equipment, desks, safes, cabinets, books, etc. The value of such items should be carried in the inventory at the purchase cost.

Construction Work In Progress

Where construction work has not been completed in the current reporting calendar year, the cost of the project should be carried as “construction work in progress.” When the project is completed, it will be placed on the inventory applicable to the assigned asset accounts.

SAMPLE

SUGGESTED FORMAT

SPECIAL PURCHASE CONTRACT FILE LIST

Contract No.	Date of Contract	Contractor Name	Contract Amount	Type of Contract	Description of Supplies	IC Reference Basis for Special Purchase	Basis of Selection of Contractor

Sample

Source: IC 5-22-10-3

SAMPLE
SUGGESTED FORMAT

Register of Proposals

Date: _____

Supplies: _____

ATTACH A COPY OF THE REQUEST FOR PROPOSALS AND A LIST OF ALL PERSONS TO WHOM COPIES OF THE REQUEST FOR PROPOSALS WERE GIVEN

Please Type or Print Legibly

Name of Offeror	Address	Amount of Offer

Sample

Source: IC 5-22-9-5

Successful Proposal:

Name of Offeror: _____

Amount of Offer: _____

Basis for Award: _____

SAMPLE
SUGGESTED FORMAT

INDEX TO SPECIFICATIONS

Date Specifications Adopted	Type of Supply	Requesting Department	Solicitation Type

Sample

Source: IC 5-22-5-4

SAMPLE
SUGGESTED FORMAT

Bid Record for Invitation for Bids

Date of Bid Opening: _____
Supplies Requested: _____
Requesting Agency: _____

Please Type or Print Legibly

Name	Address	Bid Amount	Other Information

Sample

Source: IC 5-22-7-9

SAMPLE
SUGGESTED FORMAT

Checklist for Invitation for Bids

Type of Supply _____

Requesting Agency _____

_____ Purchase Description

_____ Evaluation Criteria to Be Used (Circle Selections)

Inspection
Testing
Quality
Workmanship
Delivery
Requirements Imposed on Trusts

_____ Applicable Contract Terms and Conditions

_____ Time and Place for Opening Bid

_____ Evidence of Financial Responsibility Required? (Circle Selection)

Certified Check
Bid Bond
Other _____ (specify)

_____ Performance Bond Required?

_____ Statement of Conditions Under Which Invitation May Be Canceled

_____ Statement of Conditions Under Which Bid May Be Rejected in Whole or in Part

_____ Notice of Invitation for Bids Published

First Date of Publication _____
Second Date of Publication _____

_____ Form of Non-Collusion Affidavit

Source: IC 5-22-7-2

Sample

SAMPLE
SUGGESTED FORMAT

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
)
_____ COUNTY)

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

Sample

_____
Offeror (Firm)

_____
Signature of Offeror or Agent

Subscribed and sworn to before me this _____ day of _____, 1998.

My Commission Expired: _____ _____
Notary Public

County of Residence _____

Source: IC 5-22-16-6

SECTION H - PUBLIC WORKS LAW

GENERAL PROVISIONS

The **"Public Works Law"** [IC 36-1-12] applies to all public work performed or contracted by political subdivisions and their agencies. Any public work performed on property leased with an option to purchase is also included. [IC 36-1-12-1]

The term **"public work"** means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. [IC 36-1-12-2]

A contract for public work by a political subdivision or agency is void if it is not let in accordance with IC 36-1-12. [IC 36-1-12-16]

PUBLIC WORK PROJECTS FOR WHICH ADVERTISING AND BIDDING IS REQUIRED

Whenever the cost of a public work project is estimated to be $150,000 or more, the board must comply with the following procedures:

Plans and Specifications

The board shall prepare general plans and specifications 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 Department of Health, the Division of Fire and Building Safety, and other state agencies designated by statute. [IC 36-1-12-10]

Notice

Upon filing of the plans and specifications, the board shall publish a notice two times, at least one week apart, with the second publication made at least seven days before the date the bids will be received, calling for sealed proposals for the public work. [IC 36-1-12-4(b)(3)] [IC 5-3-1-2(e)]

The notice must specify the place where the plans and specifications are on file, the date fixed for receiving bids, and the amount of the bond or certified check to be filed with each bid. A bond or certified check is required for all projects with an estimated cost of more than two hundred thousand dollars ($200,000). [IC 36-1-12-4(b)(4)]

The period of time between the date of the first publication and the date of receiving bids may not be more than six weeks if the estimated cost of the project is less than $25 million dollars or ten weeks if the estimated cost is at least $25 million dollars. [IC 36-1-12-4(b)(5)]

Evidence of Financial Responsibility

A bond or certified check shall be filed with each bid by a bidder in the amount specified by the board if the cost of the public work is estimated to be more than two hundred thousand dollars ($200,000). The amount may not be more than 10% of the contract price. The bond or certified check shall be made payable to the political subdivision.

All checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidders. Checks of successful bidders shall be held until delivery of the performance bond. [IC 36-1-12-4.5]

Bidder's Affidavit

The board shall require the bidder to submit an affidavit that the bidder has not entered into a combination or agreement:

1. relative to the price to be bid by a person;

2. to prevent a person from bidding; or,

3. to induce a person to refrain from bidding and that his bid is made without reference to any other bid. [IC 36-1-12-4(b)(12)]

Public Meeting

The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated. Bids shall be submitted on prescribed General Form 96 (Bid for Construction). [IC 36-1-12-4(b)(7)]

Responsive Bidder

In determining whether a bidder is responsive, the board may consider the following factors:

1. Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.

2. Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.

3. Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. [IC 36-1-12-4(b)(10)]

Responsible Bidder

In determining whether a bidder is a responsible bidder, the board may consider the following factors:

1. The ability and capacity of the bidder to perform the work.

2. The integrity, character, and reputation of the bidder.

3. The competence and experience of the bidder. [IC 36-1-12-4(b)(11)]

Award of Contract

The board shall award the contract for public work or improvements to the lowest responsible and responsive bidder or the board may reject all bids submitted. [IC 36-1-12-4(b)(8)]

If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection. [IC 36-1-12-4(b)(9)]

Except as provided below, the board shall award the contract and shall provide the successful bidder with written notice to proceed within sixty (60) days after the date on which bids are opened.

1. If general obligation bonds are to be sold to finance the construction that is the subject of the bid, the board shall allow the bidder ninety (90) days.

2. If revenue bonds are to be issued and sold to finance the construction, the board shall allow the bidder one hundred fifty (150) days.

A failure to award and execute the contract and to issue notice within the time required entitles the successful bidder to reject the contract and withdraw his bid without prejudice, or extend the time to award the contract and provide notice to proceed at an agreed later date. If the successful bidder elects to reject the contract and withdraw his bid, notice of that election must be given to the board in writing within fifteen (15) days of the sixty (60) day expiration date or any other extension date. [IC 36-1-12-6]

Contract Provision - Payment of Subcontractors

A contract for public work must contain a provision for the payment of subcontractors, laborers, material suppliers, and those performing services. The board shall withhold money from the contract price in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services. [IC 36-1-12-13]

Change Orders

If, in the course of construction, reconstruction or repair of a public work project, it becomes necessary to change or alter the original specifications, a change order may be issued to add, delete, or change an item or items in the original contract. All change orders must be directly related to the original public work project.

Addendum. The change order becomes an addendum to the contract and must be approved and signed by the board and the contractor.

Architect or Engineer. If a licensed architect or engineer is assigned to the public work project the change order must be prepared by that person.

Increase in Scope of Project. The total of all change orders issued that increase the scope of the project may not exceed twenty percent (20%) of the amount of the original contract. A change order issued as a result of circumstances that could not have been reasonably foreseen does not increase the scope of the project.

Cost of Materials. If additional units of materials included in the original contract are needed, the cost of these units in the change order must be the same as those shown in the original contract.

A change order may not be issued before commencement of the actual construction, reconstruction, or repairs except in the case of an emergency. In that case, the board must make a declaration, and the board's minutes must show the nature of the emergency. [IC 36-1-12-18]

Installation of Plumbing

A person who submits a bid for a public works contract that involves the installation of plumbing must submit evidence that the person is a licensed plumbing contractor under Indiana Code 25-28.5-1. [IC 36-1-12-21]

Final Payment

The board shall withhold final payment to the contractor until the contractor has paid the subcontractors, material suppliers, laborers, and those furnishing services. However, if there is not a sufficient sum owed to the contractor to pay those bills, the sum owed to the contractor shall be prorated in payment of the bills among the claimants entitled to payment. To receive payment a subcontractor, material supplier, laborer, or person furnishing services shall file a claim with the board not later than sixty days after that person performed the last labor, furnished the material, or performed the last service. [IC 36-1-12-12]

PUBLIC WORK PROJECTS COSTING MORE THAN $100,000 - ADDITIONAL PROCEDURES

In addition to the foregoing items applying to major public work projects, the following items apply to public work projects costing more than $100,000.

Approval of Plans and Specifications

If the cost of the public building project is more than $100,000, the plans and specifications must be approved by an architect or engineer licensed under IC 25-4 or IC 25-31. [IC 36-1-12-7]

Filing of Final Record Drawings

The Board must within sixty (60) days after completion of the public works project, file in the office of the State Division of Fire and Building Safety a complete set of final record drawings for the public works project, if the project involves a public building. [IC 36-1-12-11]

PUBLIC WORKS PROJECTS - OTHER REQUIREMENTS

Bidder Information

If the cost of a project is $150,000 or more, the board shall require the bidder to submit a financial statement, a statement of experience, his proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. [IC 36-1-12-4(b)(6)]

Payment Bond

IC 36-1-12-13.1 requires a payment bond to be filed with a contract for public work only if the cost exceeds $200,000. The contractor shall execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price. The payment bond is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, material suppliers, laborers, and those performing services. The payment bond shall be deposited with the board. [IC 36-1-12-13.1]

A payment bond may be required by a political subdivision on public works projects estimated to be not more than two hundred thousand dollars ($200,000).

Performance Bonds

The contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price. The surety on the performance bond may not be released until one year after the date of the board's final settlement with the contractor. [IC 36-1-12-14(e)]

For public works contracts of less than two hundred fifty thousand dollars ($250,000), the board may waive the performance bond requirement and accept from a contractor an irrevocable letter of credit for an equivalent amount from an Indiana financial institution instead of a performance bond. [IC 36-1-12-14(h)]

Actions against a surety on a performance bond must be brought within one year after the date of the board's final settlement with the contractor. [IC 36-1-12-14(g)]

Retainage and Escrow Agreement

A board that enters into a contract for public work in excess of two hundred thousand dollars ($200,000), and a contractor who subcontracts parts of that contract, shall include in their respective contracts provisions for the retainage of portions of payments by the board to contractors, by contractors to subcontractors, and for the payment of subcontractors. At the discretion of the contractor, the retainage shall be held by the board or shall be placed in an escrow account with a bank, savings and loan institution, or the state as the escrow agent. The escrow agent shall be selected by mutual agreement between board and contractor or subcontractor under a written agreement among the bank or savings and loan institution and: (1) the board and the contractor; or (2) the subcontractor and the contractor. The board shall not be required to pay interest on the amounts of retainage that it holds. [IC 36-1-12-14(b)]

To determine the amount of retainage to be withheld, the board shall:

1. withhold no more than 10% nor less than 6% of the dollar value of all work satisfactorily completed until the public work is 50% completed, and nothing further after that; or

2. withhold no more than 5% nor less than 3% of the dollar value of all work satisfactorily completed until the public work is substantially completed.

If upon substantial completion of the public work minor items remain uncompleted, an amount equal to 200% of the value of each item as determined by the architect-engineer shall be withheld until the item is completed. [IC 36-1-12-14(c)]

The escrow agreement must contain the following provisions:

1. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent.

2. The escrow agent shall hold the escrowed principal and income until receipt of notice from the board and the contractor, or the contractor and the subcontractor, specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice.

3. The escrow agent shall be compensated for his services, to be paid from the escrowed income.

4. The contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price. The surety on the performance bond may not be released until one year after the date of the board's final settlement with the contractor. [IC 36-1-12-14(e)]

Final Payment

The board or escrow agent shall pay the contractor within sixty-one (61) days after the date of substantial completion. Payment by the escrow agent shall include all escrowed principal and escrowed income. If within sixty-one (61) days after the date of substantial completion there remains uncompleted minor items, an amount equal to 200% of the value of each item as determined by the architect-engineer shall be withheld until the item is completed. [IC 36-1-12-14(f)]

ROUTINE OPERATION, ROUTINE REPAIR, AND ROUTINE MAINTENANCE PROJECTS LESS THAN $150,000

The board may award a contract for public work projects involving routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property in the manner provided in IC 5-22 if the work is estimated to be less than $150,000 [IC 36-1-12-12].

PUBLIC WORK PROJECTS COSTING AT LEAST $50,000 AND LESS THAN $150,000 [IC 36-1-12-4.7]

The board must comply with the following provisions:

Plans and Specifications

All plans and specifications for public buildings must be approved by the State Department of Health, the Division of Fire and Building Safety, and other state agencies designated by statute. [IC 36-1-12-10]

Inviting Quotes

The board shall invite quotes from at least three persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven days before the time fixed for receiving quotes. [IC 36-1-12-4.7 (b)(1)]

Public Meeting

The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before. [IC 36-1-12-4.7(b)(2)]

Award of Contract

The board shall award the contract for the public work to the lowest responsible and responsive quoter. [IC 36-1-12-4.7(b)(3)]

Rejection of All Quotes

The board may reject all quotes submitted. [IC 36-1-12-4.7(b)(4)]

PUBLIC WORK COSTING LESS THAN $50,000 [IC 36-1-12-5]

If the board wishes to award a contract for a public work costing less than $50,000, the procedures outlined for public works costing $50,000 or more contained in IC 36-1-12-4 may be used. If such procedures are not used, then the following procedures must be used:

Plans and Specifications

All plans and specifications for public buildings must be approved by the State Department of Health, the Division of Fire and Building Safety, and other state agencies designated by statute. [IC 36-1-12-10]

Inviting Quotes

The board shall invite quotes from at least three persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven days before the time fixed for receiving quotes. [IC 36-1-12-5]

Inviting Quotes for Projects Less Than $25,000

Quotes may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) days waiting period would not apply. [IC 36-1-12-5(i)]

Public Meeting

The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated. [IC 36-1-12-5]

Award of Contract

The board shall award the contract for the public work to the lowest responsible and responsive quoter. [IC 36-1-12-5]

Rejection of All Quotes

The board may reject all quotes submitted. If the board rejects all quotes, the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes. [IC 36-1-12-5]

USE OF OWN WORK FORCE

The political subdivision may purchase or lease materials in the manner provided in IC 5-22 and perform any public work by means of its own work force, without awarding a contract whenever the cost of that public work project is estimated to be less than $150,000. Before the political subdivision may perform any work under this section by means of its own work force, the political subdivision must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes the actual cost of materials, labor, equipment, rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project. [IC 36-1-12-3]

The workforce of a city or town may perform a public work only if:

1. the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and

2. for a public work project whose cost is estimated to be more than one hundred thousand dollars ($100,000), the board:

   A. publishes a notice under IC 5-3-1 that:
      (i) describes the public work that the board intends to perform with its own workforce; and
      (ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

   B. determines at a public meeting that it is in the public interest to perform the public work with the board's own workforce.

A public work project performed by a board's own workforce must be inspected an accepted as complete in the same manner as a public work project performed under a contract awarded after receiving bids

DIVISION OF PUBLIC WORK PROJECTS [IC 36-1-12-19]

The cost of a single public work project may not be divided into two or more projects for the purpose of avoiding the requirement to solicit bids. The cost is defined by IC 36-1-12-19(a) to include cost of materials, labor, equipment rental, and all other expenses incidental to the performance of the project.

Any board member or officer of the political subdivision, bidder, quoter, or other person who is party to a public work contract who knowingly violates IC 36-1-12-19 commits a Class A infraction.

EMERGENCY CONTRACTS

In case of an emergency the board may contract for a public work project without advertising for bids if bids or quotes are invited from at least two persons known to deal in the public work required to be done. The minutes of the board must show the declaration of emergency and the names of the persons invited to bid or provide quotes. [IC 36-1-12-9]

USE OF UNITED STATES STEEL PRODUCTS

IC 5-11-1-26 requires the State Board of Accounts to include in its examination report a political subdivision's compliance with IC 5-16-8, which requires use of steel products made in the United States for construction and alterations of public buildings except under certain circumstances.

PROCEDURE FOR HIRING ARCHITECTS, ENGINEERS, OR LAND SURVEYOR [IC 5-16-11.1]

Whenever the political subdivision decides to hire an architect, engineer, or land surveyor, the political subdivision may:

1. publish a notice in accordance with the requirements of publishing legal notices as found in IC 5-3-1;

2. provide for notice (other than notice in accordance with IC 5-3-1) as it determines is reasonably calculated to inform those performing professional services of the proposed project;

3. provide for notice in accordance with both subdivision (1) and (2); or

4. determine not to provide any notice.

If the political subdivision provides for notice in accordance with the above, each notice must include:

1. the location of the project;

2. a general description of the project;

3. the general criteria to be used in selecting professional services firms for the project.

4. the place where any additional project description or specifications are on file;

5. the hours of business of the public agency; and

6. the last date for accepting statements of qualifications from interested parties.

PREVAILING WAGE/COMMON CONSTRUCTION WAGE

A contract by the board for a public work project must conform to the wage scale provisions of IC 5-16-7 if the actual construction costs are $350,000 or more. [IC 36-1-12-15]

DISCRIMINATION BY CONTRACTORS AND SUBCONTRACTORS PROHIBITED

A contract by the board for public work must conform with the antidiscrimination provisions of IC 5-16-6. The board may consider a violation of IC 5-16-6 a material breach of contract, as provided in IC 22-9-1-10. [IC 36-1-12-15]

Every contract for the construction, alteration, or repair of any public building or public work in the State of Indiana shall contain provisions by which the contractor agrees:

1. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

2. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry.

3. That there may be deducted from the amount payable to the contractor by the State of Indiana or any municipal corporation thereof, under this contract, a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract.

4. That this contract may be cancelled or terminated by the State of Indiana or by any municipal corporation thereof, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.

DISQUALIFICATION OF CONTRACTORS DEALING WITH THE GOVERNMENT OF IRAN

A person may not be awarded a contract if the person would be disqualified from being awarded a contract because of dealing with the government of Iran under IC 5-22-16.5. [IC 36-1-12-23]

OVERPAYMENT COLLECTIONS

Governmental units should collect any overpayments made.

ADVANCE PAYMENTS

Compensation and any other payments for goods and services should not be paid in advance of receipt of the goods or services unless specifically authorized by statute. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee.

PURCHASING BONUSES

Any compensation, premium, bonus, or product earned as a result of the purchase of goods or services by the governmental unit becomes the property of the governmental unit.

PUBLIC-PRIVATE AGREEMENTS [IC 5-23]

A political subdivision may enter into a public-private agreement under IC 5-23. The procedures of IC 5-23 must be specifically adopted by resolution or ordinance of the legislative body of the political subdivision, or if the political subdivision does not have a legislative body, the fiscal body of the political subdivision. [IC 5-23-1-1]

Definitions

Definitions are contained in IC 5-23-2. Three terms are defined below.

BOT Agreement. BOT Agreement means any agreement between the a governmental body and an operator to construct, operate, and maintain a public facility and to transfer the public facility back to the governmental body at an established future date.

Operating Agreement. Operating Agreement means any agreement between an operator and the governmental body for the operation, maintenance, repair, or management of a public facility.

Public Facility. Public Facility means a facility located on, or to be located on, real property owned or leased by a governmental body and upon which a public service is or may be provided.

BOT Agreements

A governmental body may enter into a BOT agreement with an operator for the acquisition, planning, design, development, reconstruction, repair, maintenance, or financing of any public facility on behalf of the governmental body. Items which should be contained in the BOT Agreement are found in IC 5-23-3.

Operating Agreements

A governmental body may enter into an operating agreement with an operator for the operation, maintenance, repair, management, or any combination of operation, maintenance, repair, or management of any public facility for any public service to be performed on behalf of the governmental body. Other provisions relating to operating agreements are located in IC 5-23-4.

Other Provisions

Other provisions contained in IC 5-23 cover the selection of contractor by request for proposals, contract terms and conditions, and records.

Consult Attorney

Before entering into a public-private agreement, it is recommended that the governing body consult with the political subdivision's attorney in order to ensure the provisions of IC 5-23 are complied with as well as any other applicable laws.

USE OF ENERGY EFFICIENT TECHNOLOGY

The board having the power to contract shall examine and consider energy efficient technologies for a public works project using a life cycle analysis. To the extent technically and economically feasible, the board shall consider the use of energy efficiency technology in the plans and specifications for the public works project. The board shall keep a record of the following in the public works contract file:

(1) The contracts the board makes with persons that provide energy efficient technology to implement the use of energy efficient technology.

(2) An analysis of the feasibility of using energy efficient technology in the public works project. [IC 4-13.6-9]

Energy efficient technology refers to any of the following:

(1) Geothermal heating and cooling.
(2) Geothermal hot water generation.
(3) Solar hot water generation.
(4) Photovoltaic power generation.
(5) Wind power generation.
(6) Combined heat and power.
(7) Heat recovery chillers.
(8) Condensing boilers and low temperature heat.
(9) Air to air energy recovery devices.
(10) Autoclaved aerated concrete.
(11) Automated meter readers.
(12) Any other energy technology that has long term environment value, energy efficiency, and cost effectiveness. [IC 36-1-12.7]

PUBLIC WORKS BORROWING

IC 36-9-41 applies to a public work project that will cost the political subdivision not more than two million dollars ($2,000,000) or an eligible efficiency project that will cost not more than three million dollars ($3,000,000). [IC 36-9-41-1]

"Public Work" means a project for the construction of any public building, highway, street, alley, bridge, sewer, drain, or any other public facility that is paid for out of public funds. [IC 36-9-41-2]

Nowithstanding any other statute, a political subdivision may borrow the money necessary to finance a public work project from a financial institution in Indiana by executing a negotiable note under IC 36-9-41-4. The political subdivision shall provide notice of its determination to issue the note under IC 5-3-1. The money borrowed is chargeable against the political subdivisions constitutional debt limitation. [IC 36-9-41-3]

A political subdivision borrowing money under IC 36-9-41-3 shall execute and deliver to the financial institution the negotiable note of the political subdivision for the summer borrowed. The note must bear interest with both principal and interest payable in equal or approximately equal installments on January 1 and July 1 each year over a period not exceeding ten (10) years. [IC 36-9-41-4]

DESIGN-BUILD PUBLIC WORKS PROJECTS

Design-build contract means a contract between a public agency and a design-builder to furnish:

(1) architectural, engineering, and related design services as required for a public project; and

(2) labor, materials, and other construction services for the same public project.

"Public agency" means: a state educational institution (as defined in IC 20-12-0.5-1); a unit (as defined in IC 36-1-2-23)

"Public project" means the process of designing, constructing, reconstructing, altering, or renovating a public building, an airport facility, or another structure or improvement that is paid for out of: (1) a public fund; or (2) a special assessment.

The term includes either of the following:

(1) A process described in subsection (a) relating to a building or structure leased by a public agency under a lease containing an option to purchase.

(2) A public improvement to real property owned by a public agency.

DESIGN-BUILD PUBLIC WORKS PROJECTS – (CONTINUED)

DISQUALIFICATION OF CONTRACTORS DEALING WITH THE GOVERNMENT OF IRAN

Public Law 21, Acts of 2012, added IC 5-22-16.5. Before entering into a design-build contract, a public agency must appoint a technical review committee of at least three (3) individuals. The three members of the technical review committee must include the following:

(1) A representative of the public agency.

(2) At least two (2) of the following, but not more than one (1) under each clause:

(A) An architect registered under IC 25-4.

(B) A professional engineer registered under IC 25-31.

(C) A qualified contractor under IC 4-13.6.

A member of the technical review committee who is an architect or a professional engineer may be:

(1) an employee of the public agency; or

(2) an outside consultant retained by the public agency for the specific purpose of evaluating proposals submitted under this article.

The design criteria developer may serve as:

(1) a full member; or

(2) a nonvoting adviser; of the committee. IC 5-30-4-3

The technical review committee shall do the following:

(1) Qualify potential design-builders as provided in IC 5-30-5.

(2) Rate and score qualitative proposals as provided in IC 5-30-6 and IC 5-30-7.

The technical review committee may interview persons submitting proposals and conduct other business necessary to fulfill the purposes of this article. However, a public agency may not require an offeror to attend more than three (3) interviews in person with the technical review committee for a design build contract. [IC 5-30-4-1]t

Please see IC 5-30 for various other provisions for the design-build process.

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SECTION I - LEASES

A political subdivision which determines to acquire a building, parking facility, transportation project, or system by lease or lease purchase must follow the procedures of IC 36-1-10 unless specifically exempted in IC 36-1-10.

LEASE WITH NO OPTION TO PURCHASE

If a lease does not contain an option to purchase, the provisions of IC 36-1-10-5 shall be followed:

1. The term of the lease may not be longer than ten years; however, a lease may be for a longer term if the lease is approved by the Department of Local Government Finance.

2. The lease must provide that the lease is subject to annual appropriation by the appropriate fiscal body.

3. The leasing agent must have a copy of the lease filed and kept in a place available for public inspection.

A leasing agent may lease part of a structure.

According to Scheub v. Town of Schererville, 617 NE2d 585 (Ind. App. 5 Dist. 1993),". . . the legislature intended to make leases without options to purchase subject to all of the procedural requirements of the chapter with the exceptions of sections 6, 12, 16, and 17 . . . (FN1.) Section 6 provides that a leasing agent may not enter a lease that will last longer than fifty years. Section 12 governs leases entered into in 'anticipation of acquisition or construction of a structure, system or transportation project. Section 16 permits a political subdivision owning a structure with respect to which revenue bonds are outstanding to convey the structure to the lessor in fee simple and lease it from the lessor to refinance the outstanding municipal bonds. Finally, section 17 governs annual appropriations and tax levy."

LEASE WITH OPTION TO PURCHASE

Requirements to Lease a Structure

A leasing agent may not lease a structure unless:

1. The leasing agent receives a petition signed by 50 or more taxpayers of the political subdivision; and,

2. The fiscal body determines, after investigation, that the structure is needed. [IC 36-1-10-7]

Lease Renewal

The lease may provide that the leasing agent has an option to renew the lease for a further term or to purchase the property. The terms and conditions of the purchase must be specified in the lease. [IC 36-1-10-9]

Option to Purchase

Whenever the leasing agent exercises an option to purchase the property, then the political subdivision may issue and sell bonds for the purpose of procuring money to pay the purchase price. If the leasing agent does not exercise an option to purchase, then upon the expiration of the lease and full performance by the leasing agent, the property becomes the absolute property of the political subdivision. The lessor shall convey title to the political subdivision. [IC 36-1-10-9]

Plans and Specifications

A lessor proposing to build, acquire, improve, remodel or expand a structure for lease to a political subdivision shall submit plans, specifications, and estimates to the leasing agent before executing a lease. The leasing agent shall submit the plans and specifications to the Division of Fire and Building Safety or the Building Law Compliance Officer and other agencies designated by law. [IC 36-1-10-10(a)]

Lessor Must Hold Fee Simple

The lessor must hold in fee simple land on which a structure is to be erected, acquired, improved, remodeled, or expanded. The lessor must hold in fee simple a structure that is to be acquired, improved, remodeled or expanded. [IC 36-1-10-11(a)]

Sale of Land/Structure to Lessor

The leasing agent may sell land or a structure owned by the political subdivision to the lessor if the political subdivision wants to lease a structure proposed to be built, acquired, improved, remodeled, or expanded on that land:

1. The leasing agent shall appoint two (2) appraisers to appraise the fair market value of the land or structure.

2. The appraisers must be professionally engaged in making appraisals or licensed under IC 25-34.1.

3. The appraisers shall return their appraisal to the leasing agent within two (2) weeks after the date of their appointment.

4. The leasing agent shall sell the land or structure for not less than the appraised value. However, if the political subdivision acquired the land or structure during the three (3) years preceding the date of the appointment of the appraisers, the land or structure may not be sold for an amount less than the amount paid by the political subdivision for the land or structure.

5. The leasing agent shall be paid in cash upon the agent's delivery of the deed.

6. The leasing agent is not required to comply with any other law relating to the sale of land or structures by a political subdivision. [IC 36-1-10-11(b)]

Note: A political subdivision owning a structure with respect to which its revenue bonds are outstanding, may, to refinance these bonds, convey the structure to the lessor in fee simple and lease it from the lessor, subject to the approval of the Department of Local Government Finance minimum purchase price and procedures are located in IC 36-1-10-16. [IC 36-1-10-16]

Notice and Hearing

After the leasing agent and the lessor have agreed upon the terms and conditions of the lease, but before the execution of the lease, the leasing agent shall publish notice of a public hearing to be held before the leasing agent. The notice shall be published one time, at least ten days before the date of the hearing. The notice must state the date, place, and hour of the hearing and provide a summary of the principal terms of the lease. Additionally, the notice must contain the name of the proposed lessor, the location and character of the structure to be leased, the rental to be paid, and the number of years the lease is to be in effect. The cost of the publication of the notice shall be paid by the lessor. The proposed lease, drawings, plans, specifications, and estimates for the structure are open to public inspection during the ten day period and at the hearing.

All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether rental is fair and reasonable for the proposed structure. After the hearing, the leasing agent may modify, confirm, or rescind the proposed lease, but the rental as set out in the published notice may not be increased. The leasing agent may rely on the testimony of independent experts as to the fairness and reasonableness of the lease. If the execution of the lease as originally agreed upon or as modified is authorized by the leasing agent, the leasing agent shall give notice of the execution of the lease by publishing it two times, at least one week apart, with the second publication made at least ten days before the signing. [IC 36-1-10-13]

Taxpayer Objections

If lease rentals are payable, in whole or in part, from property taxes, ten or more taxpayers in the political subdivision who disagree with the execution of a lease may file a petition with the County Auditor within thirty (30) days after publication of the notice of the execution of the lease. The petition must state the taxpayer's objections and the reasons why the lease is unnecessary or unwise. The petition will be forwarded to the Department of Local Government Finance, who will fix a time and place for the hearing of the matter. [IC 36-1-10-14]

Appropriation

A political subdivision that executes a lease under these provisions shall make an annual appropriation and tax levy at a rate to provide sufficient money to pay the rental stipulated in the lease. [IC 36-1-10-17]

A political subdivision that executes a lease for a tranportation project may only levy a tax under this section for an amount necessary to restore debt service reserve funds and may not levy a tax for lease rental payments. [IC 36-1-10-17(d)]

Tax Exemption

Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation. [IC 36-1-10-18]

COMPUTER HARDWARE AND SOFTWARE - LEASE WITH OPTION TO PURCHASE

The leasing agent may lease with option to purchase computer hardware and software by following the provisions of IC 36-1-10. The procedures required are the same as building, acquiring, improving, remodeling or expanding structures for lease to a political subdivision.

A lessor proposing to acquire computer hardware and/or software may enter into a lease without submitting plans, designs, or specifications to the leasing agent. However, before the execution of the lease, the lessor must submit to the lessee or lessees an estimate of the cost and a description of the system. [IC 36-1-10-10(b)]

JOINT LEASING

If two or more leasing agents propose to enter into a lease jointly, joint meetings of the leasing agents may be held. However, joint leasing must be approved by each leasing agent's fiscal body.

A lease executed by two or more leasing agents as joint lessees must set out the amount of the total rental to be paid by each. A lessee has no right of occupancy or use of the transportation project or system until the total rental is paid as stipulated by the contract. [IC 36-1-10-8]

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SECTION J - DISPOSAL OF REAL OR PERSONAL PROPERTY

SALE OR TRANSFER OF REAL PROPERTY

All political subdivisions must follow IC 36-1-11 in disposing of property. However, certain transactions are exempted from the requirements of IC 36-1-11. These exemptions are listed in IC 36-1-11-1(b). [IC 36-1-11-1]

For purposes of IC 36-1-11, **"Property"** is defined as all fixtures and real property to be included in a disposal. [IC 36-1-11-2]

Assessed Value of Property is less than $15,000

If (1) the assessed value of a tract of real property to be sold is less than $15,000, based on the most recent assessment of the parcel or of the tract of which it was a part before it was acquired, or (2) the property has not been assessed and the property was previously a part of a public right-of-way, the disposing agent may proceed as follows:

Board Determination. The disposing agent may determine that:

1. The highest and best use of the tract is sale to an abutting landowner;

2. The cost to the public of maintaining the tract equals or exceeds the estimated fair market value of the parcel; or

3. It is economically unjustifiable to sell the tract under IC 36-1-11-4. [IC 36-1-11-5(c,d)]

Notice. Within ten (10) days after the disposing agent makes a determination under IC 36-1-11-5(d), the disposing agent shall publish a notice in accordance with IC 5-3-1, identifying the tracts intended for sale by legal description and, if possible, by key number and street address. The notice must include the offering price and a statement that:

1. the property may not be sold to a person who is ineligible under IC 36-1-11-16; and

2. an offer to purchase the property submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

    a. beneficiary of the trust; and

    b. settlor empowered to revoke or modify the trust.

At the time of publication of notice under the subsection, the disposing agent shall send notice by certified mail to all abutting landowners. This notice shall contain the same information as the published notice. [IC 36-1-11-5(e)]

Property Appraisal. The disposing agent shall also have each tract appraised. The appraiser must be professionally engaged in making appraisals, a person licensed under IC 25-34.1, or an employee of the political subdivision who is familiar with the value of tract. However, if the assessed value of the tract is less than six thousand dollars ($6,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired, the disposing agent is not required to have the tract appraised. [IC 36-1-11-5(f)]

Offer to Purchase. If within ten days after the date of publication, the disposing agent receives an offer to purchase a tract listed in the notice at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the tract as required in IC 36-1-11-4(c) through (g). [IC 36-1-11-5(g)]

Offer to Purchase - Abutting Landowner. If, within ten days after the date of publication of the notice, an offer to purchase the tract at or in excess of the offering price is not received from any person other than the abutting landowner the disposing agent shall conduct the negotiation and sale of the tract as follows:

1. If only one abutting landowner makes an eligible offer to purchase the tract, then without further appraisal or notice, the disposing agent shall offer to negotiate for the sale of the tract with that abutting landowner.

2. If more than one abutting landowner submits an offer to purchase the tract, the other abutting landowners who submit offers shall be informed of the highest offer received and be given an opportunity to submit one additional offer. The tract shall be sold to the abutting landowner who submits the highest offer for the tract.

3. If no abutting landowners submit an offer to purchase the tract, the disposing agent may sell the tract to any person who submits the highest offer for the tract. [IC 36-1-11-5(h)]

IC 36-1-11-5.9 sets out procedures to follow to sell or transfer real property acquired by tax default to an abutting landowner.

Sale or Transfer of All Other Real Property

Any other sale or transfer of real property must comply with the following requirements:

Appraisal. The property must first be appraised by two licensed appraisers or employees of the political subdivision familiar with the value of the property. [IC 36-1-11-4(b)]

Notice. After the property is appraised, the disposing agent shall publish a notice two times, at least one week apart, with the second publication made at least three days before the event, setting forth the terms and conditions of the sale. If the disposing agent determines that the best sale of the property can be made by letting the bidders determine certain conditions of the sale (such as required zoning or soil or drainage conditions) as a prerequisite to purchasing the property, the disposing agent may permit the bidders to specify those conditions. The notice must state that bids will be received beginning on a specific date; that the sale will continue from day to day for a period determined by the disposing agent of not more than sixty days; and the property may not be sold to a person who is ineligible. [IC 36-1-11-4(c)]

Bid. A bid must be open to public inspection. A bidder may raise the bidder's bid, and that raise takes effect after the disposing agent has given written notice of the raise to the other bidders. [IC 36-1-11-4(d)]

Auction. The disposing agent may also engage an auctioneer licensed under IC 25-6.1 to conduct a sale by public auction. The auction may be conducted either at the time for beginning the sale in accordance with the public notice or after the beginning of the sale. The disposing agent shall give each bidder who has submitted a bid written notice of the time and place of the auction. Any advertising conducted by the licensed auctioneer is in addition to the notice required by law and shall include a detailed description of the property to be sold. [IC 36-1-11-4(e)]

Acceptance/Rejection of Bids. The disposing agent may, before expiration of the time set out in the notice, sell the property to the highest and best bidder. However, the property may be sold for less than ninety percent of the average of the two appraisals only after having an additional notice of the sale published. The disposing agent may reject all bids. [IC 36-1-11-4(f)]

Hiring of Broker/Auctioneer. The disposing agent may hire a broker or auctioneer to sell the property, and pay the broker or auctioneer a reasonable compensation out of the proceeds of the sale. A disposing agent may hire a broker to sell real property directly rather than using the bid process if: (1) the disposing agent publishes a notice of the determination to hire the broker in accordance with IC 5-3-1; and (2) the property has been up for bid for at least sixty (60) days before the broker is hired; and either no bids were received or the disposing agent has rejected all bids that were received. The disposing agent may hire one of the appraisers as the broker or auctioneer. [IC 36-1-11-4(g)]

The following apply if a broker is hired under IC 36-1-11-4(g):
(1) The property may not be sold to a person who is ineligible under IC 36-1-11-16.
(2) If the property is sold to a trust (as defined in IC 30-4-1-1(a)), the following information must be placed in the public record relating to the sale:
  (A) Each beneficiary of the trust
  (B) Each settlor empowered to revoke or modify the trust. [IC 36-1-11-4(h)]

Sale and Rental Proceeds

Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise provided by statute.

SPECIAL PROVISIONS REGARDING CERTAIN SALES OR TRANSFERS OF REAL PROPERTY

Sale or transfer of Real Property to Governmental Entity or Not-for-Profit Corporation

The following rules may apply to sales or transfers to governmental entities or not-for-profit corporations.

1. A transfer or exchange of property may be made with a governmental entity upon terms and conditions agreed upon by the entities as evidenced by adoption of a substantially identical resolution by each entity. Such a transfer may be made for any amount of real property, cash, or other personal property, as agreed upon by the entities. [IC 36-1-11-8]

2. The sale or lease of property by a political subdivision to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit corporation is not governed by the provisions of IC 36-1-11. [IC 36-1-11-1 (b)(7)]

3. IC 36-1-11 does not apply to the disposal of residential structures or improvements by a municipal corporation without consideration to:

   a. a governmental entity; or
   b. a nonprofit corporation that is organized to expand the supply or sustain the supply of good quality, affordable housing for residents of Indiana having low or moderate incomes [IC 36-1-11-1(b)(20)]

4. IC 36-1-11 does not apply to the disposal of historic property without consideration to a nonprofit corporation whose charter of articles of incorporation allows the corporation to take action for the preservation of historic property. **Historic Property** means property that is listed on the National Register of Historic Places or eligible for listing on the National Register of Historic Places, as determined by the Division of Historic Preservation and Archeology of the Department of Natural Resources. [IC 36-1-11-1(b)(21)]

5. IC 36-1-11 does not apply to the disposal of real property without consideration to a governmental agency or a nonprofit corporation that exists for the primary purpose of enhancing the environment when the property is to be used for compliance with a permit or an order issued by a federal of state regulatory agency to mitigate an adverse environmental impact. [IC 36-1-11-1(b)(22)]

Transfer or Sale of Real Property Originally Given to the Political Subdivision

The following rules may apply in the transfer or sale of property originally transferred to the political subdivision as a gift.

1. If a tract of real property was originally transferred to a political subdivision as a gift and public funds have not been expended to improve the property since the original transfer, the political subdivision may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agency that:

    a. the property is surplus; and

    b. the original grantor or the grantor's successors are eligible to receive the property under IC 36-1-11-16. [IC 36-1-11-14]

2. If a tract of real property was originally transferred to the political subdivision as a gift by a not-for-profit corporation or organization, the disposing agent may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agent that:

    a. the property is surplus; and

    b. the original grantor or the grantor's successors are eligible to receive the property under IC 36-1-11-16. [IC 36-1-11-15]

Public-Private Agreement

IC 36-1-11 does not apply to the disposal of property to a person under an agreement between the person and a political subdivision under IC 5-23. [IC 36-1-11-1(b)(23)]

LEASEBACK PROVISION OR OPTION TO REPURCHASE

A disposing agent who wants to sell or transfer real property, and as a condition of sale, includes a provision for leaseback or leaseback with option to repurchase must follow these procedures:

1. The disposing agent shall publish a notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale published two times, at least one week apart, with the second publication made at least seven days before the date the bids will be received. The notice must state the following:

    a. Bids will be received beginning on a specific date.

    b. The sale will continue day to day for a period to be determined by the disposing agent of not more than sixty days.

c. The property may not be sold or transferred to a person who is ineligible under IC 36-1-11-16.

d. A bid submitted by a trust (as defined in IC 30-4-1-1(a) must identify each beneficiary of the trust and settlor empowered to revoke or modify the trust.

2. A bid must be open to public inspection.

3. After the period for receiving bids has expired, a disposing agent may sell the property to the highest and best eligible bidder. The highest and best eligible bidder must have complied with the requirements of IC 36-1-11-4.1(b)(4).

4. IC 36-1-10 does not apply to this section. [IC 36-1-11-4.1]

LEASE OF REAL PROPERTY

Lease of Property

The disposing agent may lease property rather than sell, transfer, or exchange it only if the disposing agent determines that a lease rather than a sale, transfer, or exchange would be in the best interest of the political subdivision and the public. The disposing agent must follow these procedures unless they determine that use of these procedures is not feasible, in which case IC 36-1-11-12 will be used. [IC 36-1-11-10(a)]

Procedures Under IC 36-1-11-10

1. The disposing agent must have the property appraised by two appraisers. The appraisers shall determine the fair market rental value of the property.

2. The disposing agent shall receive bids and lease the property to the highest and best bidder. However, the property may be leased for less than 90% of the appraised fair market rental value only after having an additional notice of the lease published.

3. The disposing agent shall determine the terms and conditions of any lease, which may include options to renew and options to purchase. The property may not be leased to a person who is ineligible.

4. The terms of a lease with option to purchase may provide that all or part of the rental payments under the lease apply to the purchase price. The purchase price must be equal to at least the minimum sale price.

5. Property owned by a political subdivision may be leased for a term longer than three years if the lease is approved by the fiscal body of the political subdivision. [IC 36-1-11-10]

Alternative Procedures Under IC 36-1-11-12

If the disposing agent chooses to use this procedure instead of IC 36-1-11-10, the disposing agent must make a written determination stating the reasons that use of the procedure in IC 36-1-11-10 is not feasible. Authorization to use the following procedure must be granted by the executive of the political subdivision.

1. Proposals to develop specifications shall be solicited through a request for proposals, which must include all of the following:

    a. The factors or criteria that will be used in evaluating the proposals, including a statement that the property may not be leased to a person who is ineligible; and a proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

    b. A statement concerning the relative importance of price and the other evaluation factors.

    c. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

    d. A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

2. Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

3. As provided in the request for proposals, discussion may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

4. Eligible offerors must be accorded fair and equal treatment with respect to an opportunity for discussion and revision of proposals.

5. After the procedures outlined in IC 36-1-11-12 have been completed, the disposing agent shall make a determination as to the most appropriate response to the request for proposals and shall dispose of the subject property in accordance with that response.

Sale and Rental Proceeds

Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise authorized by statute.

SALE OR TRANSFER OF SURPLUS PERSONAL PROPERTY [IC 5-22-22]

All political subdivisions must follow IC 5-22-22 in disposing of surplus personal property. However, certain transactions are exempted from the requirements of IC 5-22-22. These exemptions are listed in IC 5-22-22-1(b) and (c).

Definitions

"Purchasing Agency" means a governmental body that is authorized to enter into contracts by IC 5-22, rules adopted under IC 5-22, or by another law.

General Provisions

A purchasing agency may sell personal property that:

1. has been left in the custody of an officer or employee of a governmental body and has remained unclaimed for more than one year; or

2. belongs to the governmental body but is no longer needed or is unfit for the purpose for which it was intended. [IC 5-22-22-3]

Auction

If the property to be sold is one item with an estimated value of $1,000 or more; than one item with an estimated total value of $5,000 or more, the purchasing agency may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and conduct a public auction. The advertising by an auctioneer must include a detailed description of the property to be sold. [IC 5-22-22-4]

The purchasing agency shall pay an auctioneer who conducts a sale under this section from the gross proceeds of the sale received before other expenses and liens are paid. [IC 5-22-22-4]

Internet Auction

The purchasing agency may sell surplus property using an Internet auction site that satisfies both of the following:

(1) The site is approved by the Indiana Department of Administration.
(2) The site is linked to the electronic gateway administered by the Indiana Office of Technology.

The purchasing agency's posting of the sale on the auction site must include a detailed description of the surplus property to be sold.

The purchasing agency may pay the costs of conducting the auction on the Internet site as required by the person maintaining the auction site. [IC 5-22-22-4.5]

Public Sale or Sealed Bids

If an auctioneer is not engaged under IC 5-22-22-4, or the surplus property is not sold through an Internet auction site under IC 5-22-22-4.5, the purchasing agency shall sell the property at a public sale or by sealed bids delivered to the office of the purchasing agency before the date of sale. Advertisement of the sale shall be made in accordance with IC 5-3-1. All sales shall be made to the highest responsible bidder. [IC 5-22-22-5]

Public or Private Sale or Transfer Without Advertising

If the personal property to be sold is one item with an estimated value of less than $1,000, or more than one item with an estimated total value less than $5,000, the purchasing agency may sell the property at a public or private sale or transfer the property, without advertising. [IC 5-22-22-6]

Recyclable Material

If the personal property to be sold is material that may be recycled and has been collected in conjunction with a recycling program, the purchasing agency may, without advertising, sell the property at public or private sale or transfer the property. [IC 5-22-22-7]

Worthless Property

If the property is worthless, it may be demolished or junked. Property may be considered worthless if the value of the property is less than the estimated costs of the sale and transportation of the property. [IC 5-22-22-8]

Disposition of Law Enforcement Vehicle – Repainting of Vehicle Required – Penalty

If a purchasing agency disposes of a law enforcement vehicle that is a model year of 1994 or after and is painted in a color scheme of more than one (1) color by transferring the vehicle to:

(1) A person who will operate the vehicle on a public highway in Indiana, the person must repaint the vehicle to:
   (A) a monochrome color scheme; or
   (B) a color scheme that does not duplicate the color scheme of an Indiana law enforcement vehicle;

before the vehicle is operated on a public highway in Indiana;

(2) A person who will sell or otherwise transfer the vehicle to another person who will operate the vehicle on a public highway in Indiana, the person must repaint the vehicle in:
   (A) a monochrome color scheme; or
   (B) a color scheme that does not duplicate the color scheme of an Indiana law enforcement vehicle,

   before the vehicle is sold or otherwise transferred to the other person to be operated on a public highway in Indiana.

(3) A person who will sell or otherwise transfer the vehicle to another person who will not operate the vehicle on a public highway in Indiana, the person is not required to repaint the vehicle before the vehicle is sold or otherwise transferred to the other person; or

(4) another governmental body, the governmental body is not required to repaint the vehicle before the vehicle is operated on a public highway in Indiana.

Before a purchasing agency disposes of a law enforcement vehicle that is painted in a color scheme of more than one (1) color, the purchasing agency must provide a copy of IC 5-22-22-9 to the prospective purchaser of the vehicle.

A person who violates this section commits a Class C infraction. (IC 5-22-22-9)

Exchange with Another Governmental Body

A purchasing agency may exchange property with another governmental body upon terms and conditions agreed upon by the governmental bodies as evidenced by adoption of a substantially identical resolution by each entity.

A transfer under this section may be made for any amount of property or cash as agreed upon by the governmental bodies. (IC 5-22-22-10)

Notice by Publication

Notice of a sale must be given by publication of the time, place, and terms of the sale, as provided in IC 5-3-1 in the county where the property is located. The publication shall be made at least fifteen (15) days before the date of the sale.

Notice is required in addition to notice:

(1) given by an auctioneer under section 4 [IC 5-22-22-4] of this chapter; or

(2) provided by an Internet auction side under section 4.5 [IC 5-22-22-4.5] of this chapter. [IC 5-22-22-11]

Transfer of Title of Surplus Property to Volunteer Fire Department

This applies to the following surplus equipment:

(1) Fire Trucks.
(2) Emergency service vehicles.
(3) Firefighting or emergency services equipment.

As used in IC 5-22-22-12, “volunteer fire department” has the meaning set forth in IC 36-8-12-2. Notwithstanding section 4, 4.5, or 5 [IC 5-22-22-4, IC 5-22-22-4.5, or IC 5-22-22-5] of this chapter, a government body may transfer title of surplus property to a volunteer fire department for the volunteer fire department’s use in providing fire protection or emergency services.

A volunteer fire department located in the same county as the governmental body offering the surplus property for transfer has the right of first refusal for all surplus property offered. Surplus property that is refused by the volunteer fire departments located in the same county as the governmental body may be transferred to any volunteer fire department in Indiana.

A governmental body may transfer title of surplus property to a volunteer fire department by:

(1) sale;
(2) gift; or
(3) another arrangement acceptable to the governmental body and the volunteer fire department. [IC 5-22-22-12]

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SECTION K - MISCELLANEOUS GUIDELINES

LEGAL HOLIDAYS

IC 1-1-9-1 lists legal holidays within the State of Indiana.

New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Good Friday	Friday Before Easter Sunday
Any General, National, State or City Primary	First Tuesday After First Monday in May
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Any General, National, State or City Election	First Tuesday After First Monday in November
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

and "the first day of the week, commonly called Sunday."

IC 1-1-9-1(b) states: "When any of these holidays, other than Sunday, comes on Sunday, the following Monday shall be the legal holiday. When any of these holidays comes on Saturday, the preceding Friday shall be the legal holiday."

IC 1-1-9-1(c) states: "This section does not affect any action taken by the state, the general assembly, or a political subdivision (as defined in IC 36-1-2-13). Any action taken by the state, the general assembly, or a political subdivision on any such holiday shall be valid for all purposes."

CLASSIFICATION OF UTILITIES

Utilities are classified according to their annual operating revenues as follows:

Electric and Gas Utilities

Class A - $2,500,000 or more
Class B - $1,000,000 or more but less than $2,500,000.
Class C - $150,000 or more but less than $1,000,000.
Class D - $25,000 or more but less than $150,000.

Water and Wastewater Utilities

Class A - $1,000,000 or more.
Class B - $200,000 or more but less than $1,000,000.
Class C - Less Than $200,000.

TOWN MARSHALS - CLOTHING AND EQUIPMENT ALLOWANCE

No specific statutory authority exists for payment of an allowance for clothing, uniforms, arms or equipment to a town marshal or a deputy town marshal. Since no statute prohibits such payments, if town officials wish to provide such benefits, a Home Rule ordinance must be enacted providing such authority subject to prior written approval by the town attorney before such benefits are extended.

The town may purchase necessary items of clothing, uniforms, arms and equipment for use by the town marshal and his deputies provided there is an appropriation available for such purpose. Such items would be the permanent property of the town and could not be retained by the employee on his termination.

SALARIES - COMPUTING FOR PARTIAL PAY PERIODS

A city or town employee on a specified salary, whose employment begins or terminates in the middle of a pay period should be paid only for that part of the period that he has worked. If on a monthly basis and the employee's work is terminated at the end of the day on January 15, for example, he should receive 15/31 of his regular monthly salary for the month of January. If his employment terminates at the end of the day on February 15, he would be entitled to 15/28 or 15/29 (leap year) of his regular monthly salary for the month of February. Partial semi-monthly and bi-weekly pay periods would be computed in a similar manner.

STREETS AND CURBS - DEPOSITS FOR CUTTING

When a city or town requires a cash deposit from utilities, contractors and individuals for cutting streets and curbs, the following accounting procedure is recommended.

1. Receipt such deposits into a separate fund entitled “Street Cut Deposit Fund” (or similar wording).

2. If the utility, contractor or individual does not perform the work satisfactorily or if the city or town is to do the work under the agreement, pay the costs of labor and materials from the Motor Vehicle Highway Fund in the regular manner from appropriations available therefore.

3. After the repair work is completed satisfactorily, reimburse the MVH fund for any labor and materials required and refund the balance of the deposit (if any) to the depositor from the “Street Cut Deposit Fund.” Claims should be filed to support both transactions; however, no appropriation is required for either type of expenditure from said fund.

4. A record or card file should be kept for each deposit, showing the receipt and any disbursements applicable to such deposit. Utility Form No. 314, Guarantee Deposit Register, could be used for such record.

5. The amount of the cash deposit and this procedure should be established by ordinance of the common council or town board of trustees.

ACCOUNTS PAYABLE VOUCHERS - FISCAL OFFICERS' RESPONSIBILITY FOR DISBURSING PUBLIC FUNDS

A Clerk-Treasurer or Controller is not obligated to pay any bill or invoice which, in his judgment, should not be paid. Prejudice or personal feelings are not sufficient reasons for withholding payment. The correctness and legality of a bill or invoice should be the guide in disbursing public funds. The official surety bond requires that faithful accounting be made. It is advisable to proceed with caution in every instance where questions arise and advice of the city or town attorney should be requested. [Cities, IC 36-4-8-4; Towns, IC 36-5-6; General Law, IC 5-11-10-1.6 and IC 5-11-10-2]

OUTGOING OFFICIALS - YEAR END DUTIES

Outgoing Clerk-Treasurers and Controllers should completely post and balance their records before turning them over to their successors in office on January 1.

If there are any investments or undeposited cash in the office on December 31st the new Clerk-Treasurer should sign a receipt therefore, in triplicate, to be attested to by the outgoing officer. One copy should be mailed to the State Board of Accounts, with the outgoing Clerk-Treasurer and the successor in office each receiving a copy. Any cash change fund should be returned to the fund from which it was advanced on or before December 31st.

It is also suggested that the outgoing officer prepare in triplicate an itemized list of equipment in the office on December 31st to be signed by his successor and attested to by the outgoing Clerk-Treasurer. Disposition of the copies should be the same as outlined in the preceding paragraph.

The outgoing Clerk-Treasurer should also refer to the new officer the reports that must be prepared in January and offer his assistance in preparing the reports, and in reconciling the depository accounts at the close of the year. Among the reports that may have to be prepared are Withholding Taxes (Federal and State), Social Security, Utility Receipts Tax, Sales Tax (if any), Annual Financial Report to be filed on the Gateway, Utility Reports to be filed with the Indiana Utility Regulatory Commission and Form 100-R, Certified Report of Names, Addresses, Duties and Compensation of Public Employees.

If it is necessary for the outgoing official to assist the incoming official after December 31, it is permissive for the outgoing official to be compensated assuming (1) a position and salary has been established in the salary ordinance; (2) an appropriation is available for the position; and (3) funds are available.

VACATION LEAVE AND SICK LEAVE

Ordinance Required

IC 5-10-6-1 states: "Retroactive to January 1, 1969, employees of the state who are compensated for their services on an hourly basis may be granted a vacation with pay and paid holidays by executive order of the governor, and employees of the political subdivisions of the state may be granted a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance of the legislative body of a county, city, town or township or by the controlling board of municipally owned utility, board of directors or regents of a cemetery, or board of trustees of any library district. Payment of vacation benefits so granted may be made in advance of any vacation taken of such an employee."

It is noted the use of "may" provides authority without mandating such fringe benefits.

It is imperative for all cities and towns to have written guidelines and policies concerning fringe benefits, vacation and sick leave. Such policies should be in the form of an ordinance. If your municipality has no such written guidelines and is now, or wishes in the future, to provide fringe benefits to their employees please insist that the proper officials pass an ordinance. In future audits the State Board of Accounts will find it necessary to take an audit exception for any such payments made during the period of the audit.

All leave policies should specify how and when leave time is earned and whether or not such leave benefits may be carried over from year to year.

Elected Officials

An elected official's compensation goes with the office. This means that the elected official receives his (or her) salary as long as the office to which the official was elected performs the duties and responsibilities of this office. Whether the elected official personally does the work, whether the elected official personally maintains office hours, or whether the elected official shows up at the office has no bearing on the official's right to be compensated. Keep in mind this relates only to elected officials. The ghost employee statute, IC 35-44-2-4, prohibits payment to other city or town employees if they did not properly perform city or town duties assigned and maintain hours as directed by the proper governing body.

In those few instances where elected officials choose to be included in an employee leave policy (and were included in the authorizing ordinance), the officials must maintain proper attendance records (the same as all other city and town employees) which shall clearly disclose days worked, days missed, type of leave taken, etc. This decision certainly cannot be made just prior to the close of the official's term.

Appointed Officials

Appointed officials who are included in an employee benefit policy must maintain proper attendance records which shall disclose clearly the days worked, days missed, type of leave taken, etc.

City Officers and Employees - Prior Payment of Vacation Leave - Authority

IC 36-4-8-9 states:

> "(a) One (1) to three (3) days before the vacation leave period of a city officer or employee begins, the city may pay him the amount of compensation he will earn while he is on vacation leave.
>
> (b) Compensation for services paid to a salaried city officer or employee pursuant to a fixed schedule set forth in a written contract or salary ordinance shall not be construed as having been paid in advance. Under such an arrangement, the city shall maintain records to verify that actual work is performed for all salary paid."

Town Officers and Employees - Prior Payment of Vacation Leave - Authority

IC 36-5-4-7 states: ". . . One (1) to three (3) days before the vacation leave period of a town officer or employee begins, the town may pay him the amount of compensation he will earn while he is on vacation leave."

Town Officers and Employees - Prior Payment of Vacation Leave - Authority

IC 36-5-4-7 states: ". . . One (1) to three (3) days before the vacation leave period of a town officer or employee begins, the town may pay him the amount of compensation he will earn while he is on vacation leave."

Payment for Unused Vacation

Since the board may adopt and follow a reasonable plan of allowing vacations and/or sick leave, such fringe benefit must be adopted by ordinance and provided to the employees of the municipality. Any provision for payments of unused vacation and/or sick leave must be clearly disclosed in the ordinance.

LICENSES - VETERANS PEDDLER LICENSES

In Official Opinion No. 59 issued on October 27, 1959, the Attorney General held that where a county auditor issues a free peddler's license to a qualified veteran, such license shall be full and complete authority for the veteran to vend, hawk and peddle in any part of the county, including the cities and towns situated therein, even though one or more of such cities or towns has passed an ordinance licensing or prohibiting the vending, hawking or peddling of merchandise.

REPORTS TO BONDHOLDERS

In the issuance of revenue bonds for utility purposes the officers of a city or town make a contract between the city or town and the holders of the revenue bonds. One of the covenants in such contracts may require that the officials prepare and furnish to the original purchasers of the bonds and to any subsequent holder of the bonds upon written request, complete financial statements of the utility for the preceding fiscal year, which statements must be certified by the Clerk-Treasurer. Copies of such statements and reports should be kept on file in the office of the Clerk-Treasurer.

SALES TAX ON RETAIL SALES BY CITIES AND TOWNS

Liability for Collection of Sales Tax

The retail sale of tangible personal property, utility services or commodities in the performance of private or proprietary activities are subject to sales tax.

Sales to all governmental agencies, manufacturers for production purposes, farmers for agricultural purposes, religious, charitable and educational organizations are exempt from the gross retail sales tax when tangible personal property, utility service or commodities are used predominantly for the purpose for which exempt. However, in order to qualify for exemption any governmental agency or any other exempt purchaser must file an exemption certificate with the city, town or utility. Also, receipts from installing, constructing, servicing or removing tangible personal property used in connection with the furnishing of utility services are exempt.

Each city, town or utility is required to obtain a Retail Merchant's Certificate and to file a separate monthly return on Indiana Department of Revenue, Form ST-103, which shall be accompanied with remittance.

All questions concerning the law or procedure for paying and collecting sales tax should be directed to the Indiana Department of Revenue, Sales Tax Division, Indiana Government Center North, Indianapolis, Indiana, 46204, telephone number (317) 233-4015.

UTILITY RECEIPTS TAX

All questions concerning the law or procedure for paying the utility receipts tax should be directed to the Indiana Department of Revenue, Indiana Government Center North, Indianapolis, Indiana, 46204, telephone number (317) 233-4015.

IMPOSITION

The utility receipts tax is imposed upon the receipt of the entire taxable gross receipts of a taxpayer that is a resident or domiciliary of Indiana, and the taxable gross receipts derived from activities or business or any other sources within Indiana by a taxpayer that is not a resident or domiciliary of Indiana.

The tax is imposed at a rate of one and four-tenths percent (1.4%).

TAXABLE RECEIPTS

The following receipts are subject to the utility receipts tax:

1. The retail sale of utility services for consumption.
2. Judgment or settlement as compensation for lost retail sales.
3. Sales to a reseller if the utility is used in hotels, mobile home parks or marinas.
4. Sales of water or gas to another for rebottling.
5. Installation, maintenance, repair, equipment, or leasing service provided to a commercial or domestic consumer that are directly related to the deliver or utility service, and charge for removal of the equipment from such consumer upon termination for service.
6. All other receipts not segregated between retail and non-retail transactions.

NOTE: Generally, retail receipts from all utility services consumed within Indiana are subject to the utility receipts tax regardless of the point of generation or transmission across state lines. Receipts from the provision of mobile telecommunication service are subject to utility receipts tax to the extent that the receipts are sourced to Indiana pursuant to IC 6-8.1-15. However, gross receipts received by a political subdivision for sewage and sewage service are not subject to the tax.

DEDUCTIONS

The following deductions are permitted against the taxable receipts for purposes of the utility receipts tax.

1. Each taxable year a taxpayer is entitled to deduct from the taxpayer's gross receipts an amount equal to $1,000. This amount is prorated if the taxpayer's tax period is less than one year.

   NOTE: An affiliated group that files a consolidated return is entitled to only one deduction.

2. If a taxpayer reports the taxpayer's gross receipts on an accrual basis, the taxpayer is entitled to deduct bad debts from the taxpayer's gross receipts in the same manner provided in IC 6-2.5-6-9.

NONTAXABLE RECEIPTS

The following receipts are excluded from the computation of the utility receipts tax.

1. Sales to the U.S. Government to the extent prohibited by the U.S. Constitution.
2. Collections by a taxpayer of a tax, fee or surcharge imposed by a state, political subdivision, or the United States if the tax is imposed solely on the sale at retail of utility service, and the taxpayer collects the tax separately as an addition to the price of the utility service sold.
3. Wholesale sales to another generator or reseller of utilities.
4. Holding company receipts from member electric cooperatives.
5. Joint agency receipts from member municipal electric utilities.
6. Refundable deposits paid by a customer to the taxpayer.
7. An occasional sale of utility services by a taxpayer that is not regularly engaged in the trade or business of selling utility service is exempt from the tax.

ESTIMATED PAYMENTS AND RETURNS

Every taxpayer whose annual tax liability exceeds one thousand dollars ($1,000) is required to file and pay the utility receipts tax on a quarterly basis. The taxpayer shall pay to the Department twenty-five percent (25%) of the annual estimated tax or the exact amount of utility receipts tax that is due for the quarter.

A taxpayer that uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax return and pay the tax due on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer's taxable year does not end on December 31, the due dates for filing the return and paying the tax are the 20th day of the fourth, sixth, ninth, and twelfth month of the taxpayer's taxable year.

If a taxpayer's estimated quarterly utility receipts tax liability exceeds ten thousand dollars ($10,000), the taxpayer shall pay the estimated utility receipts tax due by electronic funds transfer (EFT) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the Department. The transfer or payment shall be made on or before the date that the tax is due. If the taxpayer's utility receipt tax payment is made by electronic funds transfer (EFT), the taxpayer is not required to file an estimated utility receipts tax return. To register for electronic funds transfer, form EFT-1 must be completed and remitted to the Department by fax (317-615-2691) or mailed to:

Indiana Department of Revenue
P. O. Box 6077
Indianapolis, IN 46206-6077

Form EFT-1 can be obtained on the Department's web site (www.in.gov/dor/). Questions concerning the registration process can be directed to (317)-233-4015.

ANNUAL RETURNS AND PAYMENTS

Every taxpayer who receives more than one thousand dollars ($1,000) in receipts from the retail sale of utility service is required to file an annual utility receipts tax return, Form URT. Any taxpayer who does not file an annual utility receipts tax return for a taxable year may be required to execute and file with the Department a sworn statement that the taxpayer did not receive more than one thousand dollars ($1,000) of taxable gross receipts during the taxable year.

When the taxpayer files an annual utility receipts tax return, the taxpayer shall pay to the Department the total utility receipts tax liability incurred by the taxpayer for the taxable year, minus the total estimated payment that were made for that taxable year.

A taxpayer who used a taxable year that ends on December 31 shall file the taxpayer's annual return on or before April 15 of the immediately succeeding year. A taxpayer, whose taxable year does not end on December 31, shall file the annual return on or before the fifteenth day of the fourth month after the close of the taxpayer's tax year.

SIGNATURE ON ACCOUNTS PAYABLE VOUCHERS AND WARRANTS

The decision as to whether or not the number of items to be signed justifies the use of a rubber stamp or other device for affixing his signature must be made by each public official responsible for signing accounts payable vouchers, warrants and other official documents.

A rubber stamp or other signing device should be used only under the personal direction of the public official and should be properly safeguarded when not in use since each official is responsible for his signature.

BARRETT LAW ASSESSMENTS

The Clerk-Treasurer must certify delinquent Barrett Law assessments to the County Auditor before June 1 of each year. [IC 36-9-37-23] If payment is not made by November 10 next after certification, an additional 10% of the certified principal and interest is added and the total assessment included in tax sale the following year.

TRAVELING EXPENSE REIMBURSEMENTS

City or town officers and employees may be reimbursed for actual miles traveled in their own vehicles on official business at a reasonable rate per mile as fixed by an ordinance of the city council or town council.

Reimbursed mileage shall not include travel to and from the officer's or employee's home and the governmental office in which he works. If two or more persons ride in the same motor vehicle, only one mileage reimbursement is allowable.

General Form No. 101 should be used for claiming mileage. The odometer reading columns on this form are to be used when distance between points cannot be determined by fixed mileage or official highway map.

When traveling outside the corporation limits on official business, officers and employees may be reimbursed for meals, lodging and other necessary traveling expenses. The claim for reimbursement should be completely itemized and should be supported by receipts from hotels, restaurants, and taxi cabs used by the employee while traveling on official business of the city or town.

CASH CHANGE FUND

The establishment of a cash change fund is recommended for each department of a city or town collecting licenses, fees, utility service charges or any other cash revenues. The authority for such fund is IC 36-1-8-2. The fiscal body of the political subdivision must authorize the establishment of the cash change fund.

An accounts payable voucher should be filed by the officer or employee who is charged with the duty of collecting the cash revenues for the amount deemed necessary for presentation to the proper board. The amount of the fund must be established by the fiscal body. The accounts payable voucher should contain a statement regarding the necessity for such fund together with the statutory reference authorizing its establishment.

Upon approval of the accounts payable voucher by the proper board, the Clerk-Treasurer would draw a warrant on the city or town general fund without appropriation, if for civil use, or the operating fund of the proper utility, if for utility purposes.

The warrant is to be converted to cash and retained by the officer or employee in whose favor it is drawn, who shall be held individually responsible for the custody and safekeeping of such cash.

The entire cash change fund is to be returned to the fund from which it was advanced if and when it is no longer needed, and must be returned at the conclusion of each term served by the person drawing same.

PETTY CASH FUND

As further provided by IC 36-1-8-3, the fiscal body of a political subdivision may also establish a petty cash fund for the purpose of paying small or emergency items of operating expense. A receipt shall be taken for each and every expenditure from such fund and an accounts payable voucher shall be filed by the custodian of the fund, to reimburse such fund for expenditures so made. No reimbursement shall be made unless there is attached to the accounts payable voucher receipts totaling the amount so claimed. Such reimbursement shall be approved, allowed and paid in the same manner as other accounts payable vouchers. The amount of the fund shall be established by the fiscal body of the political subdivision.

CASH RESERVE FUND

Pursuant to IC 8-1.5-3-11, the municipal legislative body (common council or town council), with the approval of the board (see IC 8-1.5-3-2 and IC 8-1.5-3-3 for definition of board), may "transfer surplus earnings of the utility (heat, light, water or gas utility) to the general fund." The money can be transferred only if terms and conditions of any bond ordinance, resolution, indenture, contract or similar instrument binding on the utility have been satisfied. [IC 8-1.5-3-11 (a)]

1. A cash reserve fund shall be established by ordinance and carried on the records of the utility or utilities. The fund shall be used to account for "monthly contributions or transfers . . . of surplus earnings of the utility or utilities." [IC 8-1.5-3-11 (b)]

2. The term "surplus earnings" is defined to mean those cash earnings remaining after provision has been made to take care of current obligations such as: (a) Operating expense; (b) depreciation or replacement fund; (c) bond and interest sinking fund; (d) retirement fund; or (e) any other priority fund requirements fixed by law. [IC 8-1.5-3-11 (c)]

3. After creation of the cash reserve fund, the legislative body may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund. [IC 8-1.5-3-11 (d)] IC 8-1-5-3-8 (g) and IC 36-9-23-25 (d) allow for payment in lieu of taxes to be transferred from the utility to the general fund if such expense is part of the utility's approved rates and charges.

4. If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body, may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30. [IC 8-1.5-3-11 (e)]

5. 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 cash reserve fund. [IC 8-1.5-3-11 (f)]

EXPENDITURES OF UTILITY FUNDS

Expenses paid from utility funds should be directly related to the operation of the municipally owned utility. Expenditures for city and town operating costs should not be paid from utility funds. Furthermore, utility funds should not be used to pay for personal items. The cost of shared employees and equipment between a city or town and its utilities or between utilities should be prorated in a rational manner.

Establishment of a Cash Reserve Fund permits transfer of surplus utility funds to the city or town general fund. After appropriation, such transferred funds may then be used for any legal general fund purpose.

CORPORATE SEAL

A common council of a city and a town council are authorized to provide a corporate seal to be affixed to all instruments needing such authentication. [IC 36-1-4-4; IC 36-4-10-4 (3); IC 36-5-2-9 (3)]

COMPENSATION OF OFFICERS AND EMPLOYEES

The following sections of law, showing citations from the Indiana Code, together with Official Opinions of the Attorney General, governs the fixing of compensation of city and town officers and employees.

Salaries Not Payable in Advance

IC 5-7-3-1 states:

"(a) Public officers may not draw or receive salaries in advance.

(b) This section does not prohibit a payment under IC 36-4-8-9."

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 is 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 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 employees 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."

In Official Opinion No. 64, issued on December 10, 1959, the Attorney General held that the salaries of appointive officers and employees of various city departments (including municipal utilities) operating under special Acts enacted prior to 1933 are fixed by the mayor subject to approval by the common council as provided by IC 18-2-1-10 [Repealed, See IC 36-4-7-3]. He stated that the salaries of appointive officers and employees of various city departments (including municipal utilities), operating under special Acts enacted in 1933 or thereafter, are fixed pursuant to the provisions of such special Acts.

In Official Opinion No. 27 of 1967, the Attorney General held that in cities (except of the first and second class) in which municipally owned public utilities are operated by boards of public works or boards of public works and safety, such boards have the power and authority to fix the compensation of all employees of such utilities, which compensation may be lowered but not raised by the city council. The provisions of IC 8-1-2-100 [Repealed, See IC 8-1.5] govern.

Note: The law was amended in 1967 which makes the official opinion applicable to all second class cities with the exception of those between 150,000 and 175,000 in population.

In Official Opinion No. 30 of 1967, the Attorney General held as follows:

1. In a city of the third class operating a public utility, the salary of those utility officers and employees who receive an annual salary as in the first instance set by the board operating that utility (whether a committee of the common council, a utility service board, or the board of public works and safety), but such salary must be approved by the common council, which council may lower but cannot raise the salary so set.

2. In a city of the third class operating a public utility, the wages of those utility employees who receive an hourly wage is in the first instance set by the board operating that utility (whether a committee of the common council, a utility service board, or the board of public works and safety), but such wages must be approved by the common council, which council may lower but cannot raise the wages so set.

Police 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."

Additional Compensation From Utilities or Functions

IC 36-4-7-4 states:

"(a) Subject to the approval of the 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."

The Attorney General held in Official Opinion No. 45 of 1965 as follows:

1. A city attorney may receive additional compensation for service performed in connection with the creation or the operation of a municipally owned function or utility provided that the utility is one that collects revenue from its operation, the service performed is other than governmental, and that the additional compensation is awarded by the governing body of the utility and approved by the mayor and common council.

2. The additional compensation must come from either revenue collected from the operation of the utility or funds raised by the sale of revenue bonds to be redeemed by revenue collected from the operation of the utility. If the additional compensation is inadvertently paid from some other source, that source must be recompensed by monies drawn from the proper source.

The Attorney General held in Official Opinion No. 15 of 1967 that city officers, both elected and appointed, can receive additional compensation from the proceeds of a utility revenue bond issue for the purpose of construction or reconstruction.

In accordance with the provisions of IC 18-2-1-12 [Repealed, See 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.

In view of the foregoing Opinions No. 45 of 1965 and No. 15 of 1967, 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, either by ordinance or resolution as the statutes regulating the utility might provide, then there is no authority to make any payment.

Salary Schedules

IC 36-4-7-5 states:

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

Town Officers and Employees

IC 36-5-3-2 states:

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

(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. [IC 36-5-3-2] At the time such compensation is fixed, it may be prorated between the general fund or any other applicable funds of the town, as well as any available utility funds.

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.

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 should be enacted by the town council annually on or before July 1 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 operation.

FEDERAL AID

IC 5-19-1 authorizes any political subdivision of the state to cooperate with the federal government (in any manner necessary not prohibited by law) for the purpose of accepting federal aid.

CANCELLATION OF WARRANTS - OLD OUTSTANDING CHECKS

Pursuant to IC 5-11-10.5, all checks outstanding and unpaid for a period of two years as of December 31 of each year shall be declared void.

Not later than March 1 of each year, the treasurer shall prepare or cause to be prepared a list in duplicate of all checks outstanding for two or more years as of December 31 last preceding. The original copy shall be filed with the fiscal body of the city or town and the duplicate copy maintained by the disbursing officer of the city or town. The treasurer shall enter the amounts so listed as a receipt to the fund or funds upon which they were originally drawn and remove the checks from the list of outstanding checks.

DORMANT FUND BALANCES - TRANSFERS AUTHORIZED

IC 36-1-8-5 states in part:

"(a) This section applies to all funds raised by a general or special tax levy on all the taxable property of a political subdivision.

(b) Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise: . . . (2) Funds of a municipality, to the general fund or rainy day fund of the municipality. . . ."

GROUP INSURANCE

IC 5-10-8 is the authority for a city or town to contract for group insurance in relation to its employees, to pay part of the cost of such insurance, and to provide for withholding from participating employees. Retirement annuities and pensions are not included within the definition of "insurance" as used in the law. Qualified retired employees may be included in the group insurance.

Employee is defined: an elected or appointed officer or official, or a full-time employee; for a local unit public employer, a full-time or part-time employee or a person who provides personal services to the unit under contract during the contract period; whose services have continued without interruption at least thirty (30) days. [IC 5-10-8-1]

In Official Opinion No. 21, issued on June 17, 1957, the Attorney General held that under the terms of the law governmental units may participate in paying for group insurance to any extent short of full payment so long as the requirement regarding the appropriation of funds is met.

A public employer may provide programs of group insurance for its employees and retired employees through either or both of the following methods:

(1) By purchasing policies of group insurance.

(2) By establishing self-insurance programs.

(3) By electing to participate in the local unit group of local units that offer the state employer health plan under IC 5-10-8-6.6.

However, the establishment of a self-insurance program is subject to the approval of the unit's fiscal body. [IC 5-10-8-2.6]

In Official Opinion No. 50 of 1965, the Attorney General held that the municipality may pay for the insurance on legal dependents of the employee; i.e., those dependents for whom the employee is required by law to pay their medical expenses. That would encompass the employee's wife and minor dependent children.

PENSION PLANS

Pursuant to IC 5-10.2-2-1, a city or town has no authority to establish a local pension plan by ordinance, resolution or contract after January 1, 1995, without specific statutory authority.

In reviewing the Indiana Code, the following pension plans are available to employees of a city or town:

	Indiana Code
Public Employees' Retirement Fund	5-10.3
Police Pension Fund - First Class Cities (1953 Police Pension Fund)	36-8-7.5
1925 Police Pension Fund	36-8-6
1937 Firefighter's Pension Fund	36-8-7
1977 Police Officers' and Firefighters' Pension and Disability Fund	36-8-8
Municipal Utility Employees' Pension Fund	8-1.5-3-7
City Hospitals - Third Class Cities	16-23-1-25(c)
Housing Authorities	36-7-18-10(d)
Department of Redevelopment	36-7-14-12.2 (15)
Deferred Compensation	5-10-1.1

Inquiries relative to participation in the Public Employees' Retirement Fund should be directed to the Public Employees' Retirement System, One North Capital, Suite 001, Indianapolis, Indiana, 46204.

ANNUAL REPORT

IC 5-3-1-4 provides the Clerk-Treasurer or Controller of each city and town shall have published an annual report of the receipts and expenditures of such city or town within sixty days after the close of each calendar year.

The annual report is to be published one time in two newspapers unless there is only one newspaper in the city or town, in which case publication in the one newspaper is sufficient. If no newspaper is published in the city or town then publication in a newspaper published in the county that circulates in the city or town is acceptable.

IC 5-11-1-4 requires such reports to be filed electronically on the Gateway portal no later than sixty (60) days after the close of the year.

Instructions will be sent to all municipal fiscal officers in December of each year.

INDEBTEDNESS

General Obligation Indebtedness

A city or town can legally create interest-bearing indebtedness against the taxing power of such city or town under the following statutes:

*(1) Cities - Temporary Loans
IC 36-1-4-9
IC 36-4-6-20

*(2) Towns - Temporary Loans
IC 36-1-4-9
IC 36-5-2-12

(3) Cities - Permanent Loans - In the Form of Bonds or Other Evidences of Indebtedness
IC 36-1-4-9
IC 36-4-6-19
IC 5-1-11, IC 5-1-12, IC 5-1-13, IC 5-1-14 and IC 5-1-15
IC 6-1.1-20

(4) Towns - Permanent Loans - In the Form of Bonds or Other Evidences of Indebtedness
IC 36-1-4-9
IC 36-5-2-11
IC 5-1-11, IC 5-1-12, IC 5-1-13, IC 5-1-14 and IC 5-1-15
IC 6-1.1-20

(5) Cities and Towns - Funding and Refunding Indebtedness
IC 5-1-9-1

(6) Public Works Borrowing – For Projects not more two million dollars ($2,000,000) or eligible efficiency projects not more than three million dollars ($3,000,000) IC 36-9-41-1

*IC 36-1-8-4 also authorizes cities and towns to make temporary transfers to depleted funds. (See Page 61-21)

State statutes give the common council or town council authority to make loans and issue notes in anticipation of revenues of such city or town to be levied and collected during the term of the loans which cannot be more than five (5) years. Such loans are to be authorized by ordinance.

Permanent loans evidenced by bonds or other forms of indebtedness are authorized to be issued after a petition signed by owners of taxable real estate in such city or town has been filed with the common council or town council. Other requirements include an ordinance that the common council or town council has determined to issue the obligations petitioned for, a published notice to taxpayers of filing of said petition, a period of time after publishing such notice in which remonstrances may be filed, publication of notice of public sale of bonds or other evidence of indebtedness, appropriation of proceeds of the bond issue and approval of such appropriation by the Department of Local Government Finance in the regular legal manner.

Approval by the Department of Local Government Finance is required of all issues of general obligation indebtedness if the interest rate is in excess of eight percent (8%) per annum. [IC 6-1.1-20-7, this was superseded by IC 5-1-14-1 (b)(c)]

Loans in Anticipation of Future Revenues - Cities

IC 36-4-6-20 states, as follows:

"(a) The legislative body may, by ordinance, make loans of money for not more than five (5) years and issue notes for the purpose of refunding those loans. The loans may be made only for the purpose of procuring money to be used in the exercise of the powers of the city, and the total amount of outstanding loans under this subsection may not exceed five percent (5%) of the city's total tax levy in the current year (excluding amounts levied to pay debt service and lease rentals). Loans under this subsection shall be made in the same manner as loans made under section 19 [IC 36-4-6-19] of this chapter, except that:

(1) the ordinance authorizing the loans must pledge to their payment a sufficient amount of tax revenues over the ensuing five (5) years to provide for refunding the loans; and

(2) the loans must be evidenced by notes of the city in terms designating the nature of the consideration, the time and place payable, and the revenues out of which they will be payable.

Notes issued under this subsection are not bonded indebtedness for purposes of IC 6-1.1-18.5.

(b) The legislative body may, by ordinance, make loans and issue notes for the purpose of refunding those loans in anticipation of revenues of the city that are anticipated to be levied and collected during the term of the loans. The term of a loan made under this subsection may not be more than five (5) years. Loans under this subsection shall be made in the same manner as loans made under section 19 of this chapter except that:

(1) the ordinance authorizing the loans must appropriate and pledge to their payment a sufficient amount of the revenues in anticipation of which they are issued and out of which they are payable; and

(2) the loans must be evidenced by time warrants of the city in terms designated the nature of the consideration, the time and place payable, and the revenues in anticipation of which they are issued and out of which they are payable.

(c) An action to contest the validity of a loan under this section must be brought within fifteen (15) days from the day on which the ordinance is adopted.

Loans in Anticipation of Future Revenues - Towns

The legislative body may, by ordinance, make loans and issue notes for the purpose of refunding those loans in anticipation of revenues of the town that are anticipated to be levied and collected during the term of the loans. The term of a loan may not be more than five (5) years. Loans shall be made in the same manner as loans made under IC 36-5-2-11(b) and (c), except that:

(1) the ordinance authorizing the loans must appropriate and pledge to the payment of the loans a sufficient amount of the revenues in anticipation of which the loans are issued and out of which the loans are payable; and

(2) the loans must be evidenced by time warrants of the town in terms designated the nature of the consideration, the time and place payable, and the revenues in anticipation of which the loans are issued and out of which the loans are payable.

An action to contest the validity of a loan made under this section must be brought within fifteen (15) days from the day on which the ordinance is adopted. (IC 36-5-2-12)

Time Warrants

IC 36-4-6-20(b)(2) and IC 36-5-2-12 requires loans to be evidenced by a time warrant bearing a specified rate of interest from date of loan to maturity date. IC 6-1.1-20-7 has removed the maximum interest rate but requires if the rate of interest is greater than eight percent (8%), the approval of the Department of Local Government Finance must be secured.

A loan must be repaid from the fund to which the loan was receipted. The principal of a loan may be repaid without an appropriation, but an appropriation is required for payment of the interest on the temporary loan.

Suggested forms of "Notice of Receiving Bids for Temporary Loans" and "Tax Anticipation Time Warrant" which is similar to those now being used in some cities and towns follows. Please consult your city or town attorney for advice in this matter.

NOTICE OF RECEIVING BIDS FOR LOANS

Notice is hereby given that the common council (or town council) of _____, in _____ County, Indiana, will receive sealed bids up to the hour of _____ (a.m. or p.m.) on the ____ day of _____, _____, at the office of _____ street, _____, Indiana, for the following:

The proposal to loan the said city (or town) of _____, Indiana, _____ Dollars for the _____ Fund in anticipation of the revenues of the city (or town), and for a term not to exceed _____ days/years.

Each bid shall stipulate the rate of interest to be charged. Each bid shall be accompanied by an affidavit that no collusion exists between the bidder and any other person relative to such bid.

Prior to maturity all or any amount of the principal may be prepaid with accrued interest to the date of prepayment.

All bids must be made in full compliance with the law governing such matters; and, the common council (or town council) reserves the right to reject any or all bids.

ATTEST:

_____

Clerk: (City or Town) of _____

BY: _____

Mayor, City of _____

or President of Council, Town of _____)

Principal $_____
Interest At ____% $_____
No. _____ Total $_____

CITY (OR TOWN) OF _____ TAX ANTICIPATION TIME WARRANT
_____ FUND

On the ____ day of _____, the City (or Town) of _____, in _____ County, Indiana promises to pay the bearer, at the office of the Treasurer of the City (or Town) of _____, the sum of _____ including interest on the principal amount of this warrant from the date hereof to maturity, payable out of and from taxes to be levied and collected in the year(s) ____, ____, ____, ____, ____, and payable in the year(s) ____, ____, ____, ____, _____. This warrant may be prepaid on and after _____, and prior to maturity at the principal amount hereof plus accrued interest to the date of prepayment.

This Tax Anticipation Time Warrant is one of a series of warrants aggregating a sum of _____, exclusive of interest added thereto to maturity, evidencing a temporary loan in anticipation of the taxes to be levied and collected for the _____ Fund of said City (or Town).

Said loan was authorized by an ordinance duly adopted by the Common Council (or Town Council) of the City (or Town) of _____, at a meeting thereof duly and legally convened and held on the _____ day of _____, for the purpose of providing funds for the _____ Fund of said City (or Town) of _____, in compliance with an act of the General Assembly of the State of Indiana, entitled “An Act Concerning Municipal Corporations,” approved March 6, 1905, and all acts amendatory thereof and supplemental thereto, including particularly IC 36-4-6-20(b).

The consideration of said warrant is a loan made to the City (or Town) of _____ in anticipation of taxes to be levied and collected for the _____ Fund of said City (or Town) for the year(s) ____, ____, ____, ____, ____, payable in the year(s) ____, ____, ____, ____, ____, and said taxes to be levied and collected are hereby specifically appropriated and pledged to the payment of said Tax Anticipation Time Warrant.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to the authorization, preparation, complete execution and delivery of said warrants have been done and performed as provided by law.

IN WITNESS WHEREOF, the City (or Town) of _____ has caused this warrant to be signed in its corporate name by its Mayor (or Town Council President) and attest by the Clerk of the City (or Town) of _____ and the corporate seal of said City (or Town) hereunto affixed.

Dated this _____ day of _____.

ATTEST:

_____
Clerk: (City or Town) of _____

CITY (OR TOWN) OF _____

BY: _____
Mayor, City of _____
(or President of Council, Town)
of _____)

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 the 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) 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) provides that 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 the Department of Local Government Finance. [IC 36-1-8-4]

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 failing 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 cash reserve fund."

NOTE: A municipality or municipally owned utility could borrow money from or loan money to the municipality's wastewater utility under the provisions of the Home Rule statute contained in IC 36-1-3.

INSURANCE

Insurance coverage does not appear to be included within the definitions contained in the Public Purchases Law, IC 5-22, or Public Works Law, IC 36-1-12. Therefore, there is no specific statutory requirement for advertising and soliciting bids for such service. Advertising for quotations or bids for insurance is a matter for local determination.

MOTOR VEHICLE HIGHWAY DISTRIBUTION - APPROVED USES

Motor Vehicle Highway Distributions are limited by IC 8-14-1-5 to the following approved uses on city and town highways. IC 8-14-1-1 (c) defines the term “highways” to mean “roadway, rights-of-way, bridges, drainage structures, signs, guard rails, protective structures in connection with highways, drains, culverts and bridges and the substructure and superstructure of bridges and approaches thereto and streets and alleys of cities and towns.”

(1) Construction and reconstruction of streets, alleys and curbs.

(2) Repair and maintenance of streets, alleys, and curbs.

(3) Oiling, sprinkling, snow removal, weed and tree cutting and cleaning of streets, alleys and curbs.

(4) Costs of the separation of the grades of crossing of public highways and railroads.

(5) Purchase or lease of highway construction and maintenance equipment.

(6) Purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices.

(7) Painting of structures, objects, surfaces and highways for the purpose of safety and traffic regulations.

(8) Law enforcement purposes subject to the following limitations:

(a) For cities and towns with a population of less than five thousand (5,000) no more than fifteen percent (15%) may be spent for law enforcement purposes.

(b) For cities or towns other than those specified in (a), no more than ten percent (10%) may be spent for law enforcement purposes.

All motor vehicle highway distributions shall be budgeted and appropriated in the manner required by law.

IC 8-14-1-3 lists the penalty for misapplication of Motor Vehicle Highway Distributions. The statute states in part:

> “. . . If any funds allocated to any city or town shall be used by any officer or officers of such city or town for any purpose or purposes other than the purposes as defined in this chapter such officer or officers shall be liable upon their official bonds to such city or town in such amount so used for other purposes than for the purposes as defined in this chapter together with the costs of said action and reasonable attorney fees recoverable in an action or suit instituted in the name of the State of Indiana on the relation of any taxpayer or taxpayers resident of such city or town. . . .”

LOCAL ROAD AND STREET ACCOUNT DISTRIBUTIONS - APPROVED USES

IC 8-14-2-5 states that:
"Monies from the local road and street account shall be used exclusively by the cities, towns and counties for: (1) engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems; (2) the payment of principal and interest on bonds sold primarily to finance road, street and thoroughfare projects; (3) any local costs required to undertake a recreational or reservoir project under IC 8-23-5; or (4) the purchase, rental, or repair of highway equipment. . . ."

Local road and street account distributions must be budgeted and appropriated as required by law.

TRANSFERS OF CEDIT AND RAINY DAY FUND MONEY

A city or town may permanently transfer, by ordinance or resolution, money in its CEDIT fund to the general fund or any other appropriated city or town fund. [IC 6-3.5-7-12.7]

A city or town may permanently transfer, by ordinance or resolution, money in its Rainy Day fund to any other appropriated city or town fund. [IC 36-1-8-5.1]

TRANSFERS OF MOTOR VEHICLE HIGHWAY AND LOCAL ROAD AND STREET DISTRIBUTIONS

IC 36-5-4-13 allows towns with a population of more than 500 but less than 2,000 to transfer money in the motor vehicle highway fund and local road and street fund to any town fund after the passage of an ordinance or resolution. The total amount of all money transferred may not exceed $40,000.

SMALL TOWNS - TRANSFERS OF FUNDS

Notwithstanding the provisions of any other statute a town with a population of 500 or less may transfer money from any town fund to another town fund after the passage of an ordinance or a resolution by the town legislative body specifying the:

1. amount of the transfer;
2. funds involved
3. date of the transfer; and
4. general purpose of the transfer. [IC 36-5-4-13(a)]

FINAL ACTION ON BUDGETS

If any reduction is made by the county tax adjustment board or the Department of Local Government Finance in your budget and tax levy, the appropriate body must comply with IC 6-1.1-18-4, which states in part:
". . . the proper officers of a political subdivision shall appropriate funds in such a manner that the expenditures for a year do not exceed its budget for that year as finally determined. . . ."

APPROPRIATIONS - TRANSFER BETWEEN MAJOR BUDGET CLASSIFICATIONS

Cities and Towns With Departmentalized Budgets

IC 6-1.1-18-6 states:
"(a) The proper officers of a political subdivision may transfer money from one major budget classification to another within a department or office if: (1) they determine that the transfer is necessary; (2) the transfer does not require the expenditure of more money than the total amount set out in the budget as finally determined under this article; and (3) the transfer is made at a regular public meeting and by proper ordinance or resolution.
(b) A transfer may be made under this section without notice and without the approval of the department of local government finance."

Towns Without Departmentalized Budget

As you will note, IC 6-1.1-18-6 restricts transfers to those "from one major budget classification to another within a department or office. . . ." Smaller towns do not use departmentalized budgets.

Your attention is further directed to the provisions of Attorney General Official Opinion No. 11, dated June 28, 1976, written in response to a question from a public school corporation regarding transferring "money from one account of its general fund to another account within its general fund without additional prior notice to the public and without prior approval of the state board of tax commissioners." The Attorney General, in Official Opinion No. 11, concludes:

> "It is therefore, my official opinion that by enacting Indiana Code, section 6-1.1-18-6, the General Assembly intended to authorize a public school corporation, on the same basis as other political subdivisions of government, to transfer money from one major budget classification of its general fund to another classification within that same fund without additional public notice and prior approval of the State Board of Tax Commissioners; but such a transfer could only be made by ordinance adopted at a public meeting of the school board, and the ordinance could not authorize expenditure of money in excess of the total appropriation for the school corporation. This opinion, however, relates only to the intended applicability of Code section 6-1.1-18-6. Doubts remain as to the constitutionality of the provisions of that section which permit transfer of funds without notice."

The State Board of Accounts recognizes the provisions of this statute and official opinion and recommends the town attorney review this information. With his written approval, the State Board of Accounts will take no audit exception in future audits of a town if transfers of appropriations are made within the Town General Fund, pursuant to the requirements of IC 6-1.1-18-6.

APPROPRIATIONS - ADDITIONAL

IC 6-1.1-18-5 states:

"(a) If the proper officers of a political subdivision desire to appropriate more money for a particular year than the amount prescribed in the budget for that year as finally determined under this article, they shall give notice of their proposed additional appropriation. The notice shall state the time and place at which a public hearing will be held on the proposal. The notice shall be given once in accordance with IC 5-3-1-2(b).

(b) If the additional appropriation by the political subdivision is made from a fund that receives:

(1) distributions from the motor vehicle highway account established under IC 8-14-1-1 or the local road and street account established under IC 8-14-2-4; or

(2) revenue from property taxes levied under IC 6-1.1; the political subdivision must report the additional appropriation to the department of local government finance. If the additional appropriation is made from a fund described under this subsection, subsections (f), (g), (h), and (i) apply to the political subdivision.

(c) However, if the additional appropriation is not made from a fund described under subsection (b), subsections (f), (g), (h), and (i) do not apply to the political subdivision. Subsections (f), (g), (h), and (i) do not apply to an additional appropriation made from the cumulative bridge fund if the appropriation meets the requirements under IC 8-16-3-3(c).

(d) A political subdivision may make an additional appropriation without approval of the department of local government finance if the additional appropriation is made from a fund that is not described under subsection (b). However, the fiscal officer of the political subdivision shall report the additional appropriation to the department of local government finance.

(e) After the public hearing, the proper officers of the political subdivision shall file a certified copy of their final proposal and any other relevant information to the department of local government finance.

(f) When the department of local government finance receives a certified copy of a proposal for an additional appropriation under subsection (e), the department shall determine whether sufficient funds are available or will be available for the proposal. The determination shall be made in writing and sent to the political subdivision not more than fifteen (15) days after the board receives the proposal.

(g) In making the determination under subsection (f), the board shall limit the amount of the additional appropriation to revenues available, or to be made available, which have not been previously appropriated.

(h) If the department of local government finance disapproves an additional appropriation under subsection (f), the department shall specify the reason for its disapproval on the determination sent to the political subdivision.

(I) A political subdivision may request a reconsideration of a determination of the department of local government finance under this section by filing a written request for reconsideration. A request for reconsideration must:

(1) Be filed with the department of local government finance within fifteen (15) days of the receipt to the determination by the political subdivision; and

(2) State with reasonable specificity the reason for the request. The department of local government finance must act on a request for reconsideration within fifteen (15) days of receiving the request."

See Page 4-5 for suggested format of Notice to Taxpayers of Additional Appropriations. Any questions relating to additional appropriations should be directed to the Department of Local Government Finance, Indiana Government Center North, Room N 1058, 100 North Senate Avenue, Indianapolis, Indiana, 46204, telephone (317) 232-3773.

APPROPRIATIONS - INSURANCE CLAIM PROCEEDS

IC 6-1.1-18-7 sets forth the procedure that shall be observed when appropriating insurance claim proceeds to replace property, as follows:

"Notwithstanding the other provisions of this chapter [6-1.1-18-1 -- 6-1.1-18-11], the fiscal officer of a political subdivision may appropriate funds received from an insurance company if: (1) the funds are received as a result of damage to property of the political subdivision; and (2) the funds are appropriated for the purpose of repairing or replacing the damaged property.

However, this section applies only if the funds are in fact expended to repair or replace the property within the twelve (12) month period after they are received."

Where appropriations are made for insurance claim proceeds, this need not be advertised nor approved by the Department of Local Government Finance. The amount appropriated would be added to the current appropriation account from which the expense will be paid.

PARKING METERS AND PARKING FEES (OTHER THAN INDIANAPOLIS)

IC 36-9-12-4 (b) provides that parking meter funds in cities and towns may be disbursed only to pay:

(1) the purchase price, rental fees, and costs of installation of the parking meters;

(2) the cost of maintenance, operation, and repair of the parking meters;

(3) incidental costs and expenses in the operation of the parking meters, including the cost of clerks and bookkeeping;

(4) the cost of traffic signal devices used in the municipality;

(5) the cost of repairing and maintaining any of the public ways, curbs, and sidewalks where the parking meters are in use, and all public ways connected with them in the municipality;

(6) the cost of acquiring, by lease or purchase, suitable land for off-street parking facilities to be operated or leased by the municipality;

(7) the principal and interest on bonds issued to acquire parking facilities and devices;

(8) the cost of improving and maintaining land for parking purposes and purchasing, installing, and maintaining parking meters on that land; and

(9) the cost of providing approved school crossing protective facilities, including the cost of purchase, maintenance, operation, and repair, and all other incidental costs.

IC 36-9-12-4 (a) states:

"(a) A municipality must provide, by ordinance that: (1) all license fees collected from parking meters shall be deposited with the municipal fiscal officer; (2) the fees shall be deposited to the credit of the municipality in a special fund; and (3) disbursements from the special fund may be made only on orders of the municipal works board, or board of transportation, and only for the purposes listed in subsection (b).

The law also authorizes the transfer, by ordinance, of any balance in the Parking Meter Fund at the end of the calendar year to the General Fund of the city or town. Such ordinance may be passed at any time during the year and could provide for the transfer to the General Fund of all or any part of the balance in the Parking Meter Fund as of the previous December 31. The funds so transferred to the General Fund must be appropriated before expenditure, either in the budget, or by additional appropriation. [IC 36-9-12-7]

In all cities and towns the appropriation of Parking Meter Funds by the common council or town council is required in the same manner as other public funds are appropriated. An itemized estimate of the money necessary for the operation of parking meters for the ensuing year shall be prepared at the regular time of making and filing budget estimates. These estimates shall be made and presented to the municipal legislative body in the same manner as other department estimates. Appropriations are not subject to review by either the county tax adjustment board or Department of Local Government Finance. [IC 36-9-12-5]

An ordinance by the common council or town council governing penalties on account of violations of parking meter regulations can provide for receipting penalties to either the Parking Meter Fund or General Fund. In the absence of any such provision, penalties shall be receipted to the General Fund.

PUBLIC NOTICE ADVERTISING - CLAIMS BY PUBLISHER

By the provisions of IC 5-3-1-1, the cost of all public notice advertising paid for from public funds shall be by the line and shall be computed bases on a square of two hundred fifty (250) ems at the following rates:

Before January 1, 1996, Three Dollars and Thirty Cents ($3.30) per square for the first insertion and One Dollar and Sixty-Five Cents ($1.65) per square for each additional insertion required. [IC 5-3-1-1 (b)(1)(2)]

After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by 5% more than the basic charges in effect the previous year.

After December 31, 2009, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges by not more than two and three quarters percent (2.75%) more than the basic charges that were in effect during the previous year.

If the public notice advertisement contains rule or tabular work, an additional charge of fifty percent (50%) shall be allowed.

An advertisement in tabular form would include any notice in which a column of figures is consecutively compiled in alignment. Examples of tabular work include:

Notices to Taxpayers of Tax Levies (Budget Notice)
Annual Reports
Notice of Additional Appropriations

Each newspaper publishing public notice advertising shall submit proof of publication and claim for payment on General Form No. 99P in duplicate on each public notice advertisement published. If more than two proofs of publication are required by any official, the newspaper shall be allowed to charge $1.00 for each additional copy so furnished. [IC 5-3-1-1 (d)]

If a newspaper maintains an internet web site, a notice that is published in the newspaper must also be posted in the newspaper's web site on the same day the notice appears in the newspaper. A newspaper may not charge a fee for posting a notice on the newspaper web site.

In auditing claims for publication of such notices all that is necessary is to actually count the number of lines and multiply this by the number of columns to secure the number of equivalent lines, which should be multiplied by the price per line.

CUMULATIVE FUNDS - TAX LEVY

A city or town does not have the authority to establish a cumulative fund by tax levy without statutory authority. Following is a list of cumulative funds that are authorized to be established by tax levy:

Cumulative Bridge Fund	IC 8-16-3
Cumulative Building Fund for Airport Authorities	IC 8-22-3-25
Cumulative Building Fund for Vanderburgh County Levee Authority	IC 13-2-31-26
Cumulative Maintenance Fund for Conservancy Districts	IC 13-3-3-89
Cumulative Hospital Building Sinking Fund	IC 16-22-4
Cumulative Building and Equipment Fund (For Fire Stations, Fire Equipment and Police Radio Equipment)	IC 36-8-14
Cumulative Transportation Fund	IC 36-9-4-48
Cumulative Capital Development Fund for Municipalities	IC 36-9-15.5
Cumulative Building (or Sinking) Fund	IC 36-9-16-2
Cumulative Capital Improvement Fund	IC 36-9-16-3
Cumulative Street Fund	IC 36-9-16-5

General Improvement Fund	IC 36-9-17
Cumulative Building and Sinking Fund (For Sewage Disposal Plant Construction and Sanitary System or Storm Sewers)	IC 36-9-26
Cumulative Drainage Fund	IC 36-9-27-98 to 103
Cumulative Building Fund for Park Boards	IC 36-10-3-21
Cumulative Building and Sinking Fund For Park Land and Improvements in Certain 2nd and 3rd Class Cities	IC 36-10-4-36

Inquiries relative to the procedure for establishing tax levies for these funds should be directed to the Department of Local Government Finance, Indiana Government Center North, Room N 1058, 100 North Senate Avenue Indianapolis, Indiana, 46204, telephone number (317) 232-3777.

CUMULATIVE FUNDS - APPROPRIATIONS

Approval by the Department of Local Government Finance to establish a tax levy for any cumulative fund authorized by law does not carry with it the authority to expend such funds without appropriation.

Prior to obligating these funds, it will be necessary to secure an appropriation in the regular legal manner, which will require advertising to the taxpayers and approval of the Department of Local Government Finance.

PROPERTY TAXES - REQUEST FOR ADVANCES

IC 5-13-6-3 (b) requires the county treasurer to advance property taxes to any municipal corporation prior to the semi-annual distribution of taxes, where the funds are needed, upon receipt of a written request from the proper officer of the municipal corporation. The county treasurer shall advance such taxes not later than thirty (30) days after receipt of the written request for funds from the political subdivision. Any such advances may not exceed 95% of the total taxes already collected at the time of advance which are due the governmental unit. The amount of the advance must be available immediately for the use of the political subdivision.

If a county auditor fails to make an advance by the deadline, the political subdivision may recover interest on the undistributed tax collections under IC 6-1.1-27.1.

PRIMARY AND ELECTION EXPENSES

All Cities and Towns 3,500 and Over

The expenses of city primaries and elections are paid by the county with each city conducting a primary or election being billed for its share of the expenses. Each city should include an item under “Other Services and Charges” (Account No. 439.07, Election Expense) in the budget for the election year for the total estimated amount to be paid to the county. The county auditor or clerk of the circuit court can supply information as to the amount to be included for primary and election expenses. IC 3-5-3-8 and IC 3-5-3-9 provides the procedure for the county to allocate all cities and those towns (over 3,500) primary and election costs.

Your city attorney and the State Election Board should be consulted for guidance on questions related to city elections.

Towns Under 3,500

The expense of a town primary and election in a town with less than 3,500 population are to be paid directly by the town. It is recommended that the total amount of such expenses be budgeted as one item under “Other Services and Charges” (Account No. 439.07, Election Expense) in the General Fund. [IC 3-10-7-16 and IC 3-10-7-17]

The expense of a town primary and election in a town with less 3,500 population are to be paid directly by the town. It is recommended that the total amount of such expenses be budgeted as one item under “other Services and Charges” (Account Number 439.07, Election Expense) in the General Fund. [IC 3-10-7-16 and IC 3-10-7-17]

A county election board and a town may enter into a written agreement providing that the county election board will conduct a municipal primary or a municipal election, or both in the town. A town that enters into an agreement shall continue to nominate candidates by convention conducted under IC 3-8-5 or by petition filed under IC 3-8-6 unless the town nominates candidates in a primary election as provided in IC 3-8-5-2. An agreement may not be entered into after September 21 of a year in which a municipal election is to be held in the town. A county election board that enters into such agreement shall conduct the municipal election in the same manner as it conducts a general election in a town that has a population of three thousand five hundred (3,500) or more. (IC 3-10-7-4)

IC 3-5-3-8 and IC 3-5-3-9 provide the procedure for the county to charge direct expense and a portion of indirect expense to towns with 3,500 or more population. IC 3-8-5 and IC 3-8-6 list procedures to be followed in nominating candidates in towns with less than 3,500 or more population.

OATHS OF OFFICE - CITIES

Oaths - Officers and Deputies

IC 5-4-1-1 states in part:

“. . . (a) Every officer and every deputy, before entering on the officer's or deputy's official duties, shall take an oath to support the Constitution of the United States and the Constitution of the State of Indiana, and that the officer or deputy will faithfully discharge the duties of such office.

. . . (c) An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of the officer and is not required to take the oath prescribed by subsection (a). However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath required under subsection (a) before entering the official duties of the office.”

Oaths - When to Take and File

IC 5-4-1-1.2 states in part:

“(b) . . . an individual appointed or elected to an office of the political subdivision may take the oath . . . at any time after the individual's appointment or election.

(c) an individual appointed or elected to an office . . . must take the oath . . . and deposit the oath . . . not later than thirty (30) days after the beginning of the term of office.

(d) if an individual appointed or elected to an office . . . does not comply with subsection (c), the office becomes vacant.”

Oaths - Endorsement and Certified Copies

IC 5-4-1-2(a) states in part:

"The oath . . . shall be endorsed on or attached to the: (1) commission; (2) certificate if a certificate was issued under IC 3-12-7-34, IC 3-12-4, or IC 3-12-5; or (3) certificate of appointment of pro tempore under IC 3-13-11-11; signed by the person taking the oath, and certified to by the officer before whom it was taken, who shall also deliver to the person taking the oath a certified copy of the oath."

Oaths - Deposit of Certified Copies

IC 5-4-1-4(b) states in part:

"The copy of the oath . . . shall be deposited by the person as follows: . . . (2) . in the circuit court clerk's office of the county containing the greatest percentage of the population of the political subdivision . . ."

OFFICIAL BONDS - CITIES

Bonds - Approval

IC 5-4-1-8 states in part:

"(a) The official bonds of officers, if sufficient, shall be approved as follows: . . . (4) Of city officers, except executive and members of the legislative body, by the city executive. (5) Of members of the board of public works or of the board of public works and safety in cities, by the city legislative body.

(b) A person who approves an official bond shall write the approval on the bond.

(c) A bond must be approved before it is filed."

NOTE: There are no statutory requirements for members of the board of public works or board of public works and safety to obtain an official bond.

Bonds - Time for Giving - Failure to Comply

IC 5-4-1-9 states:

"An officer required to give an official bond shall give the bond before the commencement of his term of office. If the officer fails to give the bond before that time, the officer may not take office."

Bonds - To Whom Payable

IC 5-4-1-10 states:

"All official bonds shall be payable to the state of Indiana; and every such bond shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof."

Bonds - Who Must File - Amounts

IC 5-4-1-18 states in part:

"(a) Except as provided in subsection (b), the following city, . . . officers and employees shall file an individual surety bond: (1) City judges, controllers, clerks, and clerk-treasurers. . . . (5) Those employees directed to file an individual bond by the fiscal body of a city, town or county.

(b) The fiscal body of a city, . . . may by ordinance, authorize the purchase of a blanket bond or a crime insurance policy. . . to cover the faithful performance of all employees, commission members, and persons acting on behalf of the local government unit including those officers described in subsection (a).

(c) The fiscal bodies of the respective units shall fix the amounts of the bond of city controllers, city clerk- treasurers, . . . Barrett Law fund custodians, . . . as follows: (1) The amount must equal thirty thousand dollars ($30,000) for each one million dollars ($1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2). (2) The amount may not be less than thirty thousand dollars ($30,000) nor more than three hundred thousand dollars ($300,000). . . . The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than fifteen thousand dollars ($15,000). . ."

IC 5-4-1-19 states:

"The bonds prescribed by IC 5-4-1-18 cover the faithful performance of the duties of the officer or employee, including the duty to comply with IC 35-44-1-2 and the duty to account properly for all monies and property received by virtue of his position or employment."

NOTE: All employees who handle cash should be covered by some type of bond or crime insurance policy.

All official bonds, employee blanket bonds, and crime insurance policies which are to be obtained under IC 5-4-1-18 shall be filed in the office of the County Recorder. All other bonds and crime insurance policies shall also be filed in the office of the County Recorder. [IC 5-4-1-5.1]

Bonds - Police Pension Secretary

IC 36-8-6-3 (e) states in part:

"The secretary shall, in a manner prescribed by IC 5-4-1, execute a bond conditioned upon the faithful discharge of his duties.

Bonds - Fire Pension Secretary

The secretary shall, in the manner prescribed by IC 5-4-1, execute a bond conditional upon the faithful discharge of the secretary's duties."

Bonds - Utility Superintendent (Water, Gas and Electric Utilities)

IC 8-1.5-3-5(c) states:

"The superintendent shall give bond in the sum not less than double the estimated amount of money that may be in his hands at any time. The bond shall be conditioned upon the faithful discharge of his duties and the payment to the proper person of all money in his hands. The bond is subject to the approval of the executive of the municipality."

Bonds – City Manager

IC 36-4-12-8 states:

"The city manager shall execute a bond for the faithful performance of the city manager's duties in the manner prescribed by IC 5-4-1."

Bonds - City Court Bailiff

IC 33-35-3-3 states:

"The bailiff shall give bond payable to the city in the penal sum of one thousand dollars ($1,000) with a surety to be approved by the mayor, conditioned on the full faith and would be discharged of his duties. The bond shall be filed in the office of the controller or clerk-treasurer.

OATHS OF OFFICE - TOWNS

Oaths - Officers and Deputies

IC 5-4-1-1 states in part:

". . . (a) Every officer and every deputy, before entering on the officer's or deputy's official duties, shall take an oath to support the Constitution of the United States and the Constitution of the State of Indiana, and that the officer or deputy will faithfully discharge the duties of such office."

". . . (c) An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of the officer and is not required to take the oath prescribed by subsection (a). However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath required under subsection (a) before entering the official duties of the office."

Oaths - Endorsement and Certified Copies

IC 5-4-1-2(a) states in part:

"The oath . . . shall be endorsed on or attached to the: (1) commission; (2) certificate if a certificate was issued under IC 3-12-7-34, IC 3-12-4, or IC 3-12-5; or (3) certificate of appointment of pro tempore under IC 3-13-11-11; signed by the person taking the oath, and certified to by the officer before whom it was taken, who shall also deliver to the person taking the oath a certified copy of the oath."

Oaths - Deposits of Certified Copies

IC 5-4-1-4(b) states in part:

"The copy of the oath . . . shall be deposited by the person as follows: . . . (2) . . . in the circuit court clerk's office of the county containing the greatest percentage of the population of the political subdivision . . ."

Oaths - When to Take and File

IC 5-4-1-1.2 states in part:

"(b) . . . an individual appointed or elected to an office of the political subdivision may take the oath . . . at any time after the individual's appointment or election.

(c) an individual appointed or elected to an office . . . must take the oath . . . and deposit the oath . . . not later than thirty (30) days after the beginning of the term of office.

(d) if an individual appointed or elected to an office . . . does not comply with subsection (c), the office becomes vacant."

OFFICIAL BONDS - TOWNS

Bonds - Approval

IC 5-4-1-8 states in part:

"(a) The official bonds of officers, if sufficient, shall be approved as follows: . . . (6) Of clerk-treasurer and marshal of a town, by the town legislative body.

(b) A person who approves an official bond shall write the approval on the bond.

(c) A bond must be approved before it is filed."

Bonds - Time for Giving - Failure to Comply

IC 5-4-1-9 states:

"An officer required to give an official bond shall give the bond before the commencement of his term of office. If the officer fails to give the bond before that time, the officer may not take office."

Bonds - To Whom Payable

IC 5-4-1-10 states:

"All official bonds shall be payable to the state of Indiana; and every such bond shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof."

Bonds - Who Must File - Amounts

IC 5-4-1-18 states in part:

"(a) Except as provided in subsection (b), the following . . . town, . . . officers and employees shall file an individual surety bond: . . . (2) Town judges, and clerk-treasurers. . . . (5) Those employees directed to file an individual bond by the fiscal body of a . . . town, . . .

(b) The fiscal body of a . . . town . . . may by ordinance authorize the purchase of a blanket bond or a crime insurance policy. . . to cover the faithful performance of all employees, commission members, and persons acting on behalf of the local government unit including those officers described in subsection (a).

(c) The fiscal bodies of the respective units shall fix the amount of the bond of . . . town clerk-treasurers, Barrett Law fund custodians, . . . as follows: (1) The amount must equal thirty thousand dollars ($30,000) for each one million dollars ($1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2). (2) The amount may not be less than thirty thousand dollars ($30,000) nor more than three hundred thousand dollars ($300,000). . . . The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than fifteen thousand dollars ($15,000). . . ."

NOTE: All employees who handle cash should be covered by some type of bond or crime insurance policy.

All official bonds, employee blanket bonds, and crime insurance policies which are be obtained under IC 5-4-1-18 shall be filed in the office of the County Recorder. All other bonds and crime insurance policies shall also be filed in the office of the County Recorder. [IC 5-4-1-5.1]

Bonds - Town Manager

IC 36-5-5-5 states:

"The town manager must in the manner prescribed by IC 5-4-1, execute a bond for the faithful performance of his duties."

Bonds - Deputy Marshal

IC 36-5-7-6(c) states in part:

"The legislative body shall fix the amount of bond . . . of deputy marshals."

Bonds - Utility Superintendent (Water, Gas and Electric Utilities)

IC 8-1.5-3-5(c) states:

"The superintendent shall give bond in the sum not less than double the estimated amount of money that may be in his hands at any time. The bond shall be conditioned upon the faithful discharge of his duties and the payment to the proper person of all money in his hands. The bond is subject to the approval of the executive of the municipality."

Bonds - Filing Official Bonds

IC 5-4-1-5.1 requires official bonds of city and town officers and employees to be filed and recorded in the county recorder's office.

IC 36-2-7-10(f)(1) provides that no charge shall be made by the county recorder for such service.

TERM OF OFFICE

City Clerk

IC 36-4-10-2(d) states: "The term of office of a city clerk . . . is four (4) years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified."

City Clerk-Treasurer

IC 36-4-10-2(d) states: "The term of office of a city . . . clerk-treasurer is four (4) years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified."

Town Clerk-Treasurer

IC 36-5-6-3(b) states: "The term of office of the clerk-treasurer is four (4) years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified."

Town Council Members

IC 36-5-2-3 states: "The term of office of a member of the legislative body is four (4) years, beginning at noon on January 1 after his election and continuing until his successor is elected and qualified."

VACANCIES IN ELECTIVE OFFICES

IC 3-13-8 lists procedures which must be followed by cities when an office becomes vacant.

IC 3-13-9, IC 5-8-5, and IC 36-5-2-6.5 list procedures which must be followed by towns when an office becomes vacant.

IC 3-13-11-12 provides authority for filling the vacancy in the office of Clerk-Treasurer in a city or town by a chief deputy. If there is no chief deputy, IC 3-13-11-16 authorizes the mayor of the city or the president of the town council to appoint, as soon as reasonably possible, a person to assume the duties of the office until the office is filled by a caucus.

FISCAL OFFICERS - POWERS AND DUTIES

General Duties - All Fiscal Officers

IC 5-13-6-1(d) requires that all public funds must be deposited not later than the business day following receipt of funds in one or more of the municipality's depositories.

IC 5-13-6-1 (e) requires all local investment officers to reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories.

IC 5-13-5-2 requires all disbursements of public funds shall be made only upon checks (warrants) drawn upon depositories which shall be signed by the public officers authorized to sign in their official capacity. No other individual or group has authority to sign in place of the fiscal officer.

City Controller

IC 36-4-7-6 - Duties of the city fiscal officer regarding preparation of annual budget estimates.

IC 36-4-7-7 - Fiscal officer's duties regarding preparation and passage of ordinances fixing tax rate and making annual appropriations.

IC 36-4-8-2 - Restrictions on fiscal officer for expenditure of public funds.

IC 36-4-8-4 - Requires audit and investigation of claims against city by fiscal officer.

IC 36-4-8-5 - Approval of claims against city -- forfeiture of office for violation.

IC 36-4-8-7 - Prerequisites for approval of claims against city.

IC 36-4-8-8(b) - Procedures required prior to payment of salary claims.

IC 36-4-10-5(b) states: “The fiscal officer is the head of the city department of finance. The fiscal officer shall do the following:

(1) Prescribe the form of reports and accounts to be submitted to his department.

(2) Sign and issue all warrants on the city treasury.

(3) Audit and revise all accounts and trusts in which the city is concerned.

(4) Keep separate accounts for each item of appropriation made for each city department, including a statement showing the amount drawn on each appropriation, the unpaid contracts charged against it, and the balance remaining.

(5) At the end of each fiscal year, submit under oath to the city legislative body a report of the accounts of the city published in pamphlet form and showing revenues, receipts, expenditures, and the sources of revenues.

(6) Maintain custody of the records of his department and turn them over to his successor in office.

(7) Perform duties prescribed by statute concerning the negotiation of city bonds, notes, and warrants.

(8) Keep a register of bonds of the city and of transfers of those bonds.

(9) Manage the finances and accounts of the city and make investments of city monies, subject to the ordinances of the legislative body.

(10) Issue city licenses on payment of the license fee.

(11) Collect fees as fixed by ordinance.

(12) Pay into the city treasury, once each week, all fees and other city monies collected by his department during the preceding week, specifying the source of each item.

(13) Prescribe payroll and account forms for all city offices.

(14) Prescribe the manner in which salaries shall be drawn.

(15) Prescribe the manner in which creditors, officers, and employees shall be paid.

(16) Provide that all salaries are payable monthly, unless the legislative body establishes more frequent payments.

(17) Notify the city executive of the failure of any city officer to collect monies due the city or to pay city monies into the city treasury.

(18) Draw warrants on the city treasury for miscellaneous city expenditures not made under the direction of a department and not specifically fixed by statute.

IC 36-4-10-2 (d) states: “The City Controller of a second class city is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the city controller’s duty as fiscal officer of the second class city, unless the act or omission constitutes gross negligence or an intentional disregard of the controller’s duty.”

City Clerk

IC 36-4-10-4 states: “The clerk shall do the following:

(1) Serve as clerk of the city legislative body under IC 36-4-6-9 and maintain custody of its records.

(2) Maintain all records required by law.

(3) Keep the city seal.

(4) As soon as a successor is elected and qualified, deliver to the successor all the records and property of the clerk's office.

(5) Perform other duties prescribed by law.

(6) Administer oaths when necessary in the discharge of the clerk's duties, without charging a fee.

(7) Take depositions, without charging a fee.

(8) Take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.”

(9) Serve as clerk of the city court under IC 33-35-3-2, if the Judge of the Court does not serve as Clerk of the Court or appoint a Clerk of the Court under IC 33-35-3-1.”

City Clerk-Treasurer - Third Class Cities

IC 36-4-7-6 - Duties of the city fiscal officer regarding preparation of annual budget estimates.

IC 36-4-7-7 - Fiscal officers' duties regarding preparation and passage of ordinances fixing tax rate and making annual appropriations.

IC 36-4-8-2 - Restrictions on fiscal officer for expenditure of public funds.

IC 36-4-8-4 - Requires audit and investigation of claims against city by fiscal officer.

IC 36-4-8-5 - Approval of claims against city -- forfeiture of office for violation.

IC 36-4-8-7 - Prerequisites for approval of claims against city.

IC 36-4-8-8(b) - Procedures required prior to payment of salary claims.

IC 36-4-10-4.5(b) states: “The fiscal officer is the head of the city department of finance. The fiscal officer shall do the following:

(1) Receive and care for all city money and pay the money out only on order of the approving body.

(2) Keep Accounts showing when and from what sources the fiscal officer has received city money and when and to whom the fiscal officer has paid out city money.

(3) Prescribe payroll and account forms for all city offices.

(4) Prescribe the manner in which creditors, officers, and employees shall be paid.

(5) Manage the finances and accounts of the city and make investments of city money.

(6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate.

(7) Issue all licenses authorized by statute and collect the fees fixed by ordinance.

(8) Serve as clerk of the board of public works by attending meetings, preparing agendas, and recording proceedings.

(9) Perform all other duties prescribed by statute.”

IC 36-4-10-4.5(c) states that a fiscal officer is not liable in an individual capacity for an act or omission occurring in connection with the performance of the duties prescribed by subsection (b), unless the act or omission constitutes gross negligence or intentional disregard of the fiscal officer’s duties.

Town Clerk-Treasurer

IC 36-5-2-8 - Town clerk-treasurer is clerk of legislative body - tie-breaking vote authorized.

IC 36-5-3-3 - Fiscal officers responsibilities regarding preparation of annual budget estimates.

IC 36-5-3-4 - Town fiscal officers responsibilities regarding preparation and approval of ordinance fixing tax rate and making annual appropriations.

IC 36-5-4-2 - Requirements to be met prior to disbursement of funds.

IC 36-5-4-3 - Procedures required of the town council prior to issue of warrants (checks) - forfeiture of office for violation.

IC 36-5-4-4 - Requirements for allowance of claims - forfeiture of office for violation.

IC 36-5-4-6 - Conditions which must be met prior to issue of warrants (checks) for payment of claims.

IC 36-5-4-10 - Requires delivery of records and property to successor.

IC 36-5-6-2 - Clerk-treasurer serves as town clerk and town fiscal officer.

IC 36-5-6-5 - Clerk-treasurer may administer oaths, take depositions, and take acknowledgments of instruments required by statute to be acknowledged.

IC 36-5-6-6(a) states: "The clerk-treasurer shall do the following:

(1) Receive and care for all town money and pay the money out only on order of the town legislative body.

(2) Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money.

(3) Prescribe payroll and account forms for all town offices.

(4) Prescribe the manner in which creditors, officers, and employees shall be paid.

(5) Manage the finances and accounts of the town and make investments of town money.

(6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate.

(7) Maintain custody of the town seal and the records of the legislative body.

(8) Issue all licenses authorized by statute and collect the fees fixed by ordinance.

(9) Serve as clerk of the legislative body by attending its meetings and recording its proceedings.

(10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.

(11) Serve as clerk of the town court under IC 33-35-3-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-35-3-1.

(12) Perform all other duties prescribed by statute."

IC 36-5-6-6(b) states:

"A clerk-treasurer is not liable in an individual capacity for any act or omission occurring in connection with the performance of the requirements set forth in subsection (a), unless the act or omission constitutes gross negligence or an intentional disregard of the requirements."

FISCAL OFFICERS - APPOINTMENT OF OFFICE PERSONNEL

City Controller

IC 36-4-11-5 - Applies only to second class cities and section (b) states:

"The city legislative body may, by ordinance, authorize the city fiscal officer to appoint a deputy. The fiscal officer is responsible for the official acts of his deputy."

City Clerk

IC 36-4-10-2 states:

"(a) A city clerk shall be elected under IC 3-10-6 by the voters of each second class city, and a city clerk-treasurer shall be elected under IC 3-10-6 by the voters of each third class city."

IC 36-4-7-3(d) states in part:

". . . 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."

IC 36-4-11-4 states:

"The city clerk may appoint the number of deputies and employees authorized by the city legislative body. The clerk's deputies and employees serve at his pleasure."

City Clerk-Treasurer - Third Class Cities

IC 36-4-10-7 states:

". . . (b) The clerk shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the city legislative body. The clerk's deputies and employees serve at the clerk's pleasure.

(c) If a city owns a utility and the clerk is directly responsible for the billing and collection of that utility's rates and charges, the clerk shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk's pleasure.

(d) Whenever the city court judge does not serve as clerk of the city court or appoint a clerk to serve as clerk of the city court under IC 33-35-3-1, the clerk shall serve as clerk of the city court.

Town Clerk-Treasurer

IC 36-5-6-7 states:

"(a) The clerk-treasurer shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the town legislative body. The clerk-treasurer's deputies and employees serve at the clerk-treasurer's pleasure.

(b) If a town owns a utility and the clerk-treasurer is directly responsible for the billing and collection of that utility's rates and charges, the clerk-treasurer shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk-treasurer's pleasure."

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 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 the salaries of attorneys and legal research assistants employed shall be approved in the annual budget and must be allocated to the Clerk or Clerk-Treasurer for the 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 36-4-9-4.

CLAIMS - PAYMENT OF

IC 5-11-10-1.6 states:

"(a) This section applies to a municipality (as defined in IC 36-1-2-11), a school corporation (as defined in IC 36-1-2-7), a county having a consolidated city, a municipally owned utility that is subject to IC 8-1.5-3 or IC 8-1.5-4, a board of an airport authority under IC 8-22-3, a board of aviation commissioners under IC 8-22-2, a public transportation corporation under IC 36-9-4, or a commuter transportation district under IC 8-5-15.

(b) As used in this section, "claim" means a bill or an invoice submitted to a municipality for goods and services.

(c) The fiscal officer of a municipality may not draw a warrant or check for payment of a claim unless:

(1) there is a fully itemized invoice or bill for the claim;

(2) the invoice or bill is approved by the officer or person receiving the goods and services;

(3) the invoice or bill is filed with the municipality's fiscal officer;

(4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and

(5) payment of the claim is allowed by the municipality's legislative body or the board having jurisdiction over allowance of payment of the claim.

(d) The fiscal officer of a municipality shall issue checks or warrants for claims by the municipality that meet all of the requirements of this section. The fiscal officer does not incur personal liability for disbursements:

(1) processed in accordance with this section; and

(2) for which funds are appropriated and available.

(e) The certification provided for in subsection (c)(4) must be on a form prescribed by the state board of accounts"

IC 5-11-10-2 states in part:

"(a) Claims against a political subdivision of the state must be approved by the officer or person receiving the goods or services, be audited for correctness and approved by the disbursing officer of the political subdivision, and, where applicable, be allowed by the governing body having jurisdiction over allowance of such claims before they are paid. If the claim is against, a municipality (as defined in IC 36-1-2-11), the claim must be certified by the fiscal officer.

(b) The state board of accounts shall prescribe a form which will permit claims from two (2) or more claimants to be listed on a single document and, when such list is signed by members of the governing body showing the claims and amounts allowed each claimant and the total claimed and allowed as listed on such document, it shall not be necessary for the members to sign each claim.

(c) Notwithstanding subsection (b), only:

(1) the chairperson of the board of directors of a solid waste management district established under IC 13-9.5; or

(2) the chairperson's designee; is required to sign the claim form described under this section.

(d) The form prescribed under this section shall be prepared by or filed with the disbursing officer of the political subdivision together with:

(1) the supporting claims if payment is made under section 1 (IC 5-11-10-1) of this chapter; or

(2) the supporting invoices or bills if payment is made under section 1.6 (IC 5-11-10-1.6) of this chapter.

All such documents shall be carefully preserved by the disbursing officer as a part of the official records of the office.

(e) Where under any law it is provided that each claim be allowed over the signatures of members of a governing body, or a claim docket or accounts payable voucher register be prepared listing claims to be considered for allowance, the form and procedure prescribed in this section shall be in lieu of the provisions of the other law. . . ."

PAYMENT OF CLAIMS PRIOR TO BOARD ALLOWANCE

IC 36-4-8 and IC 36-5-4 lists various conditions which must be met prior to issuing warrants in cities and towns. IC 36-4-8-14 and IC 36-5-4-12 allows a city or town council to adopt an ordinance allowing the city or town fiscal officer to pay certain types of claims prior to board allowance.

The types of claims which could be paid before board allowance include: (1) property or services purchased from the U.S. Government, (2) license or permit fees, (3) insurance premiums, (4) utility payments or connection charges, (5) general grant programs where advance refunding is not prohibited and the contracting party posts sufficient security to cover the amount advanced, (6) grants of State funds, (7) maintenance or service agreements, (8) leases or rental agreements, (9) bond or coupon payments, (10) payroll, (11) state, federal or county taxes, (12) expenses that must be paid because of emergency circumstances, and (13) expenses described in an ordinance.

The legislative body or the board having jurisdiction over the allowance of the claims shall review and allow the claims at the body's or board's next regular or special meeting following the preapproved payment of the expense.

BONDS-DISPOSITION OF SURPLUS PROCEEDS OF BOND ISSUES OR INVESTMENT EARNINGS

IC 5-1-13-2 states:

"(a) Notwithstanding any other law, whenever (1) bonds are issued by any political subdivision in the state of Indiana, for any lawful purpose or project; (2) the purpose or project for which the bonds were issued has been accomplished or abandoned; and (3) a surplus remains from the proceeds of the bonds or investments earnings derived from the proceeds of those bonds; the political subdivision may use the surplus only in the manner prescribed by subsection (b) or (c).

(b) The legislative body of any such political subdivision may by an order, ordinance, or resolution entered of record direct the disbursing officer of such political subdivision to transfer the surplus bond proceeds or investment earnings to the fund of the political subdivision pledged to the payment of principal and interest on those bonds, and upon such order, ordinance, or resolution being made, the disbursing officer shall make such transfer. Thereafter such funds transferred shall be used for the payment of the bonds to which the surplus bond proceeds or investment earnings are attributable or interest due for such bonds.

(c) Surplus bond proceeds or investment earnings may be used by a local issuing body for the following purposes: (1) To maintain a debt service reserve fund for the bonds to which the surplus bond proceeds or investment earnings are attributable, at the level required under the terms of the bonds, if the local issuing body adopts an ordinance, resolution, or order authorizing that use of the proceeds or earnings. (2) To pay the principal or interest, or both, on any other bonds of the local issuing body, if the local issuing body adopts an ordinance, a resolution, or an order authorizing the sue of the surplus proceeds to pay principal or interest on the bonds. (3) To reduce the rate or amount of ad valorem property taxes, special benefit taxes on property, or tax increment revenues imposed by or allocated to the local issuing body.

(d) This section applies to bonds that are not payable from ad valorem property taxes, special benefit taxes on property, or tax increment revenues derived from property taxes. Surplus bond proceeds or investment earnings may be used by a local issuing body for the same purpose or type of project from which the bonds were originally issued, if: (1) the fiscal officer of the local issuing body certifies before or at the time of that use that the surplus was not anticipated at the time of issuance of the bonds; and (2) the board or legislative body responsible for issuing the bonds takes action approving the use of surplus bond proceeds or investment earnings for the same purpose or type of project for which the bonds were originally issued."

IC 5-1-13-3 states:

> "Notwithstanding any other law, income from the investment of proceeds of the sale of bonds issued by any political subdivision that are payable from property taxes shall be applied to the improvement or the public purpose for which the bonds were issued or shall be used to pay interest on the bonds and in no event may such income be used for any other purpose except as provided in section 2 of this chapter."

CLAIMS - ITEMIZATION

Because the term "itemized" has not been defined in the Indiana Code, we have recommended the following as a guide to local officials responsible for the approval and payment of claims:

> A claim to be properly itemized should show the kind of service, where performed, date service rendered, by whom, rate per day, number of hours, rate per hour, price per foot, per yard, per hundred, per pound, per ton, etc.

RESTRICTED DONATIONS

The Attorney General held in Official Opinion No. 68 of 1961 that no further appropriation by other officials of government is necessary to expend monies donated for the specific purpose designated by the donor of the gift.

Such donation should be receipted into a separate fund properly titled, such monies not to be commingled with any other monies received by the city or town.

Based upon the reasoning used in the foregoing opinion, we believe payments may be made by a city or town at any time from this fund for the purpose specified by the donor without appropriation. However, accounts payable vouchers must be filed and approved in the regular legal manner before payments are made from this specific fund.

If the volume of restricted donations justifies it, a "control" fund may be established for all restricted donations. Separate, individual accounts would then be established to account for each restricted donation or each type of restricted donation. The total activities of the separate accounts -- receipts, disbursements, balances -- could be reflected on the control fund.

Income from investments on restricted donations should be receipted into the same fund in which the principal of the donation has been receipted, provided it is to be used for the same purpose as the principal. However, if under the terms of the trust, the principal must be held in trust in perpetuity and only the income used by the governmental unit, there should be two funds established. One fund should be designated as "trust principal" and the other designated as "trust interest." In this situation, expenditures would only be permitted from the "Trust Interest (Income) Fund".

CLAIMS - PENALTIES WHEN NOT PAID TIMELY

IC 5-17-5 provides every "political subdivision shall pay a late payment penalty at a rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the . . . political subdivision fails to make timely payment." This statute does not include contracts for road and street work. IC 36-1-12-17 provides for interest payments on late payments for road work.

Timely payment is defined, with some exceptions, to occur if ". . . a check or warrant is mailed or delivered on the date specified for the amount specified in the applicable contract documents, or, if no date is specified, within thirty-five (35) days of receipt of goods or services, or receipt of a properly completed claim. . . "

For the purpose of this statute, payment by a political subdivision is timely if:

(1) a date for payment is not specified in an applicable contract;

(2) a claim: (a) for payment for goods or services; and (b) that must be approved by a local legislative body or boards is submitted to the body or board; and

(3) the political subdivision pays the claim within thirty-five (35) days following the first regularly scheduled meeting of the body or board that is held at least ten (10) days after the body or board receives the claim.

Pursuant to IC 5-17-5-2, the interest requirement does not apply to the following:

"(1) Interagency or intergovernmental transactions.

(2) Amounts payable to employees . . . of . . . political subdivisions as reimbursements for expenses.

(3) Claims subject to a good faith dispute, if before the date of timely payment notice of the dispute is: (A) sent by certified mail; (B) personally delivered; or (C) sent in accordance with procedure in the contract.

(4) Contracts entered into before September 1, 1983.

(5) Contracts related to highway or road construction, reconstruction, or maintenance. . . .

(6) Claims, contracts, or projects that are to be paid exclusively with federal funds."

A contractor who is receiving late payment penalties from a government who is unable to make timely payments to a subcontractor because of a state agency or political subdivision's failure to make timely payment to the contractor shall pay interest to the subcontractor at the rate of one percent (1%) per month on the amount due the subcontractor after the contractor receives payment and any penalty paid under this statute. Any interest that remains unpaid to the subcontractor at the end of any thirty (30) day period shall be added to the principal amount of the debt. After that time, interest accrues on the aggregate of the principal and unpaid interest." [IC 5-17-5-4]

It is noted, existing statutes require the funds and appropriations must be available prior to entering into a contract. (Past court decisions have rendered contracts invalid when funds and appropriations were not provided prior to signing the contracts.) With this in mind, why should contractual payments ever need to be delayed? The Attorney General will have to provide the State Board of Accounts with legal guidance regarding the fiscal officer's responsibility for making interest payments on delayed contractual payments if the contract was entered into without regard to these statutes. Another unanswered question is the position of the fiscal officer when claims and/or receiving information are delayed by the receiving department personnel or department head. To prevent this situation, please do not be late in making such payments.

The State Board of Accounts' official position concerning payment by governmental officials of late charges, penalties, and interest is as follows:

> For many years, the audit position of the State Board of Accounts was that under conditions where negligent nonfeasance or misfeasance in office by a public official resulted in the public entity accruing penalty and interest charges for failure to file or deposit state or federal taxes or pay other valid claims, the amount of the penalty and interest was deemed the personal responsibility of the official.
>
> At the present time when payment of penalty and interest from public funds is found in an audit, the field examiners are instructed to write up in complete detail the facts concerning the payments, including the official's explanation along with any mitigating circumstances. The information is sent to the State Examiner for review and resolution. A formal response will be returned to the field examiner(s) and incorporated in the audit working papers prior to the exit conference with the local officials. This provides the public official opportunity for response if needed.

SEWAGE UTILITY - COLLECTION OF DELINQUENT CHARGES

IC 36-9-23-31 states as follows:

"If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality."

IC 36-9-23-32 states:

"(a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitutes a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 [36-9-23-33] of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if, the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent. A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service under IC 1-1-7-1 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 notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release: (1) liens filed with the county recorder after the recorded date of conveyance of the property; and (2) delinquent fees incurred by the seller; upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees."

IC 36-9-23-33 states:

"(a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following: (1) a list of the delinquent fees and penalties that are enforceable under this section, which must include: the following: (A) the name or names or the owner or owners of each lot or parcel or real property on which fees are delinquent; (B) a description of the premises, as shown by the records of the county auditor, (C) the amount of the delinquent fees, together with the penalty; or (2) an individual instrument for each lot or parcel of real property or which the fees are delinquent.

(c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars ($5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.

(d) [Applies to Indianapolis only.]

(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c) the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid, for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection (e), the county auditor of each county shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. In a county having a consolidated city the delinquent fees, penalties, service charges, and recording fees are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property at the next cycle's property tax installment is billed.

(h) After certification of liens under subsection (e), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

(I) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars ($40)."

IC 36-9-23-34 states:

"(a) A municipality or board may foreclose a lien established by this chapter in order to collect fees and penalties. The municipality or board shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments."

Special attention should be given to making proper entries for recording bad debt expense when the properly verified documents are presented by a real estate purchaser pursuant to IC 36-9-23-32(d). The verified demands shall be retained for subsequent review during audit of the utility records.

Whether the sewage utility records are maintained on a cash or accrual basis, the individual consumer's ledger will be credited for the amount written off as a bad debt. The amounts written off should be noted in the governing board's minutes. (This would also apply to bad debts of a water, electric, or gas utility.)

Following is a suggested general journal entry for those sewage utilities on an accrual basis for recording the bad debt expense:

	Debit	Credit
Bad Debt Expense	$ xxx.xx	
Accounts Receivable - Consumers		$ xxx.xx

To record bad debt expense due to purchaser's verified demand pursuant to IC 36-9-23-32(d). (This entry would also be used where a board wrote off an account under IC 36-9-23-33(l).)

SEWAGE UTILITY - CONSUMERS' DEPOSITS

IC 36-9-23-28 states:

"(a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to insure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor, after a notarized statement from the depositor that as of a certain date the property being served: (1) has been conveyed or transferred to another person; or (2) no longer uses or is connected with any part of the municipal sewage system. A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 31 [36-9-23-31 or 36-9-23-32] of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (Uniform Disposition of Property Act) does not apply to a deposit described in this subsection."

SEWAGE UTILITY - UNCLAIMED OVERPAYMENTS

An overpayment of sewer fees that remains unclaimed by a payor for more than seven (7) years after the termination of the service for which overpayment was made becomes the property of the municipality. [IC 36-9-23-28.5]

NOTE: There is no seven (7) year requirement for holding unclaimed water, gas or electric utility deposits or overpayments before declaring them property of the utility.

WATER, SEWAGE, GAS, AND ELECTRIC UTILITIES - COLLECTION POLICY

The governing board over a water, gas, or electric utility should adopt written policies dealing with unclaimed meter deposits, bad debts, due dates, write-offs, NSF checks, etc.

The governing body over a sewage utility should also adopt written collection policies for those areas not covered by statute.

BONDS - REGISTERED

IC 5-1-15 authorizes cities and towns to issue “bonds, notes, evidences of indebtedness, or other written obligations” in fully registered or book entry form.

The entity may employ any bank or trust company as paying agent or registrar, co-registrar, or depository institution. The bank or trust company need not be a depository bank under IC 5-12, and need not be located within the State of Indiana. [IC 5-1-15-4]

Notwithstanding any other provision of law, registrars or registration books or transfer records for bonds, notes, evidences of indebtedness, or other written obligations of any entity are not public records, but are only for the use of the entity, any trustee, fiduciary, paying agent, registrar, co-registrar, or transfer agent. A trust department of a bank having possession of these records shall not disclose them to a bond department, commercial department, subsidiary of the bank, or a subsidiary of the parent corporation of the bank. [IC 5-1-15-5]

Registrars of bond issues shall keep a register of ownership of bonds. [IC 5-1-15-6]

In an effort to facilitate accounting procedures, the State Board of Accounts has issued the following instructions:

(1) If a bank, trust company, or other financial institution has been employed as a paying agent or registrar, a properly certified listing of bondholders from the paying agent or registrar along with a signed claim [IC 5-11-10-1] shall serve as mailing list for the fiscal officer. There is no requirement for each individual bondholder to file a claim.

(2) The mailing of the funds for bonds and coupons coming due must be mailed in such a manner to ensure receipt by the bondholder by the due date specified. (Personnel of financial institutions state they usually make such mailings by first class mail one to three business days in advance of the due date. They do not mail by certified or registered mail due to costs involved. We suggest you review this with your city or town attorney.)

(3) Since the paying agency or registrar shall keep a register to ownership of bonds and all bonds and coupons shall be paid when becoming due, we see no reason for the municipality to duplicate those same records maintained by the paying agent or registrar by keeping a bond register. There should be no unpaid outstanding matured bonds or coupons.

(4) In all instances when employing a bank, trust company, or other financial institution, be sure to protect the municipality from any liability arising due to any possible errors relating to names and addresses of current bondholders. This protection may be obtained by the financial institution furnishing a bond or insurance in favor of the municipality.

Please consult your city or town attorney regarding their instructions for handling registered bonds.

FUNDS - CREATING NEW FUNDS

The State Board of Accounts is frequently asked if officials of a city or town can establish a new fund for a particular purpose or function. Quite often the municipality wishes to create a nonreverting fund by diverting revenues (usually from the general fund) to accumulate an amount for a specific long-term project or a large purchase. Sometimes, the municipality proposes to appropriate money from the general fund to transfer to the newly created fund. We have been requested to furnish our audit position to these questions.

IC 36-1-3 is entitled "Home Rule." IC 36-1-3-2 states: "The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs." Other sections of the statute restate this premise in various terms.

IC 36-1-3-6 states: "(a) If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner. (b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either: (1) adopt an ordinance prescribing a specific manner for exercising the power; or (2) comply with a statutory provision permitting a specific manner for exercising the power. (c) An ordinance under subsection (b) (1) must be adopted as follows: (1) in a municipality, by the legislative body of the municipality. . . ."

We feel the powers granted by various statutes authorize the common council of a city or the town council of a town to create, by ordinance, as many funds as they feel necessary to operate their particular city or town.

The enabling ordinance should provide various types of information:

(1) The ordinance should clearly indicate the type or types of revenue that is to go into the new fund.

(2) The ordinance should list the purpose or purposes for which expenditures can be made from the new fund.

(3) The ordinance should establish the life of the new fund and indicate if the fund balance is nonreverting at year end or perpetual until terminated either by the terms of the current ordinance or if another subsequent ordinance must be enacted.

(4) The ordinance should provide guidance as to disposition of the fund balance on termination of the fund.

(5) The ordinance should include any other terms or conditions the city or town attorney deems necessary.

It should be noted that establishing a new fund by diverting revenues that would normally go into the city or town general fund or by transferring by appropriation from the general fund to the new fund creates a possible future problem. After creating and funding the new fund, if the city or town appeals to the local government tax control board of the Department of Local Government Finance for an excessive levy (pursuant to IC 6-1.1-18.5-11 et seq.), the control board may insist that any balance or balances of such funds must be transferred to the city or town general fund prior to any anticipated relief being considered by the control board.

LEVY EXCESS FUND

IC 6-1.1-18.5-17 requires that a local taxing unit to establish a "Levy Excess Fund." That portion of the property taxes received which exceeds one hundred percent (100%) of the taxing unit's ad valorem property tax levy shall be receipted to this "Levy Excess Fund." Delinquent property taxes that are collected during a particular calendar year that were assessed for an assessment date that precedes the assessment date for the current year in which the taxes are collected are to be excluded from the amount which is used to compute the amount of the levy excess.

These statutes will not in any way affect the manner in which property taxes are distributed to local units of government and tax distributions will continue to be made in the manner as they have been in the past.

Each year the Department of Local Government Finance will certify to each unit of local government figures which show one hundred percent (100%) of the tax levy for each fund and, if the property taxes received exceed one hundred percent (100%) of the levy, the excess shall be receipted to the “Levy Excess Fund” unless the amount is less than $100.00 in any calendar year.

Determining Need For Levy Excess Fund

In some units of local government it may not be necessary to establish a “Levy Excess Fund”. Each year the Department of Local Government Finance will certify to each unit of local government an amount which represents one hundred percent (100%) of the levy for each fund for which a tax rate is levied.

To determine if a Levy Excess Fund should be established in the unit of government which you represent, you should:

(1) Obtain a total for all funds of the amounts certified as one hundred percent (100%) of the tax levy for each fund.

(2) Add the amounts shown on the County Auditor's Certificate of Tax Distribution on the “Totals” line of the taxes column headed “General Property” for the June and December tax distributions of the applicable year. Do not include License Excise or Bank and Building and Loan Taxes.

(3) If the total (all funds) of one hundred percent (100%) of the tax levy exceeds the total taxes received (Item 2 preceding page) it will not be necessary to establish a “Levy Excess Fund.”

(4) If the total taxes received exceeds one hundred percent (100%) of the tax levy a “Levy Excess Fund” must be established unless the amount is less than $100.00.

Handling of Levy Excess Fund on Records

In those units where it is determined that a Levy Excess Fund must be established, a worksheet should be prepared in the following manner:

LEVY EXCESS WORKSHEET

Name of Unit _____
Date_____
Taxes for 20__ Payable in 20__.

	_____ Fund	_____ Fund	_____ Fund	_____ Fund	_____ Fund
100% of Tax Levy	$	$	$	$	$
General Property Taxes - June Settlement* (Deduct)	_____	_____	_____	_____	_____
Portion of December Settlement Due Individual Funds (1)	_____	_____	_____	_____	_____
Total Property Taxes December Settlement*					$
Less Portion of December Settlement Due Individual Funds (Above)					_____
Amount Due Levy Excess Fund (1)					$_____

* This should be Property Taxes only. Do not include License Excise or Bank and Building and Loan Taxes.

(1) The "Portion of December Settlement Due Individual Funds" should be receipted to the individual funds and the "Amount Due Levy Excess Fund" should be receipted to the Levy Excess Fund.

Use of Fund

The statute provides that the Department of Local Government Finance may require a taxing unit to include the amount in its Levy Excess Fund in the taxing unit's budget. After the budget has been approved, the amount in the Levy Excess Fund should be transferred from the Levy Excess Fund by warrant (check) and quietus (receipt) to the fund or funds in which the reductions were made to reduce the amount to be raised by taxation.

Investments

Any balance in the Levy Excess Fund can and should be invested in the same manner in which money in the General Fund may be invested. Any income derived from investment of the money shall be deposited in and become a part of the Levy Excess Fund.

Advance Draws

If the amount received in the June settlement, plus advance draws against the December settlement (prior to reviewing the final distribution), exceeds one hundred percent (100%) of the tax levy, it will be necessary to transfer the amount of this excess by warrant (check) and quietus (receipt) from the affected fund or funds to the Levy Excess Fund.

Tax Refunds

IC 6-1.1-18.5-17 authorizes reimbursement from the Levy Excess Fund of amounts refunded for erroneous taxes under certain circumstances.

Generally, tax refunds are deducted by the county auditor from taxes available for distribution, so that amounts received by a governmental unit are "net" after deducting the refunds. If refunds are made of taxes paid in a year prior to the current year, such as 2004 payable in 2005 taxes refunded in 2006, or if an unusually large amount is refunded for taxes paid in a particular taxing district, the loss in receipts from property taxes may be reimbursed from the Levy Excess Fund. However, prior to a governmental unit reimbursing the amount of any tax refund from the Levy Excess Fund, the county auditor should contact the Department of Local Government Finance for approval.

All tax refunds shall be made from the County General Fund in the usual manner, deducted in the December settlement and receipted to the County General Fund. After the Department of Local Government Finance has approved reimbursement from the Levy Excess Fund, it will then be necessary for the county auditor to apportion to each taxing unit the amount refunded and notify each affected taxing unit of the amount which should be transferred from the taxing unit's Levy Excess Fund to the General Fund or Operating Fund of the taxing unit

PARK NONREVERTING OPERATING FUND – USE OF PROGRAM BALANCES

Questions are received on the audit position of the State Board of Accounts regarding use of program activity balances within the special nonreverting operating fund. Specifically, can revenues generated from various programs within the special nonreverting operating fund be used to pay expenditures and obligations of other programs within the fund that have operated at a loss?

IC 36-10-3-22 states in part: "....(a) Park and recreation facilities and programs shall be made available to the public free of charge as far as possible. However, if it is necessary in order to provide a particular activity, the board may charge a reasonable fee. (b) The unit's fiscal body may establish by ordinance, upon request of the board: (1) a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance … " (Our Emphasis)

After receiving a request, from the Park and Recreation Board, the Common Council or the Town Council should set out in the ordinance the types of expenditures approved and any other conditions and procedures related to such expenditures.

It is our audit position that the special nonreverting operating fund provide a means of funding a "particular activity" with a reasonable fee. Each such activity is to be more or less self-supporting. The fund was never intended to be a revenue producing mechanism enabling the Park and Recreation Board to operate outside of review of the Common Council or the Town Council.

The State Board of Accounts has never objected when immaterial project or activity surpluses have been generated and used to help other park activities within the special nonreverting operating fund. (Of course, this assumes the Common Council or the Town Council has granted such authority within the enabling ordinance.) As a general rule, when a program activity generates a large balance or surplus, we have instructed units to transfer this to the park operating fund. Conversely, if a program activity is unable to generate enough revenue to fund the program, the Board would have to appropriate and make expenditures from the park operating fund to make up the shortfall.

If, however, the legislative body approves in the enabling ordinance the practice of using moneys from various events for funding other approved events, the State Board of Accounts would not take audit exception. The approval must be set out in such detail that there is no question as to intent and the manner in which such funding is allowed.

BANK CARD / CREDIT CARD AND OTHER METHODS OF PAYMENT

IC 36-1-8-11 authorizes the fiscal body of a political subdivision or the board of the municipally owned utility to accept payments by cash, check, bank draft, money order, bank card or credit card, electronic funds transfer or any other financial instrument authorized by the fiscal body. A political subdivision or board of a municipally owned utility may contract with a bank card or credit card vendor for acceptance of bank cards and credit cards. However, if there is a charge to the political subdivision or municipally owned utility for the use of the financial instrument, the political subdivision 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 political subdivision 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 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.

A political subdivision or board over a 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.

LOCAL LAW ENFORCEMENT CONTINUING EDUCATION FUND

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 and IC 33-37-8-3)

2. Inspection of Motor Vehicle fees (IC 9-29-4-2)

3. Vehicle Accident Reports fees (IC 9-29-11-1)

4. Handgun License fees (IC 35-47-2-3)

5. Proceeds from the Sale of Confiscated Weapons (IC 35-47-3-2)

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]

Amounts claimed for expenditures form the Local Law Enforcement Continuing Education Fund must be appropriated prior to expenditure either through the normal budget process of by additional appropriation [IC 33-37-8-4]

Any funds remaining in the Local Law Enforcement Continuing Education Fund at year end do not revert.

PAYMENT OF CLAIMS BY ELECTRONIC FUNDS TRANSFER

The fiscal body of a political subdivision or the board of a municipally owned utility may adopt a resolution to authorize an electronic funds transfer method of payment of claims. If a proper body adopts a resolution, the political subdivision or municipally owned utility may pay money from its funds by electronic funds transfer.

A political subdivision or municipally owned utility that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by political subdivisions or municipal utilities.