

TOWNSHIP BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

Volume 301

June 2013

ITEMS TO REMEMBER

June

- 1 On or before June 1 and December 1 of each year (or more frequently if the county legislative body adopts an ordinance requiring additional certifications) the township shall certify a list of the names and addresses of each person who has money due from the township to the county treasurer. (IC 6-1.1-22-14)

All local investment officers shall 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 5-13-6-1 (e))

July

- 4 Independence Day - Legal Holiday (IC 1-1-9-1)
- 31 Last day to file Employer's Quarterly Federal Tax Return (Form 941) with the Internal Revenue Service for federal and social security taxes for the second quarter.

Last day to file report with the Indiana Department of Workforce Development for the quarter ending June 30.

All local investment officers shall 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 5-13-6-1 (e))

August

- 5 On the first Monday of each August the trustee shall post, in a conspicuous place near his office, a verified statement showing the indebtedness of the township in detail and giving the number and total amount of outstanding orders, warrants and accounts. (IC 36-6-4-10)

- 31 All local investment officers shall 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 5-13-6-1 (e))

See the Township Bulletin, Volume 302, August 2013 for budget dates or call the Department of Local Government Finance at (317) 232-3777.

The township board should set the salaries of township officials and employees in conjunction with the preparation and completion of the township budget. (Township Form 17)

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INTERNAL CONTROLS

Internal controls are the policies and procedures used by management to ensure that their programs and functions operate efficiently and effectively in conformance with applicable laws and regulations. One purpose of internal control is to ensure that financial reporting of the financial statements and the schedule of expenditures of federal awards is completed accurately. It is also used to reduce the risk associated with fraud related to the operations of the governmental unit. Internal control is essentially a check and balance system over the operations. The foundation for a good internal control system starts with making sure that there are appropriate procedures in place to ensure that errors and fraud are either prevented or detected and corrected in a timely manner.

In order to have an effective internal control system, it is important to have proper segregation of duties. Segregation of duties is a common term referred to in relation to internal control. This means to have a separation of functions over certain activities that would provide internal control. The fundamental premise of segregation of duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action. An example of appropriate segregation of duties would be having one individual prepare claims, having another individual review and approve the claims, and having a third individual sign the checks for payment of the claims. Without proper segregation of duties, it is difficult to have an effective system of internal control. Sufficient compensating controls would then need to be implemented. This might entail random verification and approval by the official at different points in the process or switching duties. There are two main advantages to implementing segregation of duties. The first is that fraud is more difficult to perpetrate when proper segregation of duties is in place because it would require collusion of two or more individuals. Secondly, with several individuals involved in the process, innocent errors are more likely to be detected and corrected. Officials have the fiduciary responsibility to ensure the proper accountability of financial activity. This is accomplished by making sure there is proper oversight, reviews and approvals.

The Accounting and Uniform Guidelines Manual for each unit provides that internal controls be established and put into operations. Therefore, a sound internal control system should be put into place to ensure accurate reporting of the financial statements and the schedule of expenditures of federal awards. Additionally, a sound internal control system should be put into place to ensure that all requirements related to federal awards received are complied with. The requirements of a federal program can be obtained from various sources which include but are not limited to the grant agreement with the Federal agency/pass-through entity, the appropriate section of the Code of Federal Regulations and United States Code, and applicable handbooks and other guidance provided by the Federal agency and/or pass-through entity.

In addition to the guidance noted above, the A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program, and, unless internal control is likely to be ineffective, perform testing of internal control as planned.

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INTERNAL CONTROLS (Continued)

As the auditor of your local governmental entity, the State Board of Accounts will be assessing the controls you have in place over the preparation of the financial statements and schedule of expenditures of federal programs and over the compliance with the requirements of federal programs. If we determine that controls for any of these areas are either not in place or are not operating effectively, we are required by the standards we follow to report those issues. This reporting is required to be made in the form of written Federal finding included in the audit report. In order for us to be able to determine operating effectiveness of the controls, we must have documentation of the controls to audit. Therefore, any review completed over the preparation of the financial statement or schedule of expenditure of federal awards should be documented in some way. Additionally, the oversight given to ensure compliance with requirements of the federal programs should be documented.

ELECTED OFFICIALS – LEAVE POLICY

We have received questions concerning the authority (or need) for elected officials to be included in the township's vacation leave, sick leave, death leave, or other such leave policy.

Our audit position is that 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 35-44.1-1-3, prohibits payment to other township employees if they did not properly perform township duties assigned and maintain hours as directed by the township board.

In those few instances where elected officials choose to be included in such employee benefit policy (and were included in the authorizing resolution), the officials must maintain proper attendance records (the same as all other township 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. A township board is authorized to grant "a vacation with pay, sick leave, paid holidays, and other similar benefits by ordinance" to "employees of the political subdivision" pursuant to IC 5-10-6-1. The term "employees" is not defined.

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CANCELLATION OF CHECKS

IC 5-11-10.5-2 states:

"All warrants or checks drawn upon public funds of a political subdivision that are outstanding and unpaid for a period of two (2) or more years as of the last day of December of each year are void. No individual, bank, trust company, building and loan association, or any other financial institution may honor, cash, or accept for payment or deposit any such warrant or check which may be presented for payment and which has been issued and outstanding for a period of two (2) or more years as of the last day of December of any year."

IC 5-11-10.5-3 states:

"Not later than March 1 of each year, the treasurer of each political subdivision shall prepare or cause to be prepared a list in triplicate of all warrants or checks that have been outstanding for a period of two (2) or more years as of December 31 of the preceding year. The original copy of each list shall be filed with the:

- (1) board of finance of a political subdivision; or
- (2) fiscal body of a city or town.

The duplicate copy shall be transmitted to the disbursing officer of the political subdivision. The triplicate copy of each list shall be filed in the office of the treasurer of the political subdivision. If the treasurer serves also as the disbursing officer of the political subdivision, only two (2) copies of each list need be prepared or caused to be prepared by the treasurer."

IC 5-11-10.5-4 states:

"Each list prepared under section 3 of this chapter must show:

- (1) the date of issue of each warrant or check;
- (2) the fund upon which the warrant or check was originally drawn;
- (3) the name of the payee;
- (4) the amount of each warrant or check issued; and
- (5) the total amount represented by the warrants or checks listed for each fund. "

IC 5-11-10.5-5 states:

"(a) Upon the preparation and transmission of the copies of the list of the outstanding warrants or checks, the treasurer of the political subdivision shall enter the amounts so listed as a receipt into the fund or funds from which they were originally drawn and shall also remove the warrants or checks from the record of outstanding warrants or checks. (b) If the disbursing officer does not serve also as treasurer of the political subdivision, the disbursing officer shall also enter the amounts so listed as a receipt into the fund or funds from which the warrants or checks were originally drawn. If the fund from which the warrant or check was originally drawn is not in existence, or cannot be ascertained, the amount of the outstanding warrant or check shall be receipted into the general fund of the political subdivision."

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CANCELLATION OF CHECKS (Continued)

Therefore, the State Board of Accounts is of the audit position that not later than March 1 of each year, the township trustee shall prepare a list in duplicate showing: (1) the date of issue of each check; (2) the fund upon which the check was originally drawn; (3) the name of the payee; (4) the amount of each check and (5) the total amount presented by the checks listed for such fund. The original copy of such list shall be filed with the local board of finance and the duplicate copy filed with the trustee.

The amounts of such checks shall be receipted into the fund or funds from which originally drawn by writing an official receipt or receipts therefore. If the fund from which the check was drawn is not now in existence or cannot be ascertained, the amount of such check shall be receipted into the township fund. Upon issuing the receipt or receipts the checks shall then be removed from the trustee's list of outstanding checks.

AFFORDABLE CARE ACT PENALTIES, FINES, OR TAX

The State Board of Accounts has received many questions regarding our audit position with regards to the Affordable Care Act. Most of the questions have inquired specifically about the penalties, fines, or tax associated with this law. While our general audit guidelines prohibit the paying of penalties and interest and states that those payments would be a personal charge to the fiscal officer, administrator, or board, we do not believe this general guideline should apply to this controversial, mandated, and complicated law.

We also believe that the governing boards should be making the fiscal decisions associated with their unit of government and the implementation of this law. Therefore, if the fiscally wise decision of the board is to pay the penalties, fines, or tax instead of the cost of the insurance then we will not personally charge the officials involved. One of the conditions necessary to not charging the penalties, fines, or tax is to have the governing board officially document their decision to not comply with the Affordable Care Act. This could be a motion in the board minutes, a resolution, or an ordinance.

In summary, as long as there is an official action of the board to choose to pay the fines, penalties, or tax, the State Board of Accounts will not personally hold anyone in that unit of government accountable for reimbursing the cost of those penalties, fines, or tax.

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PAYMENT OF CLAIMS - ELECTRONIC FUNDS TRANSFER

The township board may adopt a resolution to authorize an electronic funds transfer method of payment of claims. If the township board adopts a resolution, the township may pay money from its funds by electronic funds transfer.

A township that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by political subdivisions.

"Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. [IC 36-1-8-11.5]

ISSUING DUPLICATE WARRANTS

When a township warrant is lost or for some other reason has not been presented for payment by the depository on which drawn, and evidence of this fact is submitted, the township is authorized to issue a duplicate warrant to replace the original warrant; however, certain safeguards should be exercised before the duplicate warrant is issued, as recommended in the following outline:

1. The person, firm, or corporation requesting the duplicate warrant should submit to the township trustee an affidavit setting out all pertinent information with reference to such warrant. A separate affidavit should be furnished by the payee and by each party to whom it was endorsed. A suggested form of affidavit will be found on page 7.
2. Immediately upon receipt of the affidavit, the township trustee should issue a stop payment order on the original warrant to the bank on which it was drawn.
3. Delay issuing the duplicate warrant until the warrants for the month in which the stop payment order was issued are returned by the bank and the township trustee has verified that the original warrant has not been cashed.
4. Issue the duplicate warrant on the next warrant number of the current series, under current date (not the date it was originally issued), bearing the payee's name, amount and other details shown on the original warrant, but clearly indicate thereon that it is "issued to replace warrant number ____, dated _____, 20__." In this manner no problems should arise when the warrant is presented to the bank for payment, which sometimes happens when it is given the date and number of the original warrant on which payment was stopped. It is not permissible to have unnumbered warrants furnished by the printer for this purpose; always use the next warrant number in the current series but show thereon the warrant number it replaces.
5. The duplicate warrant is not to be posted to the ledgers since it is issued only for the purpose of replacing the original warrant. To identify it as a duplicate so it will not be posted and added with the disbursements for the month, simply circle the copy in the warrant register or otherwise identify it as a "Duplicate."

A duplicate warrant might, under emergency conditions, be issued within a short time after the stop payment order is given the bank where the bank furnishes a statement that they have checked the paid warrants to date and the warrant in question has not been paid. However, a safe position is to wait until the canceled warrants for the month in which the stop payment order was issued are returned by the bank and the fiscal officer has verified the warrant has not been paid.

 FOR USE OF TOWNSHIP TRUSTEE
 *Duplicate Issued on _____ *
 * Warrant Number _____ *
 * Date _____, 20__ *

AFFIDAVIT FOR ISSUANCE OF DUPLICATE WARRANT

STATE OF INDIANA)
)SS:
 COUNTY OF _____)

I, _____, presently residing at _____
 _____ County, Indiana, being first duly sworn upon my oath, say:

1. That I have been informed a township warrant was issued from the _____
 Fund, in the sum of \$ _____, said warrant bearing number _____, dated _____,
 20__, payable to _____ for _____.

2. That I am the person to whom said warrant was payable, or am the owner, partner or an
 officer in the firm or corporation to which payable or to which the warrant was subsequently endorsed.

(Strike out 3a or 3b, whichever is not applicable)

3a. That payment has not been received on said warrant or on any other warrant for the sum due
 as described above, for the reason that said warrant was (describe whether lost, destroyed or stolen; the
 date of the occurrence, if known; and all other pertinent facts).

3b. That payment was received on said warrant from _____
 to whom it was subsequently endorsed.

4. That I fully understand payment will be stopped on the original warrant and, if a duplicate
 warrant is issued and payment is obtained thereon, that I will not be entitled to receive payment on the
 original warrant; and, further, should said original warrant ever come into my possession I will
 immediately forward it to the township trustee.

 (Signature of Affiant)

Subscribed and sworn to before the undersigned, a Notary Public, in and for said county and
 state, this ____ day of _____, 20__.

 Notary Public

My Commission Expires: _____

Note: If the payee did not receive payment, strike out paragraph 3b. If the payee and any subsequent
 endorser received payment, strike out paragraph 3a. In the latter instance the last party to whom the
 warrant was endorsed should complete paragraph 3a. A separate affidavit should be obtained from the
 payee and from each party to whom the warrant was endorsed.

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FINANCIAL ASSISTANCE TO ENTITIES

Since September 1, 1986, the State Board of Accounts has been responsible for the examination of the records and accounts of entities receiving financial assistance from governmental sources.

Entities are defined as providers of goods, services, or other benefits that are maintained in whole or in part at public expense; or supported in whole or in part by appropriations of public funds, or by taxation. The definition does not include the state or municipalities but does include for-profit and not-for-profit corporations, unincorporated associations and organizations and individuals. Financial assistance is defined as payments to entities in the form of grants, subsidies, contributions, aid, etc.

As of September 1, 1986, all contracts involving financial assistance between governmental units and entities must permit the examination and require reports as prescribed by IC 5-11-1-9.

The examination of an entity receiving public funds will be limited to matters relevant to the use of the money if the financial assistance received is less than 50% of the disbursements of the entity. The entire entity is subject to examination if the assistance received is greater than 50%. An examination of an entity organized as a not-for-profit corporation which derives less than 50% (or at least 50% but less than \$200,000) of its disbursements from public funds may be waived by the State Examiner.

Our examinations of qualifying entities commenced with their year ending December 31, 1986, or thereafter. The majority of these audits are performed by private accountants authorized or designated by the State Board of Accounts. The entity will be charged the actual cost of the examination.

The information is significant to townships entering into any contractual agreements with not-for-profit corporations (e.g. fire protection contracts with volunteer fire departments). Contracts that provide for a flat amount of assistance would subject the volunteer fire department to examination. An examination would not be required if the contract provides for reimbursement by the township on a "per unit run" basis, claims for payment are submitted by the volunteer fire department after the service is performed (with sufficient documentation to evidence the units of service provided), and the total amount provided during the contract period is not subject to adjustment due to variances between a recipient's estimated and actual cost of providing the service.

Detailed information is provided in the Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources. These Guidelines can be found on our website at www.in.gov/sboa.

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GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005)

The following is guidance on the audit position the State Board of Accounts will take related to PL 135-2012, HEA 1005. It is intended to answer questions for implementing officials and their employees on how the legislation will be applied during an audit and for reporting to State Board of Accounts as required by law. It is based on our review of PL 135 and related Indiana Code but it is not to be construed to be legal advice or opinion.

SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

State Board Of Accounts (SBOA) Audit Position: This chapter becomes effective January 1, 2013. Therefore, all "units" as defined within this chapter should be following this section on January 1, 2013.

Chapter 9. Government Employees and Volunteer Firefighters Holding Office

Sec. 1. As used in this chapter, "elected office" refers only to the following:

- (1) The executive or a member of the executive body of a unit.
- (2) A member of the legislative body or fiscal body of a unit.

SBOA Audit Position: The term "elected office" for the purpose of this chapter, depending on the "unit" of government refers to the executive, executive body, legislative body, or the fiscal body of the "unit" of government. Depending on the "unit," this would include county commissioners, county council members, mayors, city or town council members, township board members, and trustees of each "unit."

Sec. 2. As used in this chapter, "government employee" refers to an employee of a unit. The term does not include an individual who holds only an elected office.

SBOA Audit Position: The term "government employee" includes everyone employed by the "unit" that is not a person that holds an "elected office." Therefore, for the purpose of this chapter, county commissioners, county council members, mayors, city and town council members, township board members, and trustees of their respective "units" are not considered a "government employee."

Sec. 3. As used in this chapter, "unit" means a county, city, town, or township.

SBOA Audit Position: The term "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" because Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county; therefore, they are not subject to the direction of the "elected office" of the county.

GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005)

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GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005) (Continued)

Sec. 4. (a) An individual who is serving as a volunteer firefighter for a volunteer fire department or a fire department that provides fire protection services to a unit:

- (1) under a contract, excluding a mutual aid agreement; or
- (2) as the unit's fire department;

may not assume or hold an elected office of a unit that receives fire protection services from the department in which the volunteer firefighter serves.

SBOA Audit Position: An individual who is serving as a volunteer firefighter for a volunteer fire department or a fire department that provides fire protection services to a "unit" under a contract, excluding a mutual aid agreement, or as the "unit's" fire department may not assume or hold the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee of a unit that receives fire protection services from the department in which the volunteer firefighter serves.

(b) An individual who:

- (1) is an employee of a unit, serving as a full-time, paid firefighter; or
- (2) serves as a volunteer firefighter;

in a department that provides fire protection services to more than one (1) unit, excluding fire protection services provided under mutual aid agreements, may not assume or hold an elected office of any unit that receives fire protection services from the department.

SBOA Audit Position: An individual who is an employee of a "unit," serving as a full-time, paid firefighter or serves as a volunteer firefighter in a department that provides fire protection services to more than one (1) "unit," excluding fire protection services provided under mutual aid agreements, may not assume or hold the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee of any "unit" that receives fire protection services from the department.

Sec. 5. Except as provided in section 7 of this chapter, an individual is considered to have resigned as a government employee when the individual assumes an elected office of the unit that employs the individual.

SBOA Audit Position: Any "government employee" of a "unit" is considered to have resigned their position as a "government employee" when the individual assumes the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee within the "unit" that employs the individual. See section 7 for exception.

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GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005) (Continued)

Sec. 6. This chapter does not prohibit:

- (1) a government employee from assuming or holding an elected office of a unit other than the unit that employs the government employee;
- (2) a full-time, paid firefighter or volunteer firefighter from assuming or holding an elected office of a unit other than a unit that receives fire protection services from the department in which the volunteer firefighter serves; or
- (3) an individual who assumes or holds an elected office from also being appointed to and serving on a board, commission, or committee of the unit.

SBOA Audit Position: A "government employee" may hold an "elected office" of any "unit" where the "government employee" is not employed. A full-time, paid firefighter or volunteer firefighter may not hold an "elected office" of any "unit" that receives fire protection services from the department in which the volunteer firefighter serves. An individual who assumes or holds an "elected office" may also be appointed to or serve on a board, commission, or committee of the "unit" to which they were elected or appointed.

Sec. 7. (a) Notwithstanding sections 4 and 5 of this chapter:

- (1) a volunteer firefighter who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and serve as a volunteer firefighter; and
- (2) a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee;

until the term of the elected office that the volunteer firefighter or government employee is serving on January 1, 2013, expires.

(b) After the expiration of the term of the elected office that the volunteer firefighter referred to in subsection (a) is serving on January 1, 2013, the volunteer firefighter is subject to section 4 of this chapter with respect to serving as a volunteer firefighter and assuming or holding an elected office of the unit that receives fire protection services from the department in which the volunteer firefighter serves.

(c) After the expiration of the term of the elected office that the government employee referred to in subsection (a) is serving on January 1, 2013, the government employee is subject to section 5 of this chapter with respect to assuming or holding an elected office and being employed by the unit that employs the government employee.

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GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005) (Continued)

SBOA Audit Position: A volunteer firefighter who assumes or holds the position of a county commissioner, county council member, mayor, city or town council member, township board member or trustee within the "unit" that employs the volunteer firefighter on January 1, 2013, may continue to hold the "elected office" and serve as a volunteer firefighter until the term of the "elected office" that the volunteer firefighter is serving on January 1, 2013, expires.

A "government employee" who assumes or holds the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee within the "unit" that employs the "government employee," may continue to hold the "elected office" and be employed as a "government employee" until the term of the "elected office" that the "government employee" is serving on January 1, 2013, expires.

SOURCE: IC 5-11-13-1.1; (12)HE 1005.1.2. --> SECTION 2. IC 5-11-13-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Sec. 1.1. (a) This section applies to a unit (as defined in IC 36-1-2-23).

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.

A "unit" is a county, city, town, and townships in Indiana. All elected or appointed officials within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county.

(b) A report under section 1 of this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the unit regarding whether the unit has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a unit does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the Department of Local Government Finance may not approve the unit's budget or any additional appropriations for the unit for the ensuing calendar year.

SBOA Audit Position: In accordance with IC 5-11-13-1 every, county, city, town, township, elective or appointive, who is the head of or in charge of any office, department, board, or commission of any county, city, town, or township, and every, county, city, town, or township employee or agent who is the head of, or in charge of, or the executive officer of any department, bureau, board, or commission of the, county, city, town, or township, and every executive officer by whatever title designated, who is in charge of any, county, or city institution, shall during the month of January of each year prepare, make, and sign a certified report, correctly and completely showing the names and business addresses of each and all officers, employees, and agents in their respective offices, departments, boards, commissions, and institutions, and the respective duties and compensation of each, and shall forthwith file said report in the office of the State Examiner of the State Board Of Accounts. The report must also indicate whether the political subdivision offers a health plan, pension, and other benefits to full-time and part-time employees. The certification must be filed electronically in the manner prescribed under IC 5-14-3.8-7. Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the board of commissioners, for a county not having a consolidated city; mayor of a consolidated city for a county having a consolidated city; mayor, for a city; president of the town council for a town; trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21.

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GUIDANCE ON NEPOTISM AND CONTRACTING (PL 135-2012, HEA 1005) (Continued)

If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the Department of Local Government Finance may not approve the "unit's" budget or any additional appropriations for the unit for the ensuing calendar year.

The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not made the required certification under IC 5-11-13-1.1 based upon information obtained from the filing of the "units" year-end personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.

SECTION 4. IC 25-1-6-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012] Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore it should be in place and all "units" should be following this section on July 1, 2012.

Article 2, Section 9 of the Constitution of the State of Indiana states: "No person holding a lucrative office or appointment under the United States or under this State is eligible to a seat in the General Assembly; and no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution. Offices in the militia to which there is attached no annual salary shall not be deemed lucrative." Therefore membership on a "board" is not a lucrative office. For the purpose of this chapter members of a "board" are appointed positions by members of an "elected office" or an executive of the government "unit."

SECTION 5. IC 33-42-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.

Article 2, Section 9 of the Constitution of the State of Indiana states: "No person holding a lucrative office or appointment under the United States or under this State is eligible to a seat in the General Assembly; and no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution. Offices in the militia to which there is attached no annual salary shall not be deemed lucrative." This clarifies that a notary public is not a lucrative office.

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SECTION 6. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005, SECTION 231, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.

This makes this section subject to IC 3-5-9.

SOURCE: IC 36-1-20.2; (12)HE1005.1.7. --> SECTION 7. IC 36-1-20.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 20.2. Nepotism

Sec. 1. This chapter applies to all units.

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.

A "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county. Therefore, they are not subject to the direction of the "elected office" of the county.

Sec. 2. An individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

- (1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.
- (2) The individual's employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

SBOA Audit Position: Any individual that is employed by a "unit" on July 1, 2012, is not subject to this chapter and any individual hired on or after July 2, 2012, is subject to this chapter.

At a minimum, "units" must define that an individual absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation is not considered a "break in service." If an individual's employment with the unit is terminated, followed by immediate reemployment by the "unit," without loss of payroll time, this is not considered a "break in service." "Units" may adopt within their specific nepotism policy additional specific situations that could qualify as not being a "break in service."

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Sec. 3. For purposes of this chapter, the performance of the duties of:

- (1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or
- (2) a volunteer firefighter;

is not considered employment by a unit.

SBOA Audit Position: If you are a precinct election officer or volunteer firefighter, for this chapter you are not considered to be an employee of the "unit" and, therefore, are not employed by the "unit" on July 1, 2012.

Sec. 4. As used in this chapter, "direct line of supervision" means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

SBOA Audit Position: The nepotism policy is designed to help prevent occurrences whereby relatives who are employees of the "unit" are in direct supervisory line with respect to each other. In order to guard against these practices the policy should prohibit "unit" full-time, part-time, or temporary employees who are relatives from being placed within the same direct line of supervision where one relative is responsible for directly supervising the job performance or work activity of another relative. In discussions with the author of the bill, it was determined that it was not the authors intent, to the extent possible, to prohibit two or more such relatives from working for the same "unit" or within the same department or office of a "unit." More specifically, "direct line of supervision" for the purpose of this section means the direct next person directly above the employee.

Sec. 5. As used in this chapter, "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

SBOA Audit Position: The term "employed" means an individual who is employed by a "unit" on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit. Elected office for this chapter is any office that is elected within the "unit" of government and is not limited to the definition established in IC 3-5-9.

Sec. 6. As used in this chapter, "member of the fire department" means the fire chief or a firefighter appointed to the department.

SBOA Audit Position: A member of the fire department means the fire chief or a firefighter appointed to the department.

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Sec. 7. As used in this chapter, "member of the police department" means the police chief or a police officer appointed to the department.

SBOA Audit Position: A member of the police department means the police chief or a police officer appointed to the department.

Sec. 8. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.
- (2) A parent or stepparent.
- (3) A child or stepchild.
- (4) A brother, sister, stepbrother, or stepsister.
- (5) A niece or nephew.
- (6) An aunt or uncle.
- (7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

SBOA Audit Position: A relative of an employee is a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half-brother, or half-sister.

Sec. 9. (a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter;
and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the State Board Of Accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

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SBOA Audit Position: HEA 1005 establishes minimum requirements that must be adopted by the "unit." The "legislative body" of the "unit" has the ability to adopt additional requirements that are more stringent or detailed and that apply to individuals who are exempted or excluded from the application of the new law. A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA 1005 (2012).

A report under this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the Department of Local Government Finance may not approve the "unit's" budget or any additional appropriations for the "unit" for the ensuing calendar year.

Sec. 10. Individuals who are relatives may not be employed by a unit in a position that results in one (1) relative being in the direct line of supervision of the other relative.

SBOA Audit Position: Any individual "employed" by a "unit" may not directly supervise a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half-brother or half-sister.

The term "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an "elected" office within the "unit." The term includes an individual who is a party to an employment contract with the "unit."

Sec. 11. (a) This section applies to an individual who:

- (1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and
- (2) is not exempt from the application of this chapter under section 2 of this chapter.

(b) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate section 10 of this chapter.

(c) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

- (1) be promoted to a position; or
- (2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate section 10 of this chapter.

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SBOA Audit Position: Section 11 of this chapter applies to an individual who is employed by a "unit" on the date the individual's relative begins serving a term of an elected office of the "unit," and is not exempt from the application of this chapter under section 2 of this chapter. So, if an individual is employed by a "unit" on July 1, 2012, they are not subject to this section unless they have had a break in service between July 1, 2012, and the date of the application of this section.

Unless a policy adopted under section 9 of this chapter provides otherwise, section 11 allows an individual to remain employed by a "unit" and maintain the individual's position or rank even if the individual's employment allows a direct supervisor to be a relative as specified in section 8.

Unless a policy adopted under section 9 of this chapter provides otherwise, an individual whose direct supervisor is a relative may not be promoted to a position if the new position would place a relative as the direct supervisor to the individual being promoted. If the individual being promoted is a member of a merit police department or merit fire department, the individual may not be promoted if the new position would place a relative as the direct supervisor to the individual being promoted.

Sec. 12. This chapter does not abrogate or affect an employment contract with a unit that:

- (1) an individual is a party to; and
- (2) is in effect on the date the individual's relative begins serving a term of an elected office of the unit.

SBOA Audit Position: This chapter does not abolish, annul, repeal or affect an employment contract with a "unit" that an individual is a party to, and is in effect on the date the individual's relative begins serving a term of an "elected office" of the "unit."

Sec. 13. Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that states otherwise, the sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

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Sec. 14. Unless the policy adopted under section 9 of this chapter provides otherwise, an individual:

- (1) who served as coroner;
- (2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;
- (3) who, as coroner, received certification under IC 36-2-14-22.3; and
- (4) whose successor in the office of coroner is a relative of the individual;

may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that provides otherwise, an individual who served as coroner, who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana, who, as coroner, received certification under IC 36-2-14-22.3; and whose successor in the office of coroner is a relative of the individual, may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

Sec. 15. If the township trustee's office is located in the township trustee's personal residence, unless the policy adopted under section 9 of this chapter provides otherwise the township trustee may hire only one (1) employee who is a relative. The employee:

- (1) may be hired to work only in the township trustee's office;
- (2) may be in the township trustee's direct line of supervision; and
- (3) may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year.

SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that disallows the following: In a township where the trustee's office is located in the township trustee's personal residence, the township trustee may hire only one (1) employee who is a relative. The employee may be hired to work only in the township trustee's office, may be in the township trustee's direct line of supervision and may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year. A policy adopted under section 9 may be more restrictive but may not increase total salary, benefits, and compensation allowed under this section.

Sec. 16. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

SBOA Audit Position: Each locally elected officer is required to certify under penalties of perjury to the "executive" of the "unit" before December 31 of each year that they have not violated the adopted nepotism policy. Depending on the "unit," the "executive" of the unit may be one of the following: president of the county commissioners, mayor, president of the town council, trustee, or chief executive officer.

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Sec. 17. If the State Board Of Accounts finds that a unit has not implemented a policy under this chapter, the State Board Of Accounts shall forward the information to the Department of Local Government Finance.

SBOA Audit Position: Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the president of the board of county commissioners, for a county not having a consolidated city, mayor of a consolidated city for a county having a consolidated city, mayor, for a city, president of the town council for a town, trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 6-1-21. The SBOA will use these reports as the initial verification that a policy has been implemented for a "unit" of government. On February 1, the SBOA will notify the Department of Local Government Finance of any "unit" not submitting this verification by the end of January of each year. The SBOA will also follow up with each "unit" that has not submitted their verification to determine the status. If a "unit" subsequently files the required report, the SBOA will notify the Department of Local Government Finance that they have received verification from the "unit" that a policy has been adopted and has been implemented. During the course of the annual or biennial audit, the SBOA will review the policies that have been implemented as the SBOA field staff determines necessary. If it is found that the policy has not been implemented the report will contain an audit result and comment and forwarded to the Department of Local Government Finance.

Sec. 18. If a "unit" has not implemented a policy under this chapter, the Department of Local Government Finance may not approve:

- (1) the "unit's" budget; or
- (2) any additional appropriations for the "unit";

for the ensuing calendar year until the State Board Of Accounts certifies to the Department of Local Government Finance that the unit is in compliance with this chapter.

SBOA Audit Position: The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not certified in accordance with IC 5-11-13-1.1 based upon information obtained from the filing of the "units" yearend personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.

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SOURCE: IC 36-1-21; (12)HE1005.1.8. --> SECTION 8. IC 36-1-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 21. Contracting With a Unit

Sec. 1. This chapter applies only to a unit.

SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.

A "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county. Therefore, they are not subject to the direction of the "elected office" of the county.

Sec. 2. As used in this chapter, "elected official" means:

- (1) the executive or a member of the executive body of the "unit";
- (2) a member of the legislative body of the "unit"; or
- (3) a member of the fiscal body of the "unit."

SBOA Audit Position: The term "elected official" for the purpose of this chapter, depending on the "unit" of government refers to the executive, executive body, legislative body, or the fiscal body of the "unit" of government. Depending on the "unit," this would include county commissioners, county council members, mayors, city or town council members, township board members, and trustees of each "unit."

Sec. 3. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.
- (2) A parent or stepparent.
- (3) A child or stepchild.
- (4) A brother, sister, stepbrother, or stepsister.
- (5) A niece or nephew.
- (6) An aunt or uncle.
- (7) A daughter-in-law or son-in-law.

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(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

SBOA Audit Position: A "relative" of an employee is a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half-brother, or half-sister.

Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a "unit." The legislative body of the "unit" shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The "unit" may prohibit or restrict an individual from entering into a contract with the "unit" that is not otherwise prohibited or restricted by this chapter.

(b) The annual report filed by a "unit" with the State Board Of Accounts under IC 5-11-13-1 must include a statement by the executive of the "unit" stating whether the "unit" has implemented a policy under this chapter.

SBOA Audit Position: HEA 1005 establishes minimum requirements that must be adopted by the "unit." The "legislative body" of the "unit" has the ability to adopt additional requirements that are more stringent or detailed and that apply to individuals who are exempted or excluded from the application of the new law. A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA 1005 (2012).

A report under this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the Department of Local Government Finance may not approve the "units" budget or any additional appropriations for the "unit" for the ensuing calendar year.

Sec. 5. (a) A "unit" may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

- (1) an individual who is a relative of an elected official; or
- (2) a business entity that is wholly or partially owned by a relative of an elected official;

only if the requirements of this section are satisfied and the elected official does not violate IC 35-44-1-3.

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(b) A "unit" may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

(1) the elected official files with the "unit" a full disclosure, which must:

(A) be in writing;

(B) describe the contract or purchase to be made by the "unit";

(C) describe the relationship that the elected official has to the individual or business entity that contracts or purchases;

(D) be affirmed under penalty of perjury;

(E) be submitted to the legislative body of the "unit" and be accepted by the legislative body in a public meeting of the "unit" prior to final action on the contract or purchase; and

(F) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:

(i) the State Board Of Accounts; and

(ii) the clerk of the circuit court in the county where the "unit" takes final action on the contract or purchase;

(2) the appropriate agency of the "unit":

(A) makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or

(B) makes a certified statement of the reasons why the vendor or contractor was selected; and

(3) the "unit" satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) An elected official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the "unit" begins.

SBOA Audit Position: A "unit" may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with an individual who is a "relative" of an "elected official." A "unit" may also enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with a business entity that is wholly or partially owned by a "relative" of an "elected official" only if the requirements of this section are satisfied and the "elected official" does not violate IC 35-44-1-3.

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A "unit" may enter into a contract or renew a contract with an individual or business entity described in the preceding paragraph if the "elected official" files with the "unit" a full disclosure, which must be in writing; describe the contract or purchase to be made by the "unit"; describe the relationship that the "elected official" has to the individual or business entity that contracts or purchases; be affirmed under penalty of perjury; be submitted to the legislative body of the "unit" and be accepted by the legislative body in a public meeting of the "unit" prior to final action on the contract or purchase; and be filed, not later than fifteen (15) days after final action on the contract or purchase, with the SBOA and the clerk of the circuit court in the county where the "unit" takes final action on the contract or purchase.

The appropriate agency of the "unit" must also make a certified statement in writing that the contract amount or purchase price was the lowest amount bid or offered or they must make a certified statement in writing of the reasons why the vendor or contractor was selected. The "unit" must also satisfy any other requirements under IC 5-22 or IC 36-1-12.

An "elected official" shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable. This section does not affect the initial term of a contract in existence at the time the term of office of the "elected official" of the "unit" begins.

Sec. 6. Each elected officer of the "unit" shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the "unit" not later than December 31 of each year.

SBOA Audit Position: Each locally elected officer is required to certify under penalties of perjury to the "executive" of the "unit" before December 31 of each year that they have not violated the requirements of this chapter. Depending on the "unit," the "executive" of the unit may be one of the following: president of the county commissioners, mayor, president of the town council, trustee, or chief executive officer.

Sec. 7. If the State Board Of Accounts finds that a "unit" has not implemented a policy under this chapter, the State Board Of Accounts shall forward the information to the Department of Local Government Finance.

SBOA Audit Position: Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the president of the board of county commissioners, for a county not having a consolidated city, mayor of a consolidated city for a county having a consolidated city, mayor, for a city, president of the town council for a town, trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. The SBOA will use these reports as the initial verification that a policy has been implemented for a "unit" of government. On February 1, the SBOA will notify the Department of Local Government Finance of any "unit" not submitting this verification by the end of January of each year. The SBOA will also follow up with each "unit" that has not submitted their verification to determine the status. If a unit subsequently files the required report, the SBOA will notify the Department of Local Government Finance that they have received verification from the unit that a policy has been adopted and has been implemented. During the course of the annual or biennial audit, the SBOA will review the policies that have been implemented as the SBOA field staff determines necessary. If it is found that the policy has not been implemented the report will contain an audit result and comment and forwarded to the Department of Local Government Finance.

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Sec. 8. If a "unit" has not implemented a policy under this chapter, the Department of Local Government Finance may not approve:

- (1) the "unit's" budget; or
- (2) any additional appropriations for the "unit";

for the ensuing calendar year until the State Board Of Accounts certifies to the Department of Local Government Finance that the "unit" has adopted a policy under this chapter.

SBOA Audit Position: The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not certified in accordance with IC 5-11-13-1.1 based upon information obtained from the filing of the "units" year-end personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.

FREQUENTLY ASKED QUESTIONS ABOUT PL 135, HEA 1005 (these are not audit positions)

Question 1: What does it mean to be employed by the "unit" for purposes of the grandfather provision?

Answer 1: First, "unit" is defined in IC 36-1-20.2 as a county, city, town, or township. This means that an individual employed by the "unit" means any individual working for any agency of the "unit."

Example: When the "unit" is a county, individuals who work in the county auditor's office and individuals who work in the county clerk's office are both considered to be employees of the "unit."

Second, the nepotism law provides a grandfather clause that applies to any employee working for the "unit" on July 1, 2012, so long as they do not have a break in employment. As mentioned above, a break in employment does NOT occur when the individual is on paid or unpaid leave, or if an individual's termination is immediately followed by reemployment with the same "unit."

Example: Again using a county, if an individual works for the county auditor on July 1, 2012, and subsequently stops working there and is immediately reemployed by the same county's clerk, you are still covered by the grandfather provision because you did not have a break in employment from the "unit."

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Question 2: Can relatives work in the same agency of a "unit"?

Answer 2: Yes, but there are some stipulations. Under the new law, an individual cannot be employed if their "relative" is in the "direct line of supervision" over them. "Direct line of supervision" is defined as an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, and advancement or performance evaluation. This means that you cannot have a situation where an individual is reporting directly to their "relative."

It is also our understanding through discussions with legislative members that an elected official not have decision making power of hiring of a staff person who is also a relative to that elected official.

Example: A county clerk could NOT have a relative as their chief deputy, *neither could a county clerk have a relative working in their office unless the county clerk removed themselves from the responsibility for affecting the terms and conditions of ALL individual's employment in their office, including, making decisions about work assignments, compensation, grievances, advancement, or performance evaluations. A county clerk could NOT remove themselves from the "direct line of supervision" for a relative if they are in the "direct line of supervision" for a relative if they are in the "direct line of supervision" of other employees in addition to the chief deputy, in the office.*

Question 3: Were there any exceptions in the nepotism law?

Answer 3: Yes:

A sheriff's spouse may be employed as prison matron and be in the sheriff's "direct line of supervision."

A former coroner who cannot run for reelection because of term limits may serve as a deputy coroner to a relative who is the new coroner.

A township trustee whose office is located in their residence may hire one relative that can be in the trustees' "direct line of supervision" so long as the total salary, benefits, and compensation does not exceed \$5,000.

Question 4: Can merit police and firefighters be promoted if they have a relative in the same department who ranks higher than they do?

Answer 4: A police officer or firefighter could be promoted, but only if the promotion would not put that individual in a position of reporting directly to their relative.

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Answer 4: Example: Brother "A" and Brother "B" serve in the city fire department. Brother "A" receives a promotion and would have "direct line of supervision" over Brother "B," meaning Brother "B" would be reporting directly to Brother "A." There are three options in this situation:

- (1) Brother "A" will have to turn down the promotion;
- (2) Brother "B" or "A" will need to be reassigned to another city firehouse so that Brother "B" no longer is in the "direct line of supervision" of Brother "A"; or
- (3) Brother "B" or "A" will need to be reassigned to another shift so that Brother "B" no longer is in the direct line of supervision of Brother "A."

Another scenario using this same example: Brother "A" receives and accepts promotion. Brother "B" is reassigned to another city firehouse. There is a fire where both brothers' firehouses are called to the fire. Brother "A" who is senior in rank directs Brother "B" actions during this fire run. This is not a violation of the "direct line of supervision" because in the general course of business Brother "A" is not in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation on a regular basis.

Question 5: Please explain the audit position in regard to the conflict of interest portion of HEA 1005, in particular IC 3-5-9-7:

This section provides that: ". . . a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee; until the term of the elected office that the . . . government employee is serving on January 1, 2013 expires."

Answer 5: It is our understanding, through discussions with the authors of the bill; the intent was to allow a person who is currently running for office to be able to both be an elected officer and an employee of the "unit." Additionally, our understanding of the intent of this clause would also allow an individual currently running for county council to start working in the county clerk's office on January 1, 2013, which would be the same day as the individual would assume the elected office of county council on January 1, 2013. It seems that the statute is set up to allow this because the individual would both be an employee of the county and an elected officer on January 1, 2013.

Question 6: This question deals with the nepotism portion of HEA 1005, in particular what is considered a break in employment?

Many counties hire the same individuals each year for seasonal labor. Does a seasonal worker have a break in employment each year, or would seasonal employment not be considered a break in employment.

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Answer 6: Through inquiry of the author of the bill, we determined that this specific issue was not discussed. Therefore, there is little guidance as to the intent on the application of this specific language.

"Units" should define for each type of seasonal worker as to whether they meet the criteria established by the "unit" for a break in service. "Units" should consult with their legal counsel to advise them on this process if they desire to define certain "seasonal workers" not to be considered to have had a break in service from one season to the next.

The choice is the "units." The key factors to look at are the entire relationship, take into consideration the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

Question 7: What is perjury?

Answer 7: In relation to this chapter, IC 35-44-2-1 states that perjury is when a person makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true. Perjury is also a class D felony.

Question 8: If I am the "executive" of a "unit," do I need to certify in writing to myself that I am in compliance with the requirements in IC 36-1-20.2 and IC 36-1-21?

Answer 8: Yes. Each elected officer of the "unit" shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with IC 36-1-20.2 and IC 36-1-21. You should sign your compliance statement and retain for audit.

Question 9: Is the SBOA going to prescribe a form that contains the certification that all elected officer's need to sign stating that they are in compliance with IC 36-1-20.2 and IC 36-1-21?

Answer 9: No. It is up to each "unit" to come up with their own statement. It can be as simple as a statement that the elected officer signs that states "subject to the penalties for perjury, I have not violated the provisions of IC 36-1-20.2 and IC 36-1-21."

Question 10: How detailed does a policy required under IC 36-1-20.2 and IC 36-1-21 need to be?

Answer 10: A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA 1005 (2012).

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NEW LAWS AFFECTING TOWNSHIPS

The following is a digest of some of the laws passed by the 2013 Regular Session of the General Assembly affecting townships. Please note the effective dates. Some of the laws do not pertain directly to townships but are included in the Digest for ready reference to the covered subject matter.

The digest is not intended as an expression of legal interpretations, nor is the digest intended to be all inclusive. References in the digest will be to the Indiana Code in the following form (Amends IC 12-20-9-6) (Amends Indiana Code, Title 12, Article 20, Chapter 9, Section 6). If you have any questions regarding legal interpretation, please consult your township attorney.

PUBLIC LAW 28 - SENATE ENROLLED ACT 175 – EFFECTIVE JULY 1, 2013 Public Contracts for Services – E-Verify

Amends IC 22-5-1.7-6 - Requires all public contracts for services to be in writing.

PUBLIC LAW 88 - SENATE ENROLLED ACT 213 – EFFECTIVE JULY 1, 2013 Employee Benefits

Adds IC 22-2-16 - States that a township may not establish, mandate, or otherwise require an employer to provide to an employee a benefit, term of employment, working condition or attendance or leave policy that exceeds federal or state requirements.

PUBLIC LAW 240 - SENATE ENROLLED ACT 226 – EFFECTIVE JULY 1, 2013 Suspension of state and local officeholders – study committee

Urges the legislative council to establish a study committee on the topic of suspension from office for officials charged with a felony.

PUBLIC LAW 47 - SENATE ENROLLED ACT 249 – EFFECTIVE JULY 1, 2013 Retirement Plan Reporting

Adds IC 5-11-20 - Requires certain information on retirement plans to be reported on the Gateway Annual Report portal beginning next year. These would include pension plans of housing authorities, airport authorities, public transportation corporations, hospitals, local health departments, and utilities.

PUBLIC LAW 186 - SENATE ENROLLED ACT 250 – EFFECTIVE JULY 1, 2013 Petition Carriers for Candidates and Public Questions

Adds IC 3-6-12 - Sets out requirements for persons who circulate petitions to place as candidate or a public question on the ballot.

PUBLIC LAW 121 - SENATE ENROLLED ACT 293 – EFFECTIVE JULY 1, 2013 Interim Study Committee on Government Accounting

Adds IC 2-5-36.5 - Creates an interim study committee to study issues concerning state and local government accounting, including issues related to the implementation of generally accepted accounting principles. (GAAP), as adopted by the Government Accounting Standards Board (GASB).

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PUBLIC LAW 202 - SENATE ENROLLED ACT 343 - EFFECTIVE JULY 1, 2013 AND JANUARY 1, 2014 – Local Government Reorganization

Amends and adds to several sections of IC 36-1.5-4 - Adds IC 36-4-1-1.5, IC 36-4-3-1.4, IC 36-7-4-107, IC 36-7-4-202.5 and IC 36-7-4-901.5 Repeals IC 36-1.5-2-6, IC 36-1.5-4-15, IC 36-1.5-4-16, and IC 36-1.5-4-17 - Makes several changes to the laws governing local government reorganization. Requires an approval threshold for reorganizations voted on after December 31, 2013. Specifies that a reorganized political subdivision created from two or more townships and at least one municipality that have reorganized:

- (1) may exercise park and recreation powers and establish a parks and recreation board; and
- (2) may exercise planning and zoning power, if the reorganized political subdivision's plan of reorganization includes such powers.

**PUBLIC LAW 255 - SENATE ENROLLED ACT 459 – EFFECTIVE MAY 11, 2013
Local Government Reorganization**

Amends several sections of the Indiana Code - Makes several changes to eliminate double taxation for services or goods provided by a reorganized political subdivision or eliminate any excess by which property taxes imposed by the reorganized political subdivision exceeds the amount necessary to pay for services or goods provided. Adds procedures for the use of excess funds which are determined to be generated as a result of the reorganization. Provides for transfer of a development area from one redevelopment commission to another adjacent city or town's redevelopment commission.

**PUBLIC LAW 205 - HOUSE ENROLLED ACT 1001 – EFFECTIVE JULY 1, 2013
State Budget**

Establishes a budget for State government for the next two years.

Other Post Employment Benefits (OPEB)

Adds IC 36-1-8-17.5 - Requires all political subdivisions to report to the DLGF before February 1 of each year the political subdivision's OPEB liability, unfunded OPEB liability, OPEB assets, contributions, and expenses and expenditures for the preceding year.

**PUBLIC LAW 158 – HOUSE ENROLLED ACT 1006 – EFFECTIVE JULY 1, 2013
Ghost Employment**

Amends IC 35-44.1-1-3 - Makes it a Level 6 felony if a public servant is found to have committed ghost employment.

Conflict of Interest

Amends IC 35-44.1-4 - Makes it a Level 6 felony if a public servant is found to have committed conflict of interest.

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PUBLIC LAW 103 - HOUSE ENROLLED ACT 1102 – EFFECTIVE JULY 1, 2013
Executive Sessions

Amends IC 5-14-1.5-2 - Defines litigation to include any judicial action or administrative law proceeding under federal or state law.

PUBLIC LAW 218 - HOUSE ENROLLED ACT 1116 – EFFECTIVE JULY 1, 2013
Budgets, Tax Rates, and Levies

Amends and adds to several chapters of IC 6-1.1 – Requires the Department of Local Government Finance (DLGF) to conduct a public hearing on a political subdivision's budget, tax rate, and tax levy if requested in writing by a taxpayer. Allows the DLGF to conduct hearings for multiple political subdivisions at the same hearing. Eliminates amounts to be paid from donations and other gifts for a capital project from the total project cost when determining whether a project is a controlled project and whether the petition and remonstrance process or referendum process apply to the project. Eliminates the requirement that the county auditor notify each political subdivision of the property tax reductions resulting from the circuit breaker credit.

PUBLIC LAW 105 – HOUSE ENROLLED ACT 1145 – EFFECTIVE JULY 1, 2013
Rainy Day Fund

Amends IC 36-1-8-5.1 – Allows a township, in any fiscal year, at any time to do the following:

- (1) Transfer any unused and unencumbered funds specified in IC 36-1-8-5.1(b)(2)(A) from any fiscal year to the rainy day fund.
- (2) Transfer any other unobligated cash balances from any fiscal year that are not otherwise identified in IC 36-1-8-5.1(b)(2)(A) or IC 36-1-8-5 to the rainy day fund as long as the transfer satisfies the following requirements:
 - (A) The amount of the transfer is authorized by and identified in an ordinance or resolution.
 - (B) The amount of the transfer is not more than ten percent (10%) of the political subdivision's total annual budget adopted under IC 6-1.1-17 for that fiscal year.

A political subdivision may use only the funding sources specified in IC 36-1-8-5.1(b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.

The Department of Local Government Finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.

A county, city, or town may at any time, by ordinance or resolution, transfer to:

- (1) its general fund; or
- (2) any other appropriated funds of the county, city, or town;
money that has been deposited in the rainy day fund of the county, city, or town.

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**PUBLIC LAW 105 – HOUSE ENROLLED ACT 1145 – EFFECTIVE JULY 1, 2013 (continued)
Bank Cards/Credit Card - Convenience Fee**

Amends IC 36-1-8-11 – Allows a political subdivision to contract with a bank card or credit card vendor for acceptance of bank cards or credits cards. However, if there is a vendor transaction charge or discount fee, whether billed to the political subdivision or municipally owned utility or charged directly to the political subdivision's or municipally owned utility's account, 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 card or credit card used.

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

The political subdivision or municipally owned utility may pay any applicable bank card or credit card service charge associated with the use of a bank card or credit card.

**PUBLIC LAW 219 - HOUSE ENROLLED ACT 1157 – EFFECTIVE VARIOUS DATES
Elections**

Makes numerous changes to the laws affecting elections and voter registration in Title 3.

Public Questions

Amends IC 36-1.5-4-11 and IC 36-1.5-4-30 - Changes laws dealing with deadlines for certification and withdrawal of public questions for controlled projects.

**PUBLIC LAW 106 - HOUSE ENROLLED ACT 1219 – EFFECTIVE JULY 1, 2013
Restricted Addresses**

Adds IC 34-30-2-152.7 and IC 36-1-8.5 – Requires a township to restrict from disclosures the home address of a judge, law enforcement officer, or a victim of domestic violence if such person submits a written request for such restriction. Requires compliance to begin after June 30, 2014. Allows a township that operates a public property data base web site to charge a reasonable fee to such persons for restricting access to their home addresses on the web site. States that a written request, notification of name change, or any other information submitted by a covered person is confidential under IC 5-14-3-4(a).

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**PUBLIC LAW 6 - HOUSE ENROLLED ACT 1276 – EFFECTIVE JULY 1, 2013
Township Board Meetings**

Amends IC 36-6-6-9 and IC 36-6-6-10 - Requires a township board to meet in February (instead of January) to approve the annual report of the township trustee. Allows a township board to reduce the salaries of the township board members by a vote of a majority of the members (instead of by a unanimous vote of the members).

**PUBLIC LAW 71 - HOUSE ENROLLED ACT 1325 – EFFECTIVE JULY 1, 2013
Disaster Relief Personnel**

Adds IC 10-14-3-0.5 and IC 10-14-4-0.3 - Amends IC10-14-3-15, IC 10-14-3-19, IC 10-14-4-2, IC 10-14-4-6, IC 10-14-4-11, IC 22-3-6-1, and IC 22-3-7-9 - Authorizes the State to reimburse a township for a backfill employee necessary for the township to fill the position and duty of an employee deployed to a mobile support unit, if the cost of the backfill employee represents an extra cost to the township.

**PUBLIC LAW 288 - HOUSE ENROLLED ACT 1545 – EFFECTIVE VARIOUS DATES
Rainy Day Fund**

Amends IC 36-1-8-5.1 - Prohibits transfers from a debt service fund to the rainy day fund.

**PUBLIC LAW 234 – HOUSE ENROLLED ACT 1585 – EFFECTIVE VARIOUS DATES
Distressed Townships**

Amends IC 6-1.1-18.5-3, IC 6-1.1-20.3-2, IC 6-1.1-20.3-6.7, IC 6-1.1-20.3-7.5, and IC 6-1.1-20.3-8.5 - Provides that if a township's township assistance property tax rate for property taxes first due and payable in 2014 or any year thereafter is more than 12 times the statewide average township assistance property tax rate (as determined by the department of local government finance), the distressed unit appeal board may designate the township as a distressed political subdivision (effective on January 1 of the following year) regardless of whether the township has submitted a petition requesting to be designated as a distressed political subdivision.

Provides that if a township's township assistance property tax rate for property taxes first due and payable in 2013 or any year thereafter is more than 12 times the statewide average township assistance property tax rate (as determined by the department of local government finance), the department of local government finance shall, beginning with property taxes first due and payable in the following year, do the following: (1) Remove the township assistance property tax levy from the maximum property tax levy for the township's general fund. (2) Require the township to separate its township assistance property tax levy into two property tax levies (a township assistance benefits property tax levy and a township assistance administration property tax levy). (3) Calculate a separate maximum permissible property tax levy for those two tax levies.

Provides that the department of local government finance shall determine the initial maximum property tax levy for a township's township assistance administration property tax levy. Specifies the manner in which the initial maximum property tax levy for the township assistance benefits property tax levy is determined.

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**PUBLIC LAW 234 – HOUSE ENROLLED ACT 1585 – EFFECTIVE VARIOUS DATES (continued)
Transfer of Municipal Territory to an Adjacent Township**

Adds IC 36-1-1.5 - Allows a municipality containing any territory that is: (1) located in a township with a township assistance property tax rate that for property taxes first due and payable in 2015 or any year thereafter is more than 12 times the statewide average township assistance property tax rate; and (2) adjacent to another township; to have territory of the municipality transferred to an adjacent township if certain conditions are satisfied.

Provides that if sufficient voters of the municipality submit a petition requesting a transfer of such territory, a referendum shall be held on the transfer. Specifies that if at least two-thirds of the voters of the municipality who vote in the referendum vote to approve the transfer, the legislative body of the municipality may, within the one year period after the referendum, submit a petition to one or more adjacent townships requesting the adjacent township to accept the transfer of the territory of the municipality.

Provides that if the legislative body of an adjacent township adopts a resolution accepting the transfer of the territory, that territory of the municipality is transferred to and becomes part of the township adopting the resolution. Provides that if no adjacent township adopts a resolution accepting the transfer of an eligible municipality's property: (1) the territory of the eligible municipality is not transferred; and (2) a subsequent referendum on the transfer of the eligible municipality's territory may not be held.

Study Committee

Requires the commission on state tax and financing policy shall during the interim in 2013 between sessions of the general assembly, study the following issues and report its findings and recommendations, if any, to the legislative council in an electronic format under IC 5-14-6 before November 1, 2013:

1. The administrative costs of providing township assistance.
2. The reporting of the administrative costs of providing township assistance