



MITCHELL E. DANIELS, Jr., Governor
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY JOSEPH E. WAINSCOTT, Jr., EXECUTIVE DIRECTOR

*Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
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September 28, 2010

RE: Procedure for Request and Appropriation of Funds to Local Emergency
 Planning Committee (LEPC)

Dear Council President, County Auditor, and LEPC Chair:

We are writing on behalf of the Indiana Emergency Response Commission (IERC) and the State Board of Accounts (SBA) to share with you our common approach to the request for, and appropriation of, funds for LEPCs. This is a matter which has caused some confusion in the past, due to the LEPC's unusual nature as a state agency that receives its funds through the counties, which act as custodians of those funds. Below we have outlined the statutory codes, spending categories, and administrative procedures regarding LEPC funds.

I. The Law on LEPC Expenses

The requirements of the Emergency Planning and Community Right to Know Act (EPCRA) mandate the structure of the IERC and LEPCs. EPCRA was enacted in 1986 as Title III of the Superfund Amendment and Reauthorization Act (SARA Title III), and is found at 42 United States Code Sections 11001-11050. The requirements of EPCRA and the IERC's organization and specific duties of the IERC and LEPCs were enacted into law in Indiana under Indiana Code 13-25-1 and 13-25-2.

The funds for the LEPC originate from the Indiana Local Emergency Planning and Right to Know Fund, established by Indiana Code 6-6-10-5. Each year, the Indiana Department of Revenue distributes monies from this Indiana Local Emergency Planning and Right to Know Fund, based on a formula set forth in IC 6-6-10-7(a). Each county receiving these funds must deposit these monies in a separate fund established by the County ("LEPC Fund"). The Indiana statute at Indiana Code 6-6-10-7(d) requires the county fiscal body to appropriate monies from the LEPC Fund as requested by the LEPC in a compliant spending plan. **The intent and effect of this law is that the County acts as custodian of the funds, but has no authority to control or direct expenditures from the LEPC Fund.**

The monies in the LEPC Fund may, by law, only be expended by the LEPC and only on LEPC activities. Under IC 6-6-10-7(d), the county fiscal body is prohibited from appropriating money from the Fund for any person or purpose other than the LEPC. County agencies, including the County Emergency Management Agency, do not have any authority to use the LEPC funds. As such, a contract for services between the County and a contractor and a procurement action between the County and a vendor could not be paid directly with the monies from the LEPC fund. **Expenditures from the Fund are overseen by the IERC. This independence from county government results from the LEPC's being a state agency, acting under the oversight of the IERC.**

II. LEPC Expense Categories

Money from the Indiana Emergency Planning and Community Right to Know Fund may be spent by LEPCs on the following eight (8) categories of items specified in Indiana Code 6-6-10-7(b):

1. Preparing and updating a comprehensive emergency response plan required under 42 U.S.C. 11003 for the county or emergency planning district.
2. Establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under Title III of SARA (42 U.S.C. 11001 *et seq.*).
3. Training for emergency response planning, information management, and hazardous materials incident response.
4. Equipping a hazardous materials response team that provides at least a county-wide emergency planning response if the equipment purchased is consistent with current training levels of the response team members.
5. Purchasing communication equipment for an LEPC's administrative use.
6. Paying an optional stipend to LEPC members who attend regularly scheduled meetings at which a quorum is present in an amount (a) determined by a majority of the LEPC membership and (b) that is not more than twenty dollars (\$20) per member per meeting.
7. Paying for Title III risk communication, chemical accident-related, and accident prevention projects submitted to and approved by the IERC.
8. Maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under category (4), above.

However, revenue distributed to a county under Indiana Code 6-6-10-7(a) may be used for the purposes set forth in categories (3) through (8) above only if the LEPC for the county has prepared and submitted to the IERC an emergency plan that meets the requirements of 42 U.S.C. 11003(a) and has received approval for the training programs from the IERC.

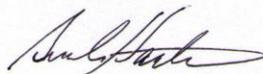
III. The Procedure for LEPC Request and Receipt of Funds

The procedure for the LEPC to request and receive funding is as follows:

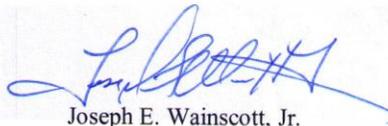
1. The LEPC must prepare a funding request, listing as line items the eight (8) categories for expenditure specified under Indiana Code 6-6-10-7(b). The funding request must be approved by the LEPC in a regular meeting, and this approval must be reflected in the official minutes of the LEPC.
2. The LEPC must submit its funding request and a copy of the LEPC's official minutes reflecting approval to the County Auditor and County Council.
3. The LEPC must participate in the annual budget hearings held by the County Council.
4. The County Council "shall" approve the LEPC's budget, as required by Indiana Code 6-6-10-7(d).
5. The County Auditor shall act as the custodian of the approved funds, writing checks to cover expenditures from the various line items as requested by the LEPC.
6. The County Auditor must ensure that appropriated funds are not invested in a manner which prohibits their ready access upon request of the LEPC.
7. Additional expenditure requests for funding beyond the appropriated funds must include a funding request and a copy of the LEPC's official minutes reflecting approval of the supplemental funding request to the County Auditor.
8. As the LEPC is a state agency, the county must not impose any requirements upon the nature or manner of expending LEPC funds beyond those outlined above in the relevant state law.

Please feel free to contact us if we may be of further assistance.

Sincerely,



Bruce A. Hartman, CPA
State Examiner
Indiana State Board of Accounts



Joseph E. Wainscott, Jr.
Chair
Indiana Emergency Response Commission

