



## Frequently Asked Questions

### Controlled Project Division

*August 21, 2015*

#### **1. What is a controlled project?**

A project is a controlled project if it costs more than the lesser of \$2,000,000 or an amount equal to 1% of the total gross assessed value of property within the taxing unit on the last assessment date, if that amount is at least \$1,000,000.

In other words, if the proposed project costs \$2,000,001 or more, it is probably a controlled project, although there are caveats and exceptions under state law.

#### **2. What controlled projects are subject to the petition and remonstrance process?**

The petition and remonstrance process allows taxpayers to sign petitions or remonstrances to support or oppose, respectively, a proposed project. If a project will cost between \$2,000,001 and \$10 million and involves an elementary school building, middle school building, high school building, or other school building for academic instruction that will be used for any combination of kindergarten through grade 12, this would be a controlled project subject to the petition and remonstrance process under IC 6-1.1-20-3.1 and 3.5. Likewise, any project that costs between \$2,000,001 and the lesser of \$12,000,000 or an amount equal to 1% of the total gross assessed value of property within the taxing unit is also subject to the petition and remonstrance process.

#### **3. What controlled projects are subject to the referendum process?**

The referendum process allows taxpayers to vote on a proposed project through a ballot. If a project will cost between \$2,000,001 and **more than** \$10 million and involves an elementary school building, middle school building, high school building, or other school building for academic instruction that will be used for any combination of kindergarten through grade 12, this would be a controlled project subject to the referendum process under IC 6-1.1-20-3.2 and 3.6. Likewise, any project that costs between \$2,000,001 and more than the lesser of \$12,000,000 or an amount equal to 1% of the total gross assessed value of property within the taxing unit is also subject to the referendum process.

**4. Can a taxing unit split a project up to avoid either the petition and remonstrance or referendum processes?**

No, state law (IC 6-1.1-20-3.1, 3.6) is very clear that a taxing unit may not artificially divide a capital project into multiple capital projects in order to avoid the petition and remonstrance or referendum processes.

**5. What if I believe a taxing unit has artificially divided a project?**

The Department of Local Government Finance would encourage you to first contact the fiscal body of the taxing unit as well as the legal counsel representing the taxing unit to discuss your concerns. If you still believe the taxing unit has artificially divided the project and if you own property within the taxing unit or are a registered voter residing within the taxing unit, you may file a petition with the Department (using State Form 55888, available at <https://forms.in.gov/Download.aspx?id=12415>, which also contains filing instructions). The petition must be filed not more than ten days after the taxing unit makes the preliminary determination to issue the bonds or enter into the lease for the project. If the Department receives a petition, it must, not later than thirty days after receiving the petition, make a final determination on the issue of whether the capital projects were artificially divided.

**6. What factors will the Department consider in reviewing my petition? What does the Department consider “artificially divided” to mean?**

Because each project and its underlying circumstances is unique, it is difficult to offer a definitive and universal answer. However, the Department will give great consideration to whether a taxing unit can demonstrate how each project can exist and proceed independently of other projects, both physically and conceptually. In other words, the Department would likely not be persuaded that simultaneous electrical and plumbing overhauls at the same building could be considered two separate projects. Here, the Department would likely view this work as components of a single renovation project. Likewise, the Department would probably not be persuaded that a school corporation replacing the roofs of four of its schools has four separate projects at hand. Here, there is one roofing project with four locations. Conversely, a school corporation replacing a roof at one school and replacing the HVAC system at another school might have a more compelling argument that there are two projects involved. Again, the Department will review the applicable facts and circumstances on a case-by-case basis. The Department emphasizes that a taxing unit could legitimately have multiple projects included in one bond issue. As a result, the bond issue amount may exceed the dollar value thresholds for the petition and remonstrance process or the referendum process, while the individual projects could be determined to be below the statutory thresholds. In this situation, the projects would not be subject to the petition and remonstrance process or the referendum process.

More information about the petition and remonstrance process and the referendum process, including procedural flowcharts, is available here: <http://www.in.gov/dlgf/8789.htm>