

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO: Township Trustees**

**FROM: Wesley R. Bennett, Commissioner**

**RE: Legislation concerning township capital improvement plans and interfund transfers, House Enrolled Act 1177-2019**

**DATE: June 17, 2019**

On April 29, 2019, Governor Holcomb signed into law House Enrolled Act 1177-2019 (“HEA 1177”). Effective July 1, 2019, HEA 1177 mandates townships to create capital improvement plans and instructs how townships can make transfers between certain funds. This memorandum explains this requirement. Please note that this memorandum is for informative purposes only and is not a substitute for reading the law.

## **I. Township Capital Improvement Plans, IC 36-6-9**

Section 4 of HEA 1177 adds IC 36-6-9. This new chapter applies to the preparation of a budget for a township for a year after 2019.

A township must adopt a capital improvement plan if the township’s capital improvement funds exceed

- (1) one hundred fifty percent (150%) of the township’s total annual budget estimate prepared under IC 6-1.1-17-2 for the ensuing year; and
- (2) two hundred thousand dollars (\$200,000).

By “capital improvement funds,” this means a township fund which may be used for the payment of capital improvements, including

- (1) the general fund;
- (2) the township fire fund under IC 36-8-13;
- (3) the cumulative fire fund under IC 36-8-14;
- (4) an equipment replacement fund for a fire protection territory under IC 36-8-19-8.5;
- (5) a cumulative township vehicle and building fund under IC 36-9-17.5;
- (6) a cumulative building fund under IC 36-10-7.5-19;
- (7) a public park fund under IC 36-10-7-7; and
- (8) any other fund established by a township for the payment of capital improvements.

HEA 1177 also defines “capital improvement” as any of the following:

- (1) Acquisition of land.
- (2) Site improvements.
- (3) Infrastructure improvements.
- (4) Construction of buildings or structures.

- (5) Rehabilitation, renovation, or enlargement of buildings or structures.
- (6) Acquisition of improvement of machinery, equipment, furnishings, or facilities.

The capital improvement plan must meet the following requirements:

- (1) It must apply to at least the three (3) years immediately following the year the plan is adopted. For example, if the township board adopts a capital improvement plan in 2019, the plan must apply at least to 2020, 2021, and 2022 budget years.
- (2) It must estimate for each year to which the plan applies the nature and amount of proposed expenditures from each of the township's capital improvement funds.
- (3) The plan must estimate
  - (A) the source of all revenue to be dedicated to the proposed expenditures in each of the three (3) calendar years; and
  - (B) the amount of property taxes to be collected in each of the three (3) calendar years and retained in the capital improvement funds for expenditures proposed for a later year.

The Department of Local Government Finance ("Department") must prescribe the format of the plan no later than September 1, 2019. Hence, the Department will issue a plan template subsequent to the release of this memorandum and no later than September 1, 2019.

The township trustee shall prepare the plan and the township board shall adopt the plan. The board must hold a public hearing on a proposed plan or amended plan prior to adoption. HEA 1177 does not specify that notice be given under IC 5-3-1. A capital improvement plan must be adopted no later than September 30, 2020. Failure to adopt a plan results in the township not being able to collect property taxes for a capital improvement fund in the ensuing year. After adoption, the county council must consider the plan in reviewing a township's budget under IC 6-1.1-17-3.6.

Also after adopting a plan, the township must submit a copy of the adopted plan to the Department. The Department will issue at a later date a memorandum on how capital improvement plans are to be submitted.

Finally, a capital improvement plan may be amended, upon approval by the township board, to

- (1) provide money for the purposes of a capital improvement fund; or
- (2) supplement money accumulated in a capital improvement fund for the purposes of the capital improvement fund.

## **II. Transfers between Township Funds, IC 36-6-6-16**

Section 3 of HEA 1177 adds IC 36-6-6-16. This section does not apply for a township that has been designated a distressed political subdivision under IC 6-1.1-20.3.

For any township fund (except a debt service fund), the township board may authorize a one (1) time transfer of any or part of an excess balance from that fund to another township fund (except a debt service fund). This action must take place at a public meeting. Transfers among multiple funds are allowed, however all transfers must be authorized by the township board one (1) time.

Monies transferred under IC 36-6-6-16 may be used for any lawful purpose of the fund to which money is transferred. However, money transferred into a fund may not be spent until the expenditure has been included in a budget certified by the Department under IC 6-1.1-17-16. For purposes of fixing the township budget and for the maximum permissible tax levy under IC 6-1.1-18.5, the money transferred and included in a certified budget order shall be treated as part of the township's maximum permissible tax levy for that budget year.

Any transfers by a township must take place no later than September 1, 2020. If a township has to complete a capital improvement plan under IC 36-6-9, the plan must be adopted by the township board before any transfers can take place.

IC 36-6-6-16 expires January 1, 2021. It is unclear what effect this statute expiring has for a township located in a county with a budget certification deadline of January 15, 2021, and that authorized a transfer, if the budget order for the county was not issued prior to January 1, 2021.

### **Contact Information**

Questions may be directed to David Marusarz, Deputy General Counsel, at (317) 233-6770 or [dmarusarz@dlgf.in.gov](mailto:dmarusarz@dlgf.in.gov).