

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions

FROM: Fred Van Dorp, Budget Director

DATE: February 4, 2022

SUBJECT: Procedures for the Establishment and Reestablishment of Cumulative Funds

The Department of Local Government Finance (“Department”) issues this memorandum, which applies to the following Cumulative Funds established under the procedures outlined in Ind. Code § 6-1.1-41, and which supersedes all previous memoranda on the subject. This memo does not take the place of Indiana law. The Department and all local units of government are bound to due dates and responsibilities as outlined in the law. In the event any part of this memorandum conflicts with Indiana law, Indiana law governs.

A political subdivision (“unit”) desiring a new cumulative fund or to increase the property tax rate for an existing cumulative fund must establish or reestablish the fund. The unit may only establish or reestablish a cumulative fund for which it has authority to establish under the statutes referenced at the end of this memorandum in Table 1. Templates for each step may be found in the companion document with this memo.

Please note that House Enrolled Act 1427-2021 (“HEA 1427”) amended the process for establishing or reestablishing cumulative funds. This includes the Department’s review of the unit’s proposal. With a few exceptions, HEA 1427 did not change the process for a unit to establish or reestablish a cumulative fund prior to submitting the proposal to the Department. This memorandum incorporates the changes made by HEA 1427 as well as describing the statutory requirements under Ind. Code § 6-1.1-41 and related statutes.

All units seeking to establish or reestablish a cumulative fund with the Department must submit the following documents to the Department by **May 31, 2022**. Units may submit these documents electronically.

1. Procedure Checklist
 - The checklist can be found in Appendix A of the companion document.
2. Adopted resolution/ordinance of adopting body
 - For most units, the resolution/ordinance template can be found in Appendix C of the companion document.
 - For fire protection territories, the resolution/ordinance template can be found in Appendix D of the companion document.
3. County auditor’s Certificate of No Remonstrance

- If no taxpayer remonstrance has been filed, the County auditor will be able to provide the appropriate certificate.
- Additional information related to submitting the Certificate of No Remonstrance can be found later in the memo.

For questions regarding the cumulative fund procedures, please contact your [Budget Field Representative](#).

In addition to complying with the budget, tax rate, and tax levy requirements of Ind. Code § 6-1.1-17, the following steps must be taken when establishing a cumulative fund or increasing the rate of an established fund. A tax to finance the fund may not be levied in the ensuing year if

- following a hearing on a taxpayer remonstrance, the establishment of a fund is found not to be in compliance with Ind. Code § 6-1.1-41 and other relevant statutes; or
- the tax rate is not certified in conformity with Ind. Code § 6-1.1-41.

PUBLICATION OF NOTICE TO TAXPAYERS

The hearing must be publicized through a Notice to Taxpayers in accordance with Ind. Code § 5-3-1-2(f). The hearing must describe the tax levy to be imposed and must be published two (2) times, at least seven (7) days apart, with the first publication being at least ten (10) days before the public hearing and the second publication at least three (3) days before the public hearing. Per Ind. Code § 6-1.1-41-3(d) as amended by HEA 1427, the notice of the public hearing must be in the form prescribed by the Department. Appendix B contains a template for this notice.

The notice must be published in two (2) newspapers published within the unit, as applicable, in accordance with Ind. Code § 5-3-1-4.

If the fund is for a Cumulative Voting System (Ind. Code § 3-11-6) or Cumulative Channel Maintenance (Ind. Code § 8-10-5-17), a notice of the proposal and the public hearing must also be posted in three public places within the unit.

PUBLIC HEARING & ADOPTION OF RESOLUTION/ORDINANCE

The adopting body for the unit must conduct a public hearing on the proposed cumulative fund on the date, time, and location as indicated in the Notice to Taxpayers. At this hearing, taxpayers of the affected taxing district(s) have the right to be heard. Subsequent to the public hearing, the adopting body can vote to pass a resolution/ordinance adopting the proposed cumulative fund and rate as presented, or at a lower tax rate. Appendix B contains a template for this notice.

Units should pay close attention to whether the enabling statute requires the unit's fiscal body or legislative body to establish a cumulative fund. Generally, the county commissioners establish a county cumulative capital development fund and a cumulative bridge fund.

PUBLICATION OF NOTICE OF ADOPTION

The unit must publish a Notice of Adoption to the affected taxpayers. Per Ind. Code § 6-1.1-41-3(e), this notice must be published in a manner prescribed by the Department. Appendix E contains a template for this notice. The unit must publish the Notice of Adoption one (1) time within 30 days after the date of the adoption in two newspapers published within the unit, as

applicable, in accordance with Ind. Code § 5-3-1-4. If the fund is for a Cumulative Voting System (Ind. Code § 3-11-6) or Cumulative Channel Maintenance (Ind. Code § 8-10-5), the notice must also be posted in three public places in the political subdivision.

The publication of this Notice begins a 30-day remonstrance period for the taxpayers affected by the cumulative fund. Taxpayers who are affected by the proposed cumulative fund may file an objection petition with the county auditor, not later than noon 30 days after the publication of the Notice of Adoption, setting forth their objections to the proposed fund. Pursuant to Ind. Code § 6-1.1-41-6, and as changed by HEA 1427, signatures from at least **twenty-five (25)** taxpayers are required for a valid objection.

Exceptions to the 30-day remonstrance period are limited to the Cumulative Building and Capital Improvement Fund (Ind. Code § 36-9-16-5) and the Cumulative Building for Hospitals Fund (Ind. Code § 16-22-5-4). Only these two funds require a ten-day remonstrance period.

Pursuant to Ind. Code § 6-1.1-41-3(e), the Department prescribes the manner in which the Notice of Adoption must be published.

The county auditor must immediately certify the objection petition(s) to the Department by verifying all of the following:

1. The number of taxpayers on the petition and counterparts who are property owners within the taxing district(s) where the proposed cumulative fund will be levied.
2. The proper number of qualified signatures appears on the petition and counterparts.
3. The petition(s) was filed within the proper number of days after the publication of the Notice of Adoption.

TAXPAYER REMONSTRANCE & HEARING

If a petition is certified by the county auditor to the Department, the Department must fix a date for a hearing within a reasonable time after receipt of the objection. The Department is **not** required to hold a public hearing on a taxpayer remonstrance unless the petition alleges by reasonable statements of fact that the unit failed to comply with the procedural requirements under 1) Ind. Code § 6-1.1-41; 2) Ind. Code § 5-3-1; or 3) the enabling act for the cumulative fund. A hearing will be conducted by a hearing officer of the Department, at which time all affected taxpayers will have the right to be heard. As permitted by Ind. Code § 6-1.1-41-7, this hearing may be held through electronic means or in-person.

Notice of the hearing, under the signature of the Commissioner of the Department, must be given to the county auditor and the first ten (10) taxpayers whose names appear on the petition at least five (5) days before the date of the hearing. This notice must be sent by mail with prepaid postage at least five (5) days before the hearing date. This notice will indicate whether the hearing will be held electronically or in-person.

At the hearing, testimony will be accepted from those in opposition to, as well as those in favor of, the proposed cumulative fund. The hearing officer will submit a report on the hearing to the Commissioner. The Department must certify approval, disapproval, or modification of the proposal to the county auditor. The Department may only disapprove a cumulative fund upon a

finding that the unit did not comply with the procedural requirements under 1) Ind. Code § 6-1.1-41; 2) Ind. Code § 5-3-1; or 3) the enabling act for the cumulative fund. The action of the Department with respect to the proposed fund is final.

SUBMISSION TO THE DEPARTMENT

A unit that adopts a proposed cumulative fund pursuant to Ind. Code § 6-1.1-41 must submit the adopted ordinance/resolution to the Department for approval **on or before May 31** of the year preceding the year in which the proposed levy takes effect. The following must be submitted to the Department:

- Procedure Checklist (see Appendix A).
- Adopted resolution/ordinance of adopting body (Appendix C or D, as applicable).
- County auditor's Certificate of No Remonstrance, when available*.

*While Ind. Code § 5-3-1-2(i) requires a Notice to be published within 30 days of the date of adoption, Ind. Code § 6-1.1-41-4 requires that a proposal be submitted to the Department on or before May 31. The proposal must include a Certificate of No Remonstrance so that the Department is aware that no remonstrance has been filed prior to certifying the tax rate. However, a unit that adopts a cumulative fund in mid-May will not have a full 30 days to publish the Notice of Adoption before having to submit the proposal. In such a case, it would not be possible to have a Certificate of No Remonstrance both on or before May 31 **and** once the 30-day remonstrance window has expired. A unit may submit a Certificate of No Remonstrance after the May 31 deadline under the following conditions:

- The Notice of Adoption was published before May 31.
- The remonstrance period cannot end on or before May 31.
- All of the other required documents have been submitted to the Department on or before May 31.

The Department will not proceed with certifying the tax rate until the Certificate of No Remonstrance is received.

Indiana Code 5-3-1-4, as presently written, does not distinguish between paper and electronic versions of newspapers. As more and more newspapers are moving entirely to an electronic format, some units may not have newspapers that publish paper editions in their jurisdiction. The unit should attempt, in compliance with Ind. Code § 5-3-1, to publish its notices in paper editions.

REVIEW BY THE DEPARTMENT

If no taxpayer remonstrance has been filed pursuant to Ind. Code § 6-1.1-41-6: The Department will verify that the tax rate for the cumulative fund as stated in the adopting ordinance does not exceed the tax rate that is permitted by the statute that allows the levy for the cumulative fund. A list of statutes and tax rates can be found in Table 2. The Department will certify the rate adopted by the unit, not to exceed the statutory maximum rate for the cumulative fund. If a submission is not filed on or before May 31, the Department has discretion not to certify the rate.

If a taxpayer remonstrance has been filed pursuant to Ind. Code § 6-1.1-41-6: After a hearing on the objections, the proposal will be reviewed by the Department for compliance with procedural

requirements and whether the adopted rate does not exceed what is permitted by statute. If the adopted rate exceeds what is permitted by statute and the proposal is otherwise proper, the Department will approve the rate at the statutory maximum.

INCLUDING THE CUMULATIVE FUND IN THE UNIT'S BUDGET

An approved cumulative fund may be levied beginning with the first annual tax levy imposed following approval of the proposal or in the year stated in the Department's order. Cumulative funds, with the exception of the Cumulative Building or Cumulative Capital Improvement Fund (Ind. Code § 36-9-16-4), do not expire and may be levied from year to year as long as they are advertised annually with the annual budget or are not time-limited by the establishing resolution/ordinance.¹ **Please note that if a unit adopts a rate for a cumulative fund as part of its budget adoption that is less than the rate at which the fund had been initially established, the unit will be held to that lesser rate the following year unless the unit reestablishes the fund at a higher rate. Again, to levy a tax in 2023, the fund must be properly adopted in 2022 and the petition timely submitted to the Department in 2022 (a unit seeking to levy a cumulative fund tax starting in 2023 should not adopt the cumulative fund until 2022).**

If the appropriate fiscal body wishes to increase the rate in subsequent years, the fund must be reestablished and presented to taxpayers (a unit establishing a municipal or county cumulative development fund may adopt three years' rates upon the establishment of such fund). The fund must also be reestablished if the use of the cumulative fund is changed. The tax rate may not exceed the rate specified by the statute authorizing the fund. The Department will apply the rate cap calculations to all cumulative funds as listed in this bulletin. As required by Ind. Code § 6-1.1-18-12, the maximum property tax rate levied for certain cumulative funds must be adjusted each time a reassessment or annual adjustment of property values takes effect. When a cumulative fund is established, the Department order will reflect the (statutory) rate approved by the Department. The Budget Order will reflect the cap rate adjustment pursuant to Ind. Code § 6-1.1-18-12. A list of cumulative funds subject to this adjustment can be found in Table 3.

Additional Guidance on Cumulative Funds

Taxes collected for a cumulative fund must be deposited in that same fund and may only be used for the purposes authorized by the corresponding statute and the resolution/ordinance as adopted. All funds must be appropriated before expenditure. The Department must approve all appropriations, except for those involving the Cumulative Bridge Fund or Cumulative Levee Fund. Appropriations may be included in the unit's annual budget or may be performed through the additional appropriation process under Ind. Code § 6-1.1-18-5. Levies and rates, however, must be approved in the annual budget process.

If the unit establishing the fund decides that the need for which the fund was established has been satisfied or no longer exists or the unit rescinds the tax levy for the fund, the fiscal body shall, pursuant to Ind. Code § 36-1-8-5, order the balance of the fund to be transferred as follows unless a statute provides that it be transferred otherwise:

- (1) funds of a county, to the general fund or rainy-day fund of the county;

¹ Cumulative funds established under Ind. Code § 6-22-5-2 and Ind. Code § 16-23-1-40 also expire by statute, but they are not governed by Ind. Code § 6-1.1-41.

- (2) funds of a municipality, to the general fund or rainy-day fund of the municipality;
- (3) funds of a township for the redemption of township assistance obligations, to the township assistance fund of the township or rainy-day fund of the township; and
- (4) funds of any other political subdivision, to the general fund or rainy-day fund of the political subdivision.

State Board of Accounts (“SBOA”) has taken the position that transfers from cumulative funds are governed by the specific statutory language and SBOA would take exception to cumulative funds under Ind. Code § 6-1.1-41 being transferred to the rainy-day fund. SBOA would not take exception to the transfer of funds if the purpose for which the fund was established had been accomplished, the need for the fund no longer existed, or the unit rescinded the tax levy.

Fire Protection Territory Equipment Replacement Fund is subject to both Ind. Code § 36-8-19-8.5 and Ind. Code § 6-1.1-41. Thus, the legislative bodies of each participating unit must adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township), and the following requirements must be met:

- (1) The ordinance or resolution is identical to the ordinances and resolutions adopted by the other participating units.
- (2) Before adopting the ordinance or resolution, each participating unit must comply with the notice and hearing requirements of Ind. Code § 6-1.1-41-3.
- (3) The ordinance or resolution authorizes the provider unit to establish the fund.
- (4) The ordinance or resolution includes at least the following:
 - a. The name of each participating unit and the provider unit.
 - b. An agreement to impose a uniform tax rate upon all of the taxable property within the territory for the equipment replacement fund.
 - c. The contents of the agreement to establish the fund.
- (5) A Notice of Adoption is published in accordance with Ind. Code § 5-3-1-4, which begins a 30-day remonstrance period.
- (6) Objection petitions are processed as described on pages 2 and 3 of this Memorandum.
- (7) All materials are submitted to the Department on or before May 31.

See Ind. Code § 36-8-19-8.5 for more information. Appendix D features a template ordinance/resolution.

Before a Cumulative Firefighting Building and Equipment Fund may be established by a Fire Protection District, the county legislative body that appoints the trustees of the District must approve the establishment of the fund.

Special note on CCD fund tax rates for counties & municipalities

Ind. Code § 36-9-14.5-6 provides for a maximum rate of \$0.0333 for counties with a local income tax (“LIT”) in effect as of January 1 of the year then the levy would be imposed. Counties without a LIT in effect as of January 1 can have a maximum rate of \$0.0233. The Department is not aware of any county that does not have a LIT in effect such that a county CCD fund could only have a maximum rate of \$0.0233.

Ind. Code § 36-9-15.5-6 provides for a maximum rate of \$0.05 for municipalities located in a county with a LIT in effect as of January 1 of the year then the levy would be imposed. A municipality in a county without a LIT in effect as of January 1 can have a maximum rate of \$0.04.

Table 1: Statutory Authority for Common Cumulative Funds

<u>Fund</u>	<u>Fund Number</u>	<u>Statutory Authority</u>
Cumulative Voting System Fund	0191	IC 3-11-6
Cumulative Channel Maintenance Fund	0990	IC 8-10-5-17
Cumulative Bridge Fund	0790	IC 8-16-3-1
Major Bridge Fund	0792	IC 8-16-3.1-4
Airport Cumulative Fund	2190	IC 8-22-3-25
Cumulative Levee Fund (Vanderburgh Co.)	0901	IC 14-27-6-48
Cumulative Improvement Fund	2390	IC 14-33-21-2
Cumulative Hospital Sinking Fund		IC 16-22-4-1
Cumulative Hospital Fund		IC 16-22-8-41
Cumulative Fire Fund (Fire District) ²	8691	IC 36-8-14-2
Cumulative Fire Fund (Township)	1190	IC 36-8-14-2
Cumulative Fire Fund (Municipality)	1191	IC 36-8-14-2
Cumulative Transportation Fund	8090	IC 36-9-4-48
Cumulative Courthouse Fund	0590	IC 36-9-14
Cumulative Capital Development (County Unit)	2391	IC 36-9-14.5
Cumulative Jail Fund	1192	IC 36-9-15
Cumulative Capital Development (Municipality)	2391	IC 36-9-15.5
Cumulative Building and Capital Improvement Fund	1092	IC 36-9-16
Cumulative General Improvement Fund	2392	IC 36-9-17
Cumulative Township Vehicle and Building Fund	1090	IC 36-9-17.5
Cumulative Bldg. Fund for Municipal Sewers	6290	IC 36-9-26
Cumulative Drainage Fund	0991	IC 36-9-27- 100
Cumulative Park Fund (County and Municipality)	1390	IC 36-10-3-21
Cumulative Park Fund (Certain Cities)	1390	IC 36-10-4-36
Township Cumulative Park Fund	1390	IC 36-10-7.5-9
Fire Protection Territory Equipment Replacement Fund ³	8692	IC 36-8-19-8.5
Cumulative Public Safety Officer Survivor's Health Coverage Fund	0193	IC 36-8-8-14.2

² Before this fund may be established by a Fire Protection District, the county legislative body that appoints the trustees of the District must approve the establishment of the fund.

³ The process for establishing a Fire Protection Territory Equipment Replacement Fund is governed by both Ind. Code § 36-8-19-8.5 and Ind. Code § 6-1.1-41.

Table 2: Cumulative Fund Maximum Rates

<u>Fund</u>	<u>Fund Number</u>	<u>Indiana Code Citation</u>	<u>Maximum Rate</u>
Cumulative Voting System Fund	0191	IC 3-11-6	\$0.0167
Cumulative Channel Maintenance Fund	0990	IC 8-10-5-17	\$0.0333
Cumulative Bridge Fund	0790	IC 8-16-3-1	\$0.10
Major Bridge Fund	0792	IC 8-16-3.1-4	\$0.0333
Airport Cumulative Fund	2190	IC 8-22-3-25	\$0.0167
Cumulative Levee Fund (Vanderburgh Co.)	0901	IC 14-27-6-48	\$0.0067
Cumulative Improvement Fund	2390	IC 14-33-21-2	\$0.0333
Cumulative Hospital Sinking Fund ¹		IC 16-22-4-1	
Cumulative Hospital Fund		IC 16-22-8-41	\$0.0667
Cumulative Fire Fund (Fire District)	8691	IC 36-8-14-2	\$0.0333
Cumulative Fire Fund (Township)	1190	IC 36-8-14-2	\$0.0333
Cumulative Fire Fund (Municipality)	1191	IC 36-8-14-2	\$0.0333
Cumulative Transportation Fund	8090	IC 36-9-4-48	\$0.0667
Cumulative Courthouse Fund	0590	IC 36-9-14	\$0.1667
Cumulative Capital Development (County Unit) ²	2391	IC 36-9-14.5	\$0.0333
Cumulative Jail Fund ¹	1192	IC 36-9-15	
Cumulative Capital Development (Municipality) ³	2391	IC 36-9-15.5	\$0.05
Cumulative Building and Capital Improvement Fund	1092	IC 36-9-16	\$0.33
Cumulative General Improvement Fund	2392	IC 36-9-17	\$0.1667
Cumulative Township Vehicle and Building Fund	1090	IC 36-9-17.5	\$0.0167
Cumulative Bldg. Fund for Municipal Sewers	6290	IC 36-9-26	\$1.00
Cumulative Drainage Fund	0991	IC 36-9-27-100	\$0.05
Cumulative Park Fund (County and Municipality)	1390	IC 36-10-3-21	\$0.0167
Cumulative Park Fund (Certain Cities)	1390	IC 36-10-4-36	\$0.0333
Cumulative Park Fund (Township)	1390	IC 36-10-7.5-19	\$0.0167
Fire Protection Territory Equipment Replacement Fund	8692	IC 36-8-19-8.5	\$0.0333
Cumulative Public Safety Officer Survivor's Health Coverage Fund	0193	IC 36-8-8-14.2	See Note 4

¹ Where the "Maximum Rate" column is blank, there is no maximum statutory rate for that fund.

² There is a two-year phase-in of the rate. A newly established county CCD fund will have a maximum rate of \$0.0167 in its first year and \$0.0333 for every year thereafter, subject to trending under Ind. Code § 6-1.1-18-12.

³ There is a three-year phase-in of the rate. A newly established municipality CCD fund will have a maximum rate of \$0.0167 in its first year, \$0.0333, in its second year, and \$0.05 for every year thereafter, subject to trending under Ind. Code § 6-1.1-18-12.

⁴ The maximum allowable rate is the rate necessary to pay the annual cost of the health coverage that the unit is obligated to pay under Ind. Code § 36-8-8-14.1(h). The unit must include information supporting the proposed rate when submitting the proposal to the Department for certification.

Table 3: Cumulative Funds Subject to Ind. Code § 6-1.1-18-12 Rate Cap Adjustment

<u>Fund</u>	<u>Fund Number</u>	<u>Subject to Adjustment</u>
Cumulative Voting System Fund	0191	No
Cumulative Channel Maintenance Fund (Counties & Port Authorities)	0990	Yes
Cumulative Bridge Fund	0790	No
Major Bridge Fund	0792	No
Airport Cumulative Fund	2190	Yes
Cumulative Levee Fund (Vanderburgh Co.)	0901	No
Cumulative Improvement Fund	2390	Yes
Cumulative Hospital Sinking Fund		No
Cumulative Hospital Fund		No
Cumulative Fire Fund (Fire District)	8691	No
Cumulative Fire Fund (Township)	1190	No
Cumulative Fire Fund (Municipality)	1191	No
Cumulative Transportation Fund	8090	No
Cumulative Courthouse Fund	0590	No
Cumulative Capital Development (County Unit)	2391	Yes
Cumulative Jail Fund	1192	No
Cumulative Capital Development (Municipality)	2391	Yes
Cumulative Building and Capital Improvement Fund	1092	No
Cumulative General Improvement Fund	2392	No
Cumulative Township Vehicle and Building Fund	1090	Yes
Cumulative Bldg. Fund for Municipal Sewers	6290	No
Cumulative Drainage Fund (County)	0991	Yes
Cumulative Drainage Fund (Municipality)	0991	No
Cumulative Park Fund (County and Municipality)	1390	No
Cumulative Park Fund (Certain Cities)	1390	No
Cumulative Park Fund (Township)	1390	Yes
Fire Protection Territory Equipment Replacement Fund	8692	Yes
Cumulative Public Safety Officer Survivor's Health Coverage Fund	0193	Yes
Cumulative Conservancy Improvement Fund	2393	Yes