

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO: All Counties, Municipalities, Townships, and Fire Protection Districts**

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

**DATE: June 15, 2022**

**RE: Legislation Affecting Fire and Emergency Medical Services Funding Matters**

## **I. Introduction**

The Department of Local Government Finance (“Department”) issues this memorandum to inform interested parties about changes made to laws concerning fire protection territories, fire protection districts, and emergency medical services, specifically as they relate to taxation. The affecting legislation includes Senate Enrolled Act 299-2022 (“SEA 299”) and House Enrolled Act 1246-2022 (“HEA 1246”), signed by Governor Eric J. Holcomb on March 7 and 11, 2022, respectively. This memorandum is for informative purposes only and is not a substitute for reading the law.

## **II. Fire Protection Territory Maximum Levy Adjustment, HEA 1246**

Section 1 of HEA 1246 adds Ind. Code § 6-1.1-18-29.5, effective upon passage. This new section provides for the provider unit of a fire protection territory (“territory”) to petition the Department to increase the property tax rate for the territory operating fund under Ind. Code § 36-8-19-8. For budget year 2023, the petition for an increase under Ind. Code § 6-1.1-12-29.5 must be submitted to the Department no later than July 31, 2022. For budget year 2024 and thereafter, the petition must be submitted no later than March 31 of the immediately preceding year.

The Department will be providing additional guidance later this year on how to submit the petition.

This increase would be applied to taxes first due and payable in 2023 or any year thereafter for which a petition is submitted. The increase in the rate is based on the following formula:

**STEP ONE:** Determine the percentage increase in population, as determined by the provider unit’s fiscal body and as may be prescribed by the Department, that is within the territory area during the ten (10) year period immediately preceding the year in which the petition is submitted. The most recently available population data issued by the Census Bureau during the ten (10) year period may be used.

STEP TWO: Subtract the STEP ONE amount by six percent (6%). If the result is greater than zero (0), use the result for STEP THREE. Otherwise, use zero (0).

STEP THREE: Take the lesser of the STEP TWO result or fifteen-hundredths (0.15).

STEP FOUR: If the rate was increased under Ind. Code § 6-1.1-12-29.5 within the immediately preceding ten (10) year period, the STEP THREE result is further reduced by the sum of the rate increases made in the immediately preceding ten (10) year period.

The rate increase is then applied to the certified net assessed value of the territory area which results in an increase to the levy that is then added to the maximum levy of the territory operating fund. This is a permanent increase. The examples below will illustrate how the formula is expected to work.

Example #1: Township which serves as a provider unit for a territory applies for an increase in its firefighting fund rate for the 2022-pay-2023 budget cycle. The territory is composed of a Township and a City. In 2011, the total population of the Township and City was 10,000. In 2020, the total population was 11,500. The Township and City's 2022-pay-2023 CNAV totals \$10,000,000.

STEP ONE: Percentage increase of population during the immediately preceding ten (10) year period:

$$(11,500 - 10,000) / 10,000 = 0.15 \text{ or } 15\%$$

STEP TWO: Greater of zero (0) or STEP ONE result minus 6%:

$$15\% - 6\% = 9\%$$

$$9\% > 0$$

$$9\% = 0.09$$

Use 0.09.

STEP THREE: Lesser of STEP TWO result or fifteen-hundredths (0.15):

$$0.09 < 0.15$$

Use 0.09.

STEP FOUR: Reduce the STEP THREE result by the rate increase for the territory during the immediately preceding ten (10) year period.

No petition was submitted in the immediately preceding ten (10) year period.

Therefore, the territory shall receive a 9% increase in its fire territory operating fund rate. Applied to the sum of the Township and City's 2022-pay-2023 CNAVs, the fire territory operating fund rate increase will result in a \$9,000 increase to the operating fund levy:

$$(\$10,000,000 / \$100) * 0.09 = \$9,000$$

Example #2: The Township in Example #1 submitted another petition for the 2023-pay-2024 budget cycle. The Township and City had an estimated population of 12,000 in 2021. In 2012, its population was estimated to be 10,100. The sum of the Township and City's 2023-pay-2024 CNAVs is \$10,100,000.

STEP ONE: Percentage increase of population during the immediately preceding ten (10) year period:

$$(12,000 - 10,100) / 10,100 = 0.189 \text{ or } 18.9\%$$

STEP TWO: Greater of zero (0) or STEP ONE result minus 6%:

$$18.9\% - 6\% = 12.9\%$$

$$12.9\% > 0$$

$$12.9\% = 0.129$$

Use 0.129.

STEP THREE: Lesser of STEP TWO result or fifteen-hundredths (0.15):

$$0.129 < 0.15$$

Use 0.129.

STEP FOUR: Reduce the STEP THREE result by the rate increase for the territory during the immediately preceding ten (10) year period.

In the previous year, the territory received a rate increase of 0.09 (see Example #1, above). Therefore, the STEP THREE result will be reduced by 0.09:

$$0.129 - 0.09 = 0.039$$

Therefore, the territory shall receive a 3.9% increase in the territory operating fund rate. Applied to the Township and City's 2023-pay-2024 CNAV, the territory operating fund rate increase will result in a \$3,034 increase to the territory operating fund levy:

$$(\$10,100,000 / \$100) * 0.039 = \$3,034$$

### **III. Fire Protection Territory New Maximum Levy Phase-in, HEA 1246**

Sections 2, 7, 8, and 9 of HEA 1246 make changes to the laws affecting the maximum levy attributable to a participating unit's obligations to a fire protection territory that is established after December 31, 2022. These changes are effective July 1, 2022.

#### A. Ind. Code § 36-8-19-7(c)

First, section 8 adds Ind. Code § 36-8-19-7(c) to provide that the total tax rate levied for a territory may be phased in over a period of no more than five (5) years. The phase-in is subject to review and approval by the Department.

#### B. Ind. Code § 6-1.1-18.5-10.5

Section 2 amends Ind. Code § 6-1.1-18.5-10.5 by adding subsection (c). New subsection (c) states that, for a territory established after December 31, 2022, and where the total tax rate is phased-in under Ind. Code § 36-8-19-7(c), the max levy for each participating unit to support its obligations to the territory will be increased each year by an amount equal to the difference between

(1) the amount the participating unit will have to levy for the ensuing calendar year in order to fund the participating unit's share of the territory budget for the operating costs as provided in the ordinance or resolution wherein the participating unit joins the territory; and

(2) the participating unit's levy for fire protection services for the current calendar year in which the unit levies a tax to support the territory.

The Department notes that this amendment references the participating unit's share of the territory operating budget "as provided in the ordinance or resolution" to join the territory. Ind. Code § 36-8-19-6(e) does not list this as a required item in a participating unit's ordinance or resolution. Moreover, Ind. Code § 36-8-19-6 requires that the ordinances or resolutions adopted by the participating units be identical, each ordinance/resolution must include each participating unit's share of the territory's operating budget. Therefore, it appears that under Ind. Code § 6-1.1-18.5-10.5(c), participating units that intend to phase in the maximum levy for the territory must include as part of the adopting ordinances or resolutions each participating unit's share of the territory's operating budget.

In addition, the Department will evaluate to what extent this provision will affect budget certifications for a territory's funds. In the past, the Department has included the certified budget, rate, and levy for the operating fund and equipment replacement fund under the provider unit. The Department has also provided max levy estimates for a territory under the provider unit. This section, as amending Ind. Code § 6-1.1-18.5-10.5, requires the max levy of the participating unit to account for its share of the territory operating budget. The Department plans to release guidance later this year to address how this change will affect budget preparation, adoption, and

certification.

C. Ind. Code § 36-8-19-8

Section 9 amends Ind. Code § 36-8-19-8(c) to state that the provider unit's established annual tax levy for the territory operating fund is subject to any phase-in of the total tax rate under Ind. Code § 36-8-19-7(c).

D. Ind. Code § 36-8-19-6

Section 7 amends Ind. Code § 36-8-19-6(c)(1) to state that, if a property tax rate is to be phased in, the property tax information provided to the public about the proposed territory must include the amount of the intended property tax rate once the phase-in is complete. This would be included with the information provided at the public hearing required by Ind. Code § 36-8-19-6(b)(4)(A) which must be held at least thirty (30) days before adoption of the ordinance to establish the territory. This section also amends Ind. Code § 36-8-19-6(d)(6), to state that the public notices for the public hearings required by Ind. Code § 36-8-19-6(b)(4) must state whether a tax rate will be phased in as allowed by Ind. Code § 36-8-19-7(c).

**IV. Treatment of Fire Protection Territory on Allocation Areas, HEA 1246**

Sections 3 and 6 of HEA 1246 to amend Ind. Code § 6-1.1-39-1 and add Ind. Code § 36-7-14-1.7, respectively. These sections provide that for an allocation area in a TIF district or economic development district established after December 31, 2021, the property tax proceeds going to a participating unit from a levy imposed to meet the unit's obligations to a territory will not be affected by the application of Ind. Code 6-1.1-39 or Ind. Code 36-7-14, as applicable. The Department interprets this to mean that property tax revenues attributed to a territory's levy cannot be captured by a TIF district or economic development district established within a participating unit of the territory. A similar provision is currently in effect for fire protection districts as found in Ind. Code § 6-1.1-39-1(b) and Ind. Code § 36-7-14-1.5.

Please note that this applies to allocation areas in TIF districts established under Ind. Code § 36-7-14 and economic development districts under Ind. Code § 6-1.1-39. There are no similar provisions for allocation areas in Marion County TIF districts (Ind. Code § 36-7-15.1), airport development zones (Ind. Code 8-22-3.5), military reuse areas (Ind. Code § 36-7-30 and Ind. Code § 36-7-30.5), certified technology parks (Ind. Code § 36-7-32), or innovative development districts established under Senate Enrolled Act 361-2022.

These sections are effective retroactive to January 1, 2022.

**V. Local Income Tax Rate for Emergency Medical Services, HEA 1246**

Section 4 of HEA 1246 adds a new code section Ind. Code § 6-3.6-6-2.8, effective July 1, 2022. This section applies only to counties that

- (1) provide emergency medical services (as defined in Ind. Code § 16-18-2-110) for all units in the county; and

(2) pay one hundred percent (100%) of the costs to provide those services.

Under this section, the county council may adopt an ordinance to impose a tax rate for emergency medical services in the county. The following conditions apply to the tax rate:

- The tax rate must be in increments of one-hundredth of one percent (0.01%) and may not exceed two-tenths of one percent (0.2%).
- The tax rate may not be in effect for more than twenty-five (25) years.
- If the county becomes ineligible for the tax rate after the ordinance is adopted, the imposed tax rate shall expire on December 31 of the year in which the county became ineligible.

The revenue generated by the tax rate shall be maintained in a separate dedicated county fund and used by the county only for paying for operating costs incurred by the county for emergency medical services that are provided throughout the county. The revenue must be distributed directly to the county before the remainder of the expenditure rate revenue is distributed. Likewise, section 5 of HEA 1246 amends Ind. Code § 6-3.6-6-3 to state that revenue generated from the expenditure rate will first be distributed to the county for emergency medical services, along with the distributions to the county under Ind. Code § 6-3.6-6-2.5 and 2.7, before the other distributions of the expenditure rate are made.

Accordingly, the Department will update its local income tax templates, previously released on February 17, 2022, prior to the July 1 effective date.

## **VI. Annexation of Territory of Fire Protection District by Municipality, SEA 299**

Section 2 of SEA 299 adds a new code section Ind. Code § 36-4-3-7.2, effective retroactive to January 1, 2021. This new section applies to an annexation that satisfies all of the following:

- (1) The annexation ordinance is adopted after December 31, 2020.
- (2) The annexation is initiated by property owners under Ind. Code § 36-4-3-5.1 in which all property owners within the area to be annexed petition the municipality to be annexed.
- (3) All or part of the area to be annexed is within a fire protection district (“district”) that was established after July 1, 1987.
- (4) At least a majority of the members of the board of trustees of the district adopt a resolution consenting to the annexation.
- (5) The portion of the area to be annexed located within the district constitutes less than three percent (3%) of the total net assessed value (as determined by the county auditor) of the district on the date the annexation ordinance is adopted.

In such an annexation, unless there has been an appeal filed under Ind. Code § 36-4-3-15.5, the annexation ordinance takes effect at least thirty (30) days after its publication (as prescribed by Ind. Code 5-3-1) and upon the filing required by Ind. Code § 36-4-3-22(a). This section states that Ind. Code § 36-4-3-7(b), (c), and (e) apply to an annexation under this section, while Ind. Code § 36-4-3-7(a), (d), (f), and (g) do not apply.

Please note also that Section 1 of SEA 299 amends Ind. Code § 36-4-3-7 to make stylistic changes to provisions concerning obligations of a municipality after an annexation of an area that has been served by a fire protection district.

### **Contact Information**

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