
STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions

FROM: Daniel Shackle, Commissioner

DATE: September 13, 2023

SUBJECT: Maintenance Emergency Waiver Process, HEA 1499

The Department of Local Government Finance (“Department”) issues this memorandum to offer guidance on the process for requesting a waiver under Section 8 of House Enrolled Act 1499-2023 (“HEA 1499”).

Introduction

Section 8 of HEA 1499 states that a project for which a 1023 hearing was held after June 30, 2023, will be subject to a remonstrance process under Ind. Code § 6-1.1-20-3.5 and 3.6, regardless of cost, if the political subdivision’s total debt service tax rate is at least eighty cents (\$0.80) per one hundred dollars (\$100) of assessed valuation. Section 11 of HEA 1499 makes an exception to this condition if a political subdivision receives a waiver from the Department on the basis of a maintenance emergency.

Qualifications for a “Maintenance Emergency”

Ind. Code § 6-1.1-20-4.5(a) defines a “maintenance emergency” as “a response to a condition that is not otherwise subject to the application of [Ind. Code § 6-1.1-20-1.1(a)(6)] and includes:

- (1) repair of a boiler or chiller system;
- (2) roof repair;
- (3) storm damage repair; or
- (4) any other repair that the [Department] determines is a maintenance emergency for which [a waiver] is warranted.”

Ind. Code § 6-1.1-20-1.1(a)(6) provides that a project is not a controlled project (i.e., is not subject to taxpayer approval or “control”) if that project is “in response to a natural disaster; an accident; or an emergency; in the political subdivision that makes a building or facility unavailable for its intended use.” (Internal subdivisions omitted.) The conditions listed in Section 4.5(a) may overlap with the conditions listed in Section 1.1(a)(6). For example, a tornado or strong winds may cause roof damage to a school building. Repairs in this case could arguably

fall under either statute: roof repair of a maintenance emergency under Section 4.5 or repairs in response to a natural disaster under Section 1.1(a)(6). Therefore, before submitting a petition for a waiver, consult with local counsel in determining whether the project can be justified as being uncontrolled under Section 1.1(a)(6).¹

In addition, Ind. Code § 36-1-12.5-5.5 exempts projects associated with a Guaranteed Energy Savings Contract from the requirements of Ind. Code § 6-1.1-20.

With respect to Section 4.5(a)(4), the Department provides below a listing of other kinds of repairs constituting a maintenance emergency. Please keep in mind that a determination approving or denying a waiver will be fact-sensitive and may depend not only on the immediate need but the circumstances surrounding that need. In addition, this is not intended to be an exhaustive list.

- (1) HVAC repair. Section 4.5(a)(1) contemplates a “boiler or chiller system,” which uses water to heat or cool an area. It does not specifically contemplate an HVAC system, which is distinguished from a boiler or chiller system by the use of forced air (though some systems may use water) as well as a ventilation mechanism.
- (2) Lead paint & pipe removal.
- (3) Asbestos abatement.
- (4) Foundation repair.
- (5) Wall repair and replacement.
- (6) Floor repair and replacement.

The Department has also identified conditions which may not likely be considered a maintenance emergency for which a waiver can be granted:

- (1) Preventative maintenance, if the needed maintenance must be expedited as a result of increased damage or wear and tear following a storm or extreme weather, for example.
- (2) Projects associated with a Guaranteed Energy Savings Contract. As noted above, such projects are exempt from the requirements of Ind. Code § 6-1.1-20.
- (3) Repairs due to fire damage may qualify as a “maintenance emergency” if it meets the condition of roof repair, storm damage repair (e.g., fire as a result of a lightning strike or downed powerline), or any of the aforementioned

¹ Ind. Code § 6-1.1-20-3.7 permits a political subdivision still to hold a referendum on a project in response to an emergency under Section 1.1(a)(6).

conditions above. However, keep in mind that a fire may also qualify as a condition under Section 1.1(a)(6), and therefore a waiver may not be needed.

- (4) Replacement of a school bus fleet. Ind. Code § 20-46-7-8 provides that a school corporation may issue a bond or enter into a lease for the purchase of school buses which will be paid from a debt service levy (exclusive of the bus replacement plan). A circumstance may arise where loss of all or part of a bus fleet can occur, such as during a fire or a storm. The Department will remain skeptical, although not totally dismissive, of a claim of a maintenance emergency, as Section 4.5 contemplates repair rather than replacement, “replacement” should be understood here as referring to replacing the whole of a thing (such as a school bus) rather than a part (such as the roof of a school building).

Submission of a Request

The political subdivision shall submit a request to the Department. Please send the request by email to Deputy General Counsel David Marusarz at dmarusarz@dlgf.in.gov. Please include “Maintenance Emergency” in the subject line. The request must contain a description of the maintenance emergency. Documentation that will be helpful, if available, may include:

- Photographs detailing the condition of the property to be repaired.
- A professional assessment or estimate of repair.
- A written declaration by a local building inspector, or other appropriate regulatory body, that a building is deemed unsafe or unsuitable for habitation unless repairs are made.
- A timeline for debt issuance for the purpose of the project to address the maintenance emergency.

The Department is not requiring political subdivisions to undergo any expenses in contemplation of a request for a waiver. However, the Department emphasizes that this is a fact-sensitive inquiry, and therefore relevant information should be provided in order for the Department to make a comprehensive review of the petition. The Department reserves the right to make further inquiries into the nature of the maintenance emergency when necessary.

Other Considerations

Political subdivisions should take into account a couple of items, both when planning for the project itself and for submitting the petition. First, the Department has forty-five (45) days, per Ind. Code § 6-1.1-20-4.5(d), from the date of receipt to review a petition. While the Department will consider requests to expedite review under certain circumstances, expedited review should not be expected in every instance and a political subdivision submitting a request for a waiver should plan accordingly that a determination will be issued no later than forty-five (45) days from receipt.

Second, if a waiver is granted, the proposed project may still be subject to a referendum if an adequate petition is filed by taxpayers with the county voter registration office pursuant to Ind. Code § 6-1.1-20-3.5(b).

Contact Information

Questions may be directed to David Marusarz, Deputy General Counsel, at dmarusarz@dlgf.in.gov.