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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO: All Political Subdivisions**

**FROM: Fred Van Dorp, Budget Director**

**DATE: February 10, 2021**

**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 IC 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.

All units seeking to establish or reestablish a cumulative fund with the Department must submit the following documents to the Department by April 30, 2021, for consideration. Units may submit these documents electronically.

1. Procedure Checklist
  - The checklist can be found in Appendix E of the companion document.
2. Adopted resolution/ordinance of adopting body
  - The resolution/ordinance template can be found in Appendix B of the companion document.
3. Proofs of publication, and proofs of posting, if required, of the Notice to Taxpayers
  - Clipping from the newspaper(s) would suffice if the proofs are not yet available.
4. Proofs of publication, and proofs of posting, if required, of the Notice of Adoption
  - Clipping from the newspaper(s) would suffice if the proofs are not yet available.)
5. County auditor’s Certificate of No Remonstrance
  - Additional information related to submitting the Certificate of No Remonstrance can be found in Step 4 later in the memo.
6. Any other relevant documentation
  - Optional information that the Department should consider during its review process.

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 IC 6-1.1-17, the following steps must be taken when establishing a cumulative fund or increasing the rate of an established fund. If the establishment of a fund is not in compliance with IC 6-1.1-41, a tax to finance the fund may not be levied in the ensuing year.

### **STEP 1: PUBLICATION OF NOTICE TO TAXPAYERS**

The hearing must be publicized through a Notice to Taxpayers in accordance with IC 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 days before the public hearing. Appendix A contains a template for this notice.

The notice must be published in two (2) newspapers published within the unit, as applicable, in accordance with IC 5-3-1-4. Appendix D contains a template for this notice.

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

### **STEP 2: 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. As Executive Order #20-09 permits public agencies to conduct meetings virtually during the course of the public health emergency declared by the Governor, the Department will have no objection to this public hearing being held virtually, as long as Executive Order #20-09 is still in effect on the date the public hearing is held. The procedures for the publication of notices and conducting the public hearing not otherwise modified by Executive Order #20-09 still apply.

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.

### **STEP 3: PUBLICATION OF NOTICE OF ADOPTION**

The unit must publish a Notice of Adoption to the affected taxpayers. Appendix C 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 IC 5-3-1-4. If the fund is for a Cumulative Voting System (IC 3-11-6) or Cumulative Channel Maintenance (IC 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 IC 6-1.1-41-6, the number of signatures required for a valid objection petition is specific to each type of cumulative fund can be found in Table 2 at the end of this memo.

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

Pursuant to IC 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.

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. 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. A hearing will be conducted in the county by a hearing officer of the Department, at which time all affected taxpayers will have the right to be heard. However, as permitted by Executive Order #20-09, the Department will also consider the option to hold the hearing virtually. 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 action of the Department with respect to the proposed fund is final.

#### **STEP 4: SUBMISSION TO THE DEPARTMENT**

A unit that adopts a proposed cumulative fund pursuant to IC 6-1.1-41 must submit the proposal to the Department for approval **on or before April 30** 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 E).
- Adopted resolution/ordinance of adopting body (Appendix B).
- Proofs of publication (and proofs of posting, if required) of the Notice to Taxpayers (a clipping from the newspaper(s) would suffice if the proofs are not yet available).

- Proofs of publication (and proofs of posting, if required) of the Notice of Adoption (a clipping from the newspaper(s) would suffice if the proofs are not yet available), if available\*.
- County auditor's Certificate of No Remonstrance, when available\*.
- Any other relevant documentation.

In order for the proposal to be complete, a unit must at least have properly *published* a Notice of Adoption on or before April 30. Proofs of publication of this Notice, if available, must be included with the proposal. If proofs of publication are not available on or before April 30, a newspaper clipping of the actual Notice will suffice (the clipping should also clearly show the date and name of the newspaper).

\*While IC 5-3-1-2(i) requires a Notice to be published within 30 days of the date of adoption, IC 6-1.1-41-4 requires that a proposal be submitted to the Department on or before April 30. This means that although a unit can potentially advertise a Notice of Adoption 30 days from the date of adoption, publication of this Notice must still occur on or before April 30. Thus, a unit that adopts a cumulative fund in mid-April will not have a full 30 days to publish the Notice of Adoption. Moreover, the proposal must include the Auditor's Certificate of No Remonstrance if the end of the remonstrance period occurs on or before April 30. A unit may submit a Certificate of No Remonstrance after the April 30 deadline under the following conditions:

- The Notice of Adoption was published before April 30.
- The remonstrance period cannot end on or before April 30.
- All of the other required documents have been submitted to the Department on or before April 30.

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 IC 5-3-1, to publish its notices in paper editions. The Department will accept notices published in electronic versions of newspapers, provided they are identical to what would have otherwise been published in a paper version. In order to show that the notice was posted online during the dates required by IC 5-3-1-2, the publisher's claim is preferred. A printout or screenshot of the online notice posting will be accepted if the publisher's claim is not yet available.

#### **STEP 5: REVIEW BY THE DEPARTMENT**

The proposal will be reviewed by the Department for completeness and whether the adopted rate does not exceed what is permitted by statute. If the proposal contains errors or proper procedure has not been followed, the packet will be returned to the fiscal officer of the adopting unit for correction.

In past years, the Department has considered procedural defects as grounds for denial if correction is not possible, such as if resubmission cannot take place on or before April 30. Such defects include the following:

- Unit did not submit all required documentation before May 1, except for a certificate of no remonstrance.

- Unit did not publish a Notice of Public Hearing or Notice of Adoption in the number of newspapers and in the timeframe required by IC 5-3-1.
- Unit did not include a statement of purpose in the Notice of Adoption.
- Unit misstates in the Notice of Adoption the number of taxpayers that are required if the number is greater than what is necessary by statute.
- Incorrect body adopts the ordinance/resolution.
- Misstating the date, time, or place of the public hearing, if the date, time, or place can be ascertained from the ordinance/resolution.

Going forward, the Department will only consider the above as grounds for denial if there is a taxpayer remonstrance against the proposal. Absent a remonstrance, the Department may deny a proposal if the unit did not timely submit all required documents. A unit must still comply with all the procedures laid out in IC 6-1.1-41 and IC 5-3-1 in adopting the proposal. Moreover, 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.

#### **STEP 6: 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 (IC 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.<sup>1</sup>

**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 2022, the fund must be properly adopted in 2021 and the petition timely submitted to the Department in 2021 (a unit seeking to levy a cumulative fund tax starting in 2022 should not adopt the cumulative fund until 2021).**

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. The maximum property tax rate levied must be adjusted each time a reassessment or annual adjustment of property values take 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 IC 6-1.1-18-12.

#### **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

<sup>1</sup> Cumulative funds established under IC 16-22-5-2 and IC 16-23-1-40 also expire by statute, but they are not governed by IC 6-1.1-41.

Fund. Appropriations may be included in the unit's annual budget or may be performed through the additional appropriation process under IC 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 IC 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;
- (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 IC 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 IC 36-8-19-8.5 and IC 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 IC 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 IC 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 April 30.

See IC 36-8-19-8.5 for more information. Appendix B(2) 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. Proof of this approval must be included with the District's proposal and submitted to the Department by April 30.

**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) <sup>2</sup>	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 <sup>3</sup>	8692	IC 36-8-19-8.5

<sup>2</sup> 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.

<sup>3</sup> The process for establishing a Fire Protection Territory Equipment Replacement Fund is governed by both IC 36-8-19-8.5 and IC 6-1.1-41.

**Table 2: Minimum Number of taxpayers required to file a remonstrance**

<u>Fund</u>	<u>Fund</u> <u>Number</u>	<u>Indiana Code</u> <u>Citation</u>	<u>Taxpayers</u> <u>Required</u>
Cumulative Voting System Fund	0191	IC 3-11-6	100
Cumulative Channel Maintenance Fund	0990	IC 8-10-5-17	10
Cumulative Bridge Fund	0790	IC 8-16-3-1	10
Major Bridge Fund	0792	IC 8-16-3.1-4	10
Airport Cumulative Fund	2190	IC 8-22-3-25	50
Cumulative Levee Fund (Vanderburgh Co.)	0901	IC 14-27-6-48	10
Cumulative Improvement Fund	2390	IC 14-33-21-2	10
Cumulative Hospital Sinking Fund		IC 16-22-4-1	20
Cumulative Hospital Fund		IC 16-22-8-41	50
Cumulative Fire Fund (Fire District)	8691	IC 36-8-14-2	10
Cumulative Fire Fund (Township)	1190	IC 36-8-14-2	10
Cumulative Fire Fund (Municipality)	1191	IC 36-8-14-2	10
Cumulative Transportation Fund	8090	IC 36-9-4-48	10
Cumulative Courthouse Fund	0590	IC 36-9-14	50
Cumulative Capital Development (County Unit)	2391	IC 36-9-14.5	50
Cumulative Jail Fund	1192	IC 36-9-15	50
Cumulative Capital Development (Municipality)	2391	IC 36-9-15.5	50
Cumulative Building and Capital Improvement Fund	1092	IC 36-9-16	50
Cumulative General Improvement Fund	2392	IC 36-9-17	50
Cumulative Township Vehicle and Building Fund	1090	IC 36-9-17.5	50
Cumulative Bldg. Fund for Municipal Sewers	6290	IC 36-9-26	50
Cumulative Drainage Fund	0991	IC 36-9-27- 100	50
Cumulative Park Fund (County and Municipality)	1390	IC 36-10-3-21	30
Cumulative Park Fund (Certain Cities)	1390	IC 36-10-4-36	10
Township Cumulative Park Fund	1390	IC 36-10-7.5-9	30
Fire Protection Territory Equipment Replacement Fund	8692	IC 36-8-19-8.5	10