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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** All Cities, Towns, Townships, and County Councils

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

**RE:** Reminder Concerning Voting on Budgets by Volunteer Firefighters, Family Members, and Employees of Volunteer Fire Departments

**DATE:** July 27, 2021

**This memorandum supersedes all previous memoranda issued on the above-entitled subject matter.**

Indiana Code 36-1-23-2 states that a member of the fiscal body of a unit (meaning city, town, or township) may not participate in a vote on the adoption of the unit's budget and tax levies if the member is an employee or a volunteer firefighter in: (1) a volunteer fire department; or (2) a fire department; that provides fire protection services to the unit under a contract (excluding a mutual aid agreement) or as the unit's fire department.

Indiana Code 36-6-6-17 imposes conflict of interest provisions for township board members effective July 1, 2020, and applies to all townships except townships in Marion County. A member of the township board may not vote on the township's budget and tax levy if the member is also an immediate family member of the township trustee. "Immediate family member" refers only to the following relations:

- A parent
- A sibling
- A spouse
- A child
- It also includes relations by adoption, half-blood, marriage, or remarriage.

If at least a majority of the members of the unit's fiscal body are precluded from voting on the unit's budget and tax levies, the unit's most recent annual appropriations are continued for the ensuing budget year, subject to the following:

- (1) The executive of the unit may petition the county fiscal body for an increase in the unit's budget.
- (2) The executive of the unit may petition the county fiscal body for any additional appropriations.

While IC 36-1-23-3 and IC 36-6-6-17 specifically indicate that a unit's most recent appropriations would be continued, a unit in this situation would not have the ability to do a

proper budget adoption under IC 6-1.1-17-5. As a result, the unit's most recent annual tax levies would also be continued, pursuant to IC 6-1.1-17-5(f).

For units that choose to petition the county fiscal body, the executive of the unit may petition the county fiscal body for an increase in the unit's budget and property tax levies. The county fiscal body may grant or deny the petition only after conducting a public hearing on the petition. The county fiscal body may adopt any additional appropriations of the unit by ordinance before the Department may approve the additional appropriation.

A unit whose most recent annual appropriations are continued pursuant to IC 36-1-23 or IC 36-6-6-17 must have its additional appropriations adopted by the county fiscal body before the Department can approve them.

Indiana Code 36-1-23-2 does not distinguish or make exceptions for situations in which the unit does not adopt the funds which provide funding for the unit's fire department (e.g., a participating unit in a fire territory) or situations in which the unit is voluntarily choosing not to grow its budgets. Here, the preclusion from voting would still apply. Additional guidance on these situations is provided in the Anticipated Questions section below.

### **How will this work?**

- The county fiscal body public hearing AND county fiscal body determination must occur on or before November 1.
- The Department collects from each city, town, and township the composition of the unit's fiscal body. If there has been any change to the composition of the unit's fiscal body since the unit submitted the information (i.e., the fiscal body now has as a member a volunteer fire department employee, volunteer firefighter, or in the case of a township an immediate family member of the trustee), the unit must notify the Department of the change. Each city, town, and township so affected should email this information to its respective [Budget Field Representative](#).
- A city, town, or township that anticipates being unable to adopt a budget (because its fiscal body is composed of a majority of employees of volunteer fire departments or volunteer firefighters that serve the unit, immediate family members of the trustee, or a combination of the three) AND that wants an increase to the unit's budgets *must*, via the unit executive, petition the county fiscal body for the increase and adoption of any additional appropriations. There is no particular format or structure for the unit's petition; a letter would suffice. The petition should include the unit's proposed budgets, levies, and rates so that there is no question as to what was approved if the county council grants the petition.
- The county fiscal body should issue its determination in the form of an ordinance or resolution. Again, this should occur on or before November 1.
- The county fiscal body may grant or deny the unit's petition for an increase in its budgets; the statute does *not* authorize the county fiscal body to modify (reduce) the unit's proposal.

Notice of the public hearing is governed by the Open Door Law (48-hour notice); to the extent, the unit and county fiscal body can coordinate and allow for enough time, the Department strongly recommends that notice of the hearing be published in the correct newspaper(s) at least ten days before the hearing.

- Upon receipt of the county fiscal body's determination, the city, town, or township must upload a copy of the unit's petition and a copy of the county fiscal body's determination to Gateway within 5 business days of November 1.
- In this situation, the unit will not have a Form 4 to upload. The unit must still upload all the other budget documentation (e.g., Form 3).
- In the event a city, town, or township subject to IC 36-1-23 or IC 36-6-6-17, as applicable, fails to comply with that statute, there will be no penalty to the county unit. The city, town, or township's penalty will be certification of the lesser of the unit's prior year budgets, rates, and levies or the unit's proposed budgets, rates, and levies.

### **Anticipated Questions**

**Q:** What if a township board has one member who is a volunteer firefighter or volunteer fire department employee serving the unit and another member who is an immediate family member of the trustee? Does the township have to have the county fiscal body approve the budget?

*A: The requirement to have the county fiscal body approve the township's budget under IC 36-1-23-3 applies when a majority of the board members are precluded from that statute. Likewise, the requirement under IC 36-6-6-17 applies when a majority of the board members are precluded from that statute. Neither statute references the other, so it is not clear what happens when one of the members is precluded from voting by IC 36-1-23-3 and the other by IC 36-6-6-17. Both statutes are similar in content and purpose. Therefore, the Department believes the township may still be able to submit a petition to the county fiscal body.*

**Q:** If a unit's fiscal body has a majority of members precluded from voting on the unit's budgets, what does the unit show on the Form 3 as far as the adoption meeting date?

*A: Only the public hearing date, time, and location must be included, and not an adoption meeting date, time, or location (again, the unit will not have a Form 4 to adopt). The unit must still post a Form 3 to Gateway and conduct a budget hearing of its own (this hearing is different from the one the county council must conduct).*

**Q:** What does the unit executive have to present to the county as far as a request?

*A: The unit executive should draft some type of letter to the county council explaining the situation and detailing the budgets, rates, and levies desired. The unit may want to include copies of the Form 4Bs and other budget forms as well. Again, the petition should include the*

*unit's proposed budgets, levies, and rates so that there is no question as to what was approved if the county council grants the petition.*

Q: Does the county council have to conduct two meetings concerning the unit's petition?

*A: The county council must conduct a public hearing before taking action on the petition. The action can be taken immediately following the hearing or on a later date.*

Q: Does the county council have to advertise the hearing?

*A: Yes, pursuant to the Open Door Law. This hearing does not require a Form 3. If the county council takes action on a date different from the date of the public hearing, then the meeting must be advertised pursuant to the Open Door Law.*

Q: What is the county council responsible for approving if it grants a unit's petition?

*A: The budgets, levies, and rates for all funds of the unit.*

Q: Is the unit required to sign a Form 4?

*A: No. It technically does not have a quorum capable of signing a Form 4.*

Q: Is the county council required to sign a Form 4?

*A: No, but it should adopt some type of resolution or ordinance granting or denying the petition.*

Q: If, for example, a township has one board member who is a volunteer firefighter or volunteer fire department employee serving the unit and another board member who does not attend meetings, does this mean that the township cannot properly adopt its budgets, rates, and levies?

*A: Correct, because a majority of the elected board has to approve the budget. However, in this situation, the township would not be eligible to petition the county fiscal body for an increase in its budgets and levies as the majority of the township board is not composed of volunteer firefighters or volunteer fire department employees serving the township.*

Q: If a township has a majority of its board as volunteer firefighters or volunteer fire department employees serving the unit but the township does not have a fire fund because it has entered into a fire territory (and it is not the provider unit), can the township adopt its budget?

*A: The voting preclusion is not contingent on whether the unit has a fire fund – it is contingent on the board member's status as an employee of a volunteer fire department or as a volunteer firefighter in a fire department that serves the unit, either by contract or as the unit's fire department.*

Q: If board members are precluded from the vote on the unit's budget, levies, and rates, does the preclusion apply to any other votes concerning the unit's budgets, such as additional

appropriations? If so, does the unit have to go to the county council for approval of an additional appropriation?

*A: Statute contemplates the county fiscal body adopting additional appropriations for the unit before the Department can approve the additional appropriations. Volunteer firefighters or volunteer fire department employees serving the unit are not disqualified from helping develop the budget and voting on what is submitted to the county fiscal body for non-binding review. The preclusion is limited to the adoption of the unit's budgets, rates, levies, and additional appropriations.*

Q: If taxpayers file an objection to the unit's budget, who would adopt the findings required by IC 6-1.1-17-5?

*A: Taxpayers could file their objection with both the unit's governing body and the county council. The county council should adopt findings as part of the ordinance or resolution it issues approving or denying the unit's petition.*

### **Contact Information**

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