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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO: All Townships Officials**

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

**RE: Emergency Loans for Township Assistance, IC 12-20-24**

**DATE: May 1, 2020**

The Department of Local Government Finance (“Department”) issues this memorandum as guidance about emergency loans under IC 12-20-24 to add funding for township assistance (“township assistance loan”). In particular, whether Department approval is required before the township issues the loan.

Indiana Code 12-20-24 states, generally, that if a township assistance fund is about to be exhausted, a township must receive Department approval before the township can take a loan to provide funding for the township assistance fund. Similarly, IC 12-20-20-2 states that if money is not available to pay township assistance claims, the township must file an appeal to the Department under IC 12-20-24. Per IC 12-20-24-8, Department approval is also required before the township can levy a property tax to repay the loan.

Indiana Code 12-20-24 was last amended in 2006. Subsequently, the General Assembly in 2008 amended IC 6-1.1-18.5-8 to include subsection (g), which states as follows:

“(g) This subsection applies only to bonds, leases, and other obligations for which a civil taxing unit:

...

(2) in the case of bonds, leases, or other obligations payable from ad valorem property taxes but not described in subdivision (1), adopts a resolution or ordinance authorizing the bonds, lease rental agreement, or other obligations after June 30, 2008.

Notwithstanding any other provision, review by the department of local government finance and approval by the department of local government finance is not required before a civil taxing unit may issue or enter into bonds, a lease, or any other obligation.”

Indiana Code 6-1.1-18.5-8(g) supersedes the requirement of a township to receive Department approval prior to taking out the township assistance loan. As a maxim of

statutory construction, where two statutes deal with the same subject matter, the more recently adopted statute is controlling.<sup>1</sup> The subject matter here is Department approval of proposed debt by a local government. Indiana Code 6-1.1-18.5-8(g) was added in the 2008 legislative session, whereas the conflicting provisions of IC 12-20-24 were last amended in 2006. In addition, IC 6-1.1-18.5-8(g) provides that “notwithstanding any other provision,” review and approval by the Department is not required before the unit may take on debt.

Therefore, Department review and approval is not required before a township may issue a township assistance loan and impose a debt service levy to repay the loan. This only applies to the provisions that state Department approval is required and does not affect any other provisions related to the township assistance loan in IC 12-24-20. The township must also report the township assistance loan in compliance with IC 5-1-18. Timely reporting is necessary to ensure the Department can certify a levy and rate for the debt service fund to repay the township assistance loan.

Please note that IC 12-20-20-2 allows a township to request financial assistance from the county board of commissioners. The Department believes that a township can pursue this option in lieu of a township assistance loan under IC 12-20-24. The requirement in IC 12-20-20-2(a), that a township must request an appeal under IC 12-20-24 if it finds that money is not available for the payment of township assistance claims, is also overridden by IC 6-1.1-18.5-8(g).

In accordance with IC 12-20-24-9, a township must make an additional appropriation before the money received from the township assistance loan may be spent. If an additional appropriation is intended to address the COVID-19 emergency, the procedures described in IC 6-1.1-18-5 can be held at a later date even after the money has been spent.

Finally, the Department emphasizes the statutory limitations on what funds can be used for paying for township assistance. Indiana Code 12-20-21-2 prohibits the commingling of township assistance funds. A township may not transfer money from the general fund to the township assistance fund, but a township may use general fund money to help pay for township assistance claims. Moreover, IC 36-8-13-4(a) prohibits the township firefighting fund from being used to finance township assistance, and IC 36-8-14-2(c) states that a cumulative firefighting building and equipment fund may only be used for the purposes laid out in that subsection, which does not include township assistance. Pursuant to IC 36-1-8-5.1(b), a township may use a rainy day fund to finance township assistance only if the resolution adopting the rainy day fund included financing township assistance as one of its purposes.

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<sup>1</sup> HAMILTON CO. COUNCIL V. STATE EX REL. GROFF, 87 N.E.2D 810, 812 (IND. 1949).