

# THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 384

July 2012

## REMINDER OF ORDER OF BUSINESS

### **July**

- 4 Legal Holiday - Independence Day [IC 1-1-9-1]
- 9 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]
- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
- 30 In those counties participating in Public Employee's Retirement Fund, last day to make pension report and payment for the second quarter of 2012 to the Public Employee's Retirement Fund. [5-10.3-7-12.5]
- 31 Last day to file quarterly unemployment compensation reports with Indiana Department of Workforce Development.  
  
Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

### **August**

- 1-3 County Treasurer's Annual Conference – Indianapolis
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

### **September**

- 3 Legal Holiday - Labor Day. [IC 1-1-9-1]
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.

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**DISTRIBUTION OF COURT FEES (IC 33-19-7)**

The following should help determine the correct percentage of court costs to be allocated to the City and Town Court Cost Fund. IC 33-19-7-1,2,3 states that 70% collected is state, 27% collected is county, and 3% collected is city and town court costs.

The Clerk of the Circuit Court retains the 70% state share and remits it semiannually to the Auditor of State. The remaining 30% collected for the county and city and town costs is forwarded monthly to the County Auditor. If the Clerk is reporting the Court Costs for the County General Fund and the City and Town Court Costs Fund separately there shouldn't be a problem. However, a problem or error may occur in calculating the apportionment between the County General Fund and the City and Town Court Cost Fund, if the Clerk reports court costs in total.

If the Clerk reports to the auditor in total the auditor will need to multiply court costs shown on the Monthly Report of Collection by 10% instead of 3%. Let us assume Court Costs in total equals \$100 and should be allocated to:

State	\$70.00
County	27.00
City	3.00

If the County Auditor uses 3% of the amount reported as Court Costs Due County on the Monthly Report of Collections, the City and Town Courts will be shorted by \$2.10, as shown in the following schedule:

	<u>City &amp; Town Costs</u>	<u>County Costs</u>
Total on Report \$30.00		
\$30 x 3%	\$ .90	
\$30 x 27%		\$29.10
 Total Collected \$100		
\$100 x 3%	<u>3.00</u>	
\$100 x 27%		<u>27.00</u>
 Differences	<u>(\$2.10)</u>	<u>\$2.10</u>

However, if the County Auditor multiplies the amount of Court Costs due the County by 10% he or she will obtain the correct amount due the City and Town Court Costs Fund, as shown in the following schedule:

Total on Report \$30.00		
\$30 x 10%	\$3.00	
\$30 x 90%		\$27.00
 Total Collected \$100		
	<u>3.00</u>	<u>27.00</u>
 Differences	<u>-0-</u>	<u>-0-</u>

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**COUNTY SHERIFFS – INMATE TRUST AND JAIL COMMISSARY FUNDS**

IC 5-13-6-1 states that all public funds paid into the treasuries of the respective political subdivisions shall be deposited not later than the business day following the receipt of funds in one or more depositories in the name of the political subdivision by the officer having control of the funds.

The sheriff is the officer of the county who has control of the inmate trust and commissary funds. Therefore, it is the audit position of this department that inmate trust and jail commissary funds should be deposited in the depository no later than the next business day after they are received.

Also, IC 36-8-10-21 states that the sheriff, or his designee, shall deposit all money from commissary sales into the fund, which he shall keep in a depository designated under IC 5-13-8.

**TRAFFIC VIOLATIONS BUREAU**

Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court. (IC 34-28-5-7)

The violations clerk or deputy violations clerk shall:

1. Accept:
  - A. Written appearances;
  - B. Waivers of trial;
  - C. Admissions of violations;
  - D. Declarations of nolo contendere for moving traffic violations;
  - E. Payments of judgments (including costs) in traffic violations cases;
  - F. Deferral agreements and deferral program fees prescribed under IC 33-37-4-2 (e); and
  - G. Community restitution or service agreements made under section 1(g) of this chapter,
2. Issue receipts and account for any judgment (including costs) collected; and
3. Pay the judgments (including costs) collected to the appropriate unit of government as provided by law. (IC 34-28-5-8)

The court shall:

1. designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies;
2. establish schedules, within limits prescribed by law, of the judgments to be imposed for the first violations, designating each violation specifically;
3. order that the schedule of judgments be prominently posted in the place where the fines are paid;
4. establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violation; and
5. dismiss deferred actions if a dismissal request is made under IC 34-4-32-1 (f) (IC 34-28-5-9)

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**TRAFFIC VIOLATIONS BUREAU (Continued)**

Any person charged with a traffic violation that is within the authority of the violations clerk may mail or deliver:

1. the amount of the judgment (including costs) indicated on the ticket; and
2. a signed:
  - A. admission of the violation; or
  - B. pleading of nolo contendere, if the action is for a moving traffic violation. (IC 34-28-5-11)

Before accepting a pleading admitting to a violation or entering a declaration of nolo contendere to a violation, the violations clerk or the officer writing the ticket shall inform the person that:

1. the person's signature to:
  - A. an admission of the violation; or
  - B. a pleading of nolo contendere will have the same effect as a judgment of a court; and
2. the record of judgment will be sent to the commissioner of motor vehicles of Indiana or the state where the person received a license to drive. (IC 34-28-5-12)

**PARKS AND RECREATION – NONREVERTING CAPITAL FUND  
AND NONREVERTING OPERATING FUND**

I.C. 36-10-3-20 concerns establishment and use of a special nonreverting capital fund and states:

“(a) Upon the request of the board, the fiscal body of the unit may establish, by ordinance, a special nonreverting capital fund for the purposes of acquiring land or making specific capital improvements. The fiscal body may include in the board's annual budget an item and an appropriation for these specific purposes.

(b) Money placed in the nonreverting capital fund may not be withdrawn except for the purposes for which the fund was created, unless the fiscal body repeals the ordinance. The fiscal body may not repeal the ordinance under suspension of the rules.”

I.C. 36-10-3-22 relates to charging fees for park services and authorized establishing either/or a special nonreverting operating fund or a special nonreverting capital fund and states:

“(a) Park and recreation facilities and programs shall be made available to the public free of charge as far as possible. However, if it is necessary in order to provide a particular activity, the board may charge a reasonable fee.

(b) The unit's fiscal body may establish by ordinance upon request of the board:

(1) a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance, either by appropriation by the board or by the unit's fiscal body; or

(2) a special nonreverting capital fund for the purpose of acquiring land or making specific capital improvements from which expenditures may be made by appropriation by the unit's fiscal body.

**PARKS AND RECREATION – NONREVERTING CAPITAL FUND  
AND NONREVERTING OPERATING FUND (Continued)**

The unit's fiscal body shall designate the fund or funds into which the unit's fiscal officer (or county treasurer) shall deposit fees from golf courses, swimming pools, skating rinks, or other major facilities requiring major expenditures for management and maintenance. Money received from fees other than from major facilities or received from the sale of surplus property shall be deposited by the unit's fiscal officer (or county treasurer) either in the special nonreverting operating fund or in the nonreverting capital fund, as directed by the board. However, if neither fund has been established, money received from fees or from the sale of surplus property shall be deposited in the unit's general fund. Money from either special fund may be disbursed only on approved claims allowed and signed by the president and secretary of the board."

Official Attorney General Opinion No. 54 of 1965 states there is no expressed authorization by the legislature to the park board to expend the activity fees in the special nonreverting fund without prior appropriation, and such money cannot be disbursed without a prior appropriation ordinance having been adopted according to law by the city council, county council or town council.

Legislative intent was for the park special nonreverting operating fund to pay for park and recreation activities that were to be conducted on a self-supporting basis. (For instance, such activities as horse shoe tournaments, swimming meets, little league, arts and crafts, and other similar activities.) The special nonreverting capital fund was to be funded from an item within the park and recreation board's annual budget with an appropriation made for "these specific purposes". It was never suggested such activities should be undertaken in an effort to relieve local tax levies.

Notwithstanding apparent legislative intent, with the passage of the aforementioned statutes along with the authority provided in I.C. 36-1-3, Home Rule, we feel the county council has the authority to create by ordinance as many funds as they feel necessary to operate their unit. When nonreverting funds, capital or operating, are established properly pursuant to the statutes mentioned, no audit exceptions will be taken by the State Board of Accounts.

There are three situations that should be considered when creating the nonreverting funds.

(1) On diverting revenues from the Park Operating Fund to the new nonreverting funds, this will reduce the revenue available for funding operating fund expenditures.

(2) All expenditures from the nonreverting operating and/or nonreverting capital funds must have been authorized by the enabling ordinance(s) and prior appropriation(s) must be available. The appropriations need not go before the Department of Local Government Finance (DLGF) but do need approval by "the board or the unit's fiscal body" for the nonreverting operating fund and the "unit's fiscal body" for the nonreverting capital fund.

(3) If the county appeals to DLGF for an excessive levy, the DLGF may insist that any balance or balances of such nonreverting funds be transferred to the park operating fund to any consideration of relief to the operating fund.

**CASH CHANGE FUND**

IC 36-1-8-2 states:

"(a) The fiscal body of a political subdivision may permit any of its officers or employees having a duty to collect cash revenues to establish a cash change fund. Such a fund must be established by a warrant drawn on the appropriate fund of the political subdivision in favor of the officer or employee, in an amount determined by the fiscal body without need for appropriation to be made for it.

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**CASH CHANGE FUND (Continued)**

(b) The officer or employee who establishes a cash change fund shall convert the warrant to cash, shall use it to make change when collecting cash revenues, and shall account for it in the same manner as is required for other funds of the political subdivision.

(c) The fiscal body shall require the entire cash change fund to be returned to the appropriate fund whenever there is a change of the custodian of the fund or if the fund is no longer needed.”

A claim should be filed by the officer or employee designated by the fiscal body. The claim should contain a statement regarding the necessity for such fund together with the statutory reference (IC 36-1-8-2) authorizing its establishment. We do caution officials the amount advanced should not be greater than seems reasonably needed by the officer or employee.

**PETTY CASH FUND**

IC 36-1-8-3 states:

“(a) The fiscal body of a political subdivision may establish a petty cash fund for any of its offices in a like manner to that prescribed by section 2 of this chapter.

(b) The custodian of a petty cash fund shall use it to pay small or emergency items of operating expense. A receipt shall be taken for each expenditure and made from the fund.

(c) The custodian of a petty cash fund shall periodically file a voucher, with all original receipts totaling the cash claimed expended being attached to it, so that the fund can be reimbursed for expenditures from it. Reimbursements must be approved and made in the same manner as is required for other expenditures of the political subdivision.”

A claim for expenditures must be prepared and filed for reimbursement to the petty cash fund. Such reimbursement shall be approved, allowed and paid in the same manner as other claims. If desired, for safeguarding funds and providing proper records, the petty cash fund may be maintained and accounted for through a separate bank account under jurisdiction of the responsible officer or employee with bank issued check forms used for all payments from the account. If this method is desired, it should have prior approval by ordinance of the fiscal body of the political subdivision.

**CONTRACTING IN EMERGENCY SITUATIONS**

Whenever an emergency (defined in IC 5-22 and 36-1-12 as a situation that could not be reasonably foreseen and that threatens the public health, welfare, or safety and requires immediate action) exists that requires a purchase of materials or the construction, alteration or repair of any public work the following statutes are to be followed:

**Public Purchase** (IC 5-22-10-4)

“A purchasing agent may make a special purchase when there exists under emergency conditions, a threat to public health, welfare or safety.”

Materials are defined to mean supplies, goods, machinery and equipment.

**Public Construction** (IC 36-1-12-9)

“ (a) The board, upon a declaration of emergency, may contract for a public work project without advertising for bids if bids or quotes are invited from at least two (2) persons known to deal in the public work required done.

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**CONTRACTING IN EMERGENCY SITUATIONS (Continued)**

(b) The minutes of the board must show the declaration of emergency and the names of the persons invited to bid or provide quotes.”

**PROPERTY REASSESSMENT FUND INVESTMENTS**

The county treasurer shall as provided by IC 6-1.1-4-28.5(c) invest any money accumulated in the property reassessment fund until the money is needed to pay reassessment expenses. Any interest received from the investment of this money shall be receipted into the property reassessment fund.

**SOIL AND WATER CONSERVATION DISTRICT EMPLOYEES**

IC 14-32-4-18 provides that employees of soil and water conservation districts shall be considered county employees in all counties except those containing a first class city. The employees will be eligible for and included in all fringe benefit programs for employees of that county.

An employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee’s position is not considered an employee of the county.

Since employees of soil and water districts shall be considered county employees this will require these positions to be included in the salary ordinance and for the county council to appropriate sufficient general fund monies to pay these salaries and fringe benefits.

This will require the filing of form 99, Payroll Schedule and Voucher with the county auditor covering the soil and water conservation district employees certified by their supervisor. The county auditor will include these employees in their records and reports in the same manner as other employees of the county.

**DRAINAGE MAINTENANCE**

IC 36-9-27-45 states, “ A maintenance fund...is subject to the use of the board for the necessary or proper repair, maintenance, study or evaluation of the particular drain or combination of drains, which may be done whenever the board, upon the recommendation of the county surveyor, finds that it is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund. However, if:

- (1) A maintenance fund has not been established for the drain or combination of drains; or
- (2) A maintenance fund has been established but it is not sufficient to pay for the work;

the general drain improvement fund shall be used to pay the cost of the work or to pay for the deficiency, and the general drain improvement fund shall be reimbursed from the appropriate maintenance fund when it is established or becomes sufficient.”

**TRIAL RULE 60.5. MANDATE of FUNDS**

- (A) **Scope of mandate.** Courts shall limit their requests for funds to those which are reasonably necessary for the operation of the court or court-related functions. Mandate will not lie for extravagant, arbitrary or unwarranted expenditures nor for personal expenditures (e.g., personal telephone bills, bar association memberships, disciplinary fees).

Prior to issuing the order, the court shall meet with the mandated party to demonstrate the need for said funds. At any time in the process, the dispute may be submitted to mediation by agreement of the parties or by order of the Supreme Court or the special judge.

**TRIAL RULE 60.5. MANDATE of FUNDS (Continued)**

**(B) Procedure.** Whenever a court, except the Supreme Court or the Court of Appeals, desires to order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions, such court shall issue and cause to be served upon such municipality, political subdivision or officer an order to show cause why such appropriation or payment should not be made. Such order to show cause shall be captioned "Order for Mandate of Funds".

The matter shall be set for trial on the merits of such order to show cause unless the legislative body, the chief executive officer or the affected officer files a waiver in writing of such a trial and agrees to make such appropriation or payment.

The trial shall be without a jury, before a special judge of the court that made the order. There shall be no change of venue from the county or from the special judge appointed by the Supreme Court.

The court shall promptly notify the Supreme Court of the entry of such order to show cause and the Supreme Court shall then appoint as special judge an attorney who is not a current or former regular judge and who does not reside nor regularly practice law in the county issuing the Order of Mandate of Funds or in any county contiguous thereto.

If the appointed judge fails to qualify within seven [7] days after he has received notice of his appointment, the Supreme Court shall follow the same procedure until an appointed judge does properly qualify.

Unless expressly waived by the respondent in writing within thirty (30) days after the entering of the trial judge's decree, a decree or order mandating the payment of funds for the operation of the court or court-related functions shall be automatically reviewed by the Supreme Court. Promptly on expiration of such thirty (30) day period, the trial judge shall certify such decree together with either a stipulation of facts or an electronic transcription of the evidence to the Supreme Court.

No motion to correct error nor notice of appeal shall be filed. No mandate order for appropriation or payment of funds made by any court other than the Supreme Court or Court of Appeals shall direct that attorney fees be paid at a rate greater than the reasonable and customary hourly rate for an attorney in the county.

No mandate order shall be effective unless it is entered after trial as herein provided and until the order has been reviewed by the Supreme Court or such review is expressly waived as herein provided.

**FORFEITURES OF BONDS**

**Cash Bonds**

Per IC 35-38-8-7(e), if the cash bond is forfeited and the court entered a judgment, any amount remaining after the deduction of the administrative fee, fines, costs, fees, restitution, and the supplemental public defender services fee should be transferred to the State Common School Fund. This is done by the clerk remitting the remaining amount to the county auditor to deposit in the State Fines and Forfeiture Fund for remittance to the Auditor of State who will deposit into the State Common School Fund.

However, IC 35-38-8-7(b) states: " In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited."

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**FORFEITURES OF BONDS (Continued)**

**Surety Bonds**

In the case of a surety bond, which was declared forfeited by the judge, and the bondsman does not remit within one hundred twenty days of the mailing of the notice required in IC 27-10-2-12, a late surrender fee shall be assessed and calculated in the following manner:

<u>Number of Days After the Mailing of the Notice</u>	<u>Percentage of the Face Value of the Bond</u>
121 – 180 days	20%
181 – 210 days	30%
211 – 240 days	50%
241 – 365 days	80%

If over 365 days, the court shall declare forfeited an amount equal to 20% of the face value of the bond and immediately enter judgment on the forfeiture and assess to the bondsman all actual costs resulting from the defendant's failure to appear (including jury fees, witness fees, and any other documented costs incurred by the court).

In the case of an insurer, if the fees, costs, or judgment are not paid, then the clerk shall mail notice to the commissioner (Insurance Commissioner). Under IC 27-10-2-12 (f) there are provisions to pay for late surrender fees, costs, and any judgment of forfeitures ordered by the court from funds the insurer has on deposit with the Department of Insurance.

The distribution of the Late Surrender Fees collected under IC 27-10-2-12 would be allocated as fifty percent (50%) deposited to the Police Pension Trust Fund, IC 36-8-10-12, and the other fifty percent (50%) of the Late Surrender Fee should be deposited to the County Extradition Fund established under IC 35-33-14.

Any remaining bond forfeitures would be remitted to the State Common School Fund.

If the County General Fund is paying the pension trust employer costs we would recommend a Police Pension Fund be established to account for the late surrender fees and the county may take these fees into consideration when paying the County employer share of the police pension costs.

As you can see from this discussion, accounting for cash and bail bond funds can be very difficult. Because of this difficulty in determining when and if a fee would be charged it is very important for the judges and the clerk to work very closely together in administering and determining the appropriate disposition of these funds.

**DATA COLLECTION FORM INSTRUCTIONS**

When a county expends \$500,000 or more of federal awards (whether the award is direct or passed-through another entity) in a year the county is required to have a single audit conducted in accordance with the Federal Office of Management and Budget's Circular A-133. This has been a requirement for a number of years and the State Board of Accounts has provided this audit when required.

As part of this requirement a reporting package along with a data collection form is submitted electronically to the Federal Audit Clearing House. Recently, it became a requirement that the county certify the data collection form through an electronic process, which is a verification that the data collection form and report posted contains the same information as presented at the exit conference. By certifying, the county is not agreeing with the comments within the auditor's report, just that the information is the same.

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**DATA COLLECTION FORM INSTRUCTIONS (Continued)**

You do have the option to reject the certification. A rejection of the certification should be done in the circumstance where you have determined that the data collection form or the report contains an error. However, we would recommend that you contact the field supervisor or office supervisor before making a rejection to discuss the issue you have found.

This certification is important as the Clearing House does not recognize that the report is filed until all certifications are provided.

Late certification may also activate an A-133 requirement whereby you as the auditee must be considered high risk and so require a more extensive audit process.

The prompt for certification comes from Internet Data Entry System (IDES) via the e-mail provided to our field examiners.

It is important that the appropriate person, along with the correct e-mail address be provided to our field examiners so that the certification may be made in a timely manner.

Our field examiner will request the contact person at the appropriate time during the audit.

It is up to the county as to who will be responsible for the certification, but it must be someone who will be present at the exit who has been made aware of the report and data collection form, often the county auditor.

At the exit, instructions along with user ID and password access will be provided to you by the field examiner so that the proper certification process may be completed.

**GUIDANCE ON PL 135-2012, HEA 1005**

SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

**State Board of Accounts (SBOA) Audit Position: This chapter becomes effective January 1, 2013. Therefore, all "units" as defined within this chapter should be following this section on January 1, 2013.**

Chapter 9. Government Employees and Volunteer Firefighters Holding Office

Sec. 1. As used in this chapter, "elected office" refers only to the following:

- (1) The executive or a member of the executive body of a unit.
- (2) A member of the legislative body or fiscal body of a unit.

**SBOA Audit Position: The term "elected office" for the purpose of this chapter, depending on the "unit" of government refers to the executive, executive body, legislative body, or the fiscal body of the "unit" of government. Depending on the "unit," this would include county commissioners, county council members, mayors, city or town council members, township board members, and trustees of each "unit."**

Sec. 2. As used in this chapter, "government employee" refers to an employee of a unit. The term does not include an individual who holds only an elected office.

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**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position:** The term "government employee" includes everyone employed by the "unit" that is not a person that holds an "elected office." Therefore, for the purpose of this chapter, county commissioners, county council members, mayors, city and town council members, township board members, and trustees of their respective "units" are not considered a "government employee."

Sec. 3. As used in this chapter, "unit" means a county, city, town, or township.

**SBOA Audit Position:** The term "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" because Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county; therefore, they are not subject to the direction of the "elected office" of the county.

Sec. 4. (a) An individual who is serving as a volunteer firefighter for a volunteer fire department or a fire department that provides fire protection services to a unit:

- (1) under a contract, excluding a mutual aid agreement; or
- (2) as the unit's fire department;

may not assume or hold an elected office of a unit that receives fire protection services from the department in which the volunteer firefighter serves.

**SBOA Audit Position:** An individual who is serving as a volunteer firefighter for a volunteer fire department or a fire department that provides fire protection services to a "unit" under a contract, excluding a mutual aid agreement, or as the "unit's" fire department may not assume or hold the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee of a unit that receives fire protection services from the department in which the volunteer firefighter serves.

(b) An individual who:

- (1) is an employee of a unit, serving as a full-time, paid firefighter; or
- (2) serves as a volunteer firefighter;

in a department that provides fire protection services to more than one (1) unit, excluding fire protection services provided under mutual aid agreements, may not assume or hold an elected office of any unit that receives fire protection services from the department.

**SBOA Audit Position:** An individual who is an employee of a "unit," serving as a full-time, paid firefighter or serves as a volunteer firefighter in a department that provides fire protection services to more than one (1) "unit," excluding fire protection services provided under mutual aid agreements, may not assume or hold the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee of any "unit" that receives fire protection services from the department.

Sec. 5. Except as provided in section 7 of this chapter, an individual is considered to have resigned as a government employee when the individual assumes an elected office of the unit that employs the individual.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position:** Any "government employee" of a "unit" is considered to have resigned their position as a "government employee" when the individual assumes the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee within the "unit" that employs the individual. See section 7 for exception.

Sec. 6. This chapter does not prohibit:

(1) a government employee from assuming or holding an elected office of a unit other than the unit that employs the government employee;

(2) a full-time, paid firefighter or volunteer firefighter from assuming or holding an elected office of a unit other than a unit that receives fire protection services from the department in which the volunteer firefighter serves; or

(3) an individual who assumes or holds an elected office from also being appointed to and serving on a board, commission, or committee of the unit.

**SBOA Audit Position:** A "government employee" may hold an "elected office" of any "unit" where the "government employee" is not employed. A full-time, paid firefighter or volunteer firefighter may not hold an "elected office" of any "unit" that receives fire protection services from the department in which the volunteer firefighter serves. An individual who assumes or holds an "elected office" may also be appointed to or serve on a board, commission, or committee of the "unit" to which they were elected or appointed.

Sec. 7. (a) Notwithstanding sections 4 and 5 of this chapter:

(1) a volunteer firefighter who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and serve as a volunteer firefighter; and

(2) a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee;

until the term of the elected office that the volunteer firefighter or government employee is serving on January 1, 2013, expires.

(b) After the expiration of the term of the elected office that the volunteer firefighter referred to in subsection (a) is serving on January 1, 2013, the volunteer firefighter is subject to section 4 of this chapter with respect to serving as a volunteer firefighter and assuming or holding an elected office of the unit that receives fire protection services from the department in which the volunteer firefighter serves.

(c) After the expiration of the term of the elected office that the government employee referred to in subsection (a) is serving on January 1, 2013, the government employee is subject to section 5 of this chapter with respect to assuming or holding an elected office and being employed by the unit that employs the government employee.

**SBOA Audit Position:** A volunteer firefighter who assumes or holds the position of a county commissioner, county council member, mayor, city or town council member, township board member or trustee within the "unit" that employs the volunteer firefighter on January 1, 2013, may continue to hold the "elected office" and serve as a volunteer firefighter until the term of the "elected office" that the volunteer firefighter is serving on January 1, 2013, expires.

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**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

A "government employee" who assumes or holds the position of a county commissioner, county council member, mayor, city or town council member, township board member, or trustee within the "unit" that employs the "government employee," may continue to hold the "elected office" and be employed as a "government employee" until the term of the "elected office" that the "government employee" is serving on January 1, 2013, expires.

SOURCE: IC 5-11-13-1.1; (12)HE1005.1.2. --> SECTION 2. IC 5-11-13-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.1. (a) This section applies to a unit (as defined in IC 36-1-2-23).

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.**

A "unit" is a county, city, town, and townships in Indiana. All elected or appointed officials within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county.

(b) A report under section 1 of this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the unit regarding whether the unit has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a unit does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the department of local government finance may not approve the unit's budget or any additional appropriations for the unit for the ensuing calendar year.

**SBOA Audit Position: In accordance with IC 5-11-13-1 every, county, city, town, township, elective or appointive, who is the head of or in charge of any office, department, board, or commission of any county, city, town, or township, and every, county, city, town, or township employee or agent who is the head of, or in charge of, or the executive officer of any department, bureau, board, or commission of the, county, city, town, or township, and every executive officer by whatever title designated, who is in charge of any, county, or city institution, shall during the month of January of each year prepare, make, and sign a certified report, correctly and completely showing the names and business addresses of each and all officers, employees, and agents in their respective offices, departments, boards, commissions, and institutions, and the respective duties and compensation of each, and shall forthwith file said report in the office of the state examiner of the state board of accounts. The report must also indicate whether the political subdivision offers a health plan, pension, and other benefits to full-time and part-time employees. The certification must be filed electronically in the manner prescribed under IC 5-14-3.8-7. Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the board of commissioners, for a county not having a consolidated city; mayor of a consolidated city for a county having a consolidated city; mayor, for a city; president of the town council for a town; trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21.**

If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the Department of Local Government Finance may not approve the "unit's" budget or any additional appropriations for the unit for the ensuing calendar year.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not made the required certification under IC 5-11-13-1.1 based upon information obtained from the filing of the "units" year-end personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.

SECTION 4. IC 25-1-6-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012] Sec. 3.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a board is not a lucrative office.

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore it should be in place and all "units" should be following this section on July 1, 2012.**

Article 2, Section 9 of the Constitution of the State of Indiana states: "No person holding a lucrative office or appointment under the United States or under this State is eligible to a seat in the General Assembly; and no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution. Offices in the militia to which there is attached no annual salary shall not be deemed lucrative." Therefore membership on a "board" is not a lucrative office. For the purpose of this chapter members of a "board" are appointed positions by members of an "elected office" or an executive of the government "unit."

SECTION 5. IC 33-42-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, notary public is not a lucrative office.

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.**

Article 2, Section 9 of the Constitution of the State of Indiana states: "No person holding a lucrative office or appointment under the United States or under this State is eligible to a seat in the General Assembly; and no person may hold more than one lucrative office at the same time, except as expressly permitted in this Constitution. Offices in the militia to which there is attached no annual salary shall not be deemed lucrative." This clarifies that a notary public is not a lucrative office.

SECTION 6. IC 36-1-8-10.5, AS AMENDED BY P.L.1-2005, SECTION 231, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.**

**This makes this section subject to IC 3-5-9.**

SOURCE: IC 36-1-20.2; (12)HE1005.1.7. --> SECTION 7. IC 36-1-20.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

Chapter 20.2. Nepotism

Sec. 1. This chapter applies to all units.

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.**

**A "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county. Therefore, they are not subject to the direction of the "elected office" of the county.**

Sec. 2. An individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

(1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.

(2) The individual's employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

**SBOA Audit Position: Any individual that is employed by a "unit" on July 1, 2012, is not subject to this chapter and any individual hired on or after July 2, 2012, is subject to this chapter.**

**At a minimum, "units" must define that an individual absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation is not considered a "break in service." If an individual's employment with the unit is terminated, followed by immediate reemployment by the "unit," without loss of payroll time, this is not considered a "break in Service." "Units" may adopt within their specific nepotism policy additional specific situations that could qualify as not being a "break in service."**

Sec. 3. For purposes of this chapter, the performance of the duties of:

(1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or

(2) a volunteer firefighter;

is not considered employment by a unit.

**SBOA Audit Position: If you are a precinct election officer or volunteer firefighter, for this chapter you are not considered to be an employee of the "unit" and, therefore, are not employed by the "unit" on July 1, 2012.**

Sec. 4. As used in this chapter, "direct line of supervision" means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position:** The nepotism policy is designed to help prevent occurrences whereby relatives who are employees of the "unit" are in direct supervisory line with respect to each other. In order to guard against these practices the policy should prohibit "unit" full-time, part-time, or temporary employees who are relatives from being placed within the same direct line of supervision where one relative is responsible for directly supervising the job performance or work activity of another relative. In discussions with the author of the bill, it was determined that it was not the authors intent, to the extent possible, to prohibit two or more such relatives from working for the same "unit" or within the same department or office of a "unit." More specifically, "direct line of supervision" for the purpose of this section means the direct next person directly above the employee.

Sec. 5. As used in this chapter, "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

**SBOA Audit Position:** The term "employed" means an individual who is employed by a "unit" on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit. Elected office for this chapter is any office that is elected within the "unit" of government and is not limited to the definition established in IC 3-5-9.

Sec. 6. As used in this chapter, "member of the fire department" means the fire chief or a firefighter appointed to the department.

**SBOA Audit Position:** A member of the fire department means the fire chief or a firefighter appointed to the department.

Sec. 7. As used in this chapter, "member of the police department" means the police chief or a police officer appointed to the department.

**SBOA Audit Position:** A member of the police department means the police chief or a police officer appointed to the department.

Sec. 8. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.
- (2) A parent or stepparent.
- (3) A child or stepchild.
- (4) A brother, sister, stepbrother, or stepsister.
- (5) A niece or nephew.
- (6) An aunt or uncle.
- (7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position: A relative of an employee is a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half-brother, or half-sister.**

Sec. 9. (a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

**SBOA Audit Position: HEA 1005 establishes minimum requirements that must be adopted by the "unit." The "legislative body" of the "unit" has the ability to adopt additional requirements that are more stringent or detailed and that apply to individuals who are exempted or excluded from the application of the new law. A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA1005 (2012)."**

**A report under this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the department of local government finance may not approve the "units" budget or any additional appropriations for the "unit" for the ensuing calendar year.**

Sec. 10. Individuals who are relatives may not be employed by a unit in a position that results in one (1) relative being in the direct line of supervision of the other relative.

**SBOA Audit Position: Any individual "employed" by a "unit" may not directly supervise a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half brother or half sister.**

**The term "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an "elected" office within the "unit." The term includes an individual who is a party to an employment contract with the "unit."**

Sec. 11. (a) This section applies to an individual who:

- (1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and
- (2) is not exempt from the application of this chapter under section 2 of this chapter.

(b) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate section 10 of this chapter.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

(c) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

(1) be promoted to a position; or

(2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate section 10 of this chapter.

**SBOA Audit Position: Section 11 of this chapter applies to an individual who is employed by a "unit" on the date the individual's relative begins serving a term of an elected office of the "unit," and is not exempt from the application of this chapter under section 2 of this chapter. So, if an individual is employed by a "unit" on July 1, 2012, they are not subject to this section unless they have had a break in service between July 1, 2012, and the date of the application of this section.**

Unless a policy adopted under section 9 of this chapter provides otherwise, section 11 allows an individual to remain employed by a "unit" and maintain the individual's position or rank even if the individual's employment allows a direct supervisor to be a relative as specified in section 8.

Unless a policy adopted under section 9 of this chapter provides otherwise, an individual whose direct supervisor is a relative may not be promoted to a position if the new position would place a relative as the direct supervisor to the individual being promoted. If the individual being promoted is a member of a merit police department or merit fire department, the individual may not be promoted if the new position would place a relative as the direct supervisor to the individual being promoted.

Sec. 12. This chapter does not abrogate or affect an employment contract with a unit that:

(1) an individual is a party to; and

(2) is in effect on the date the individual's relative begins serving a term of an elected office of the unit.

**SBOA Audit Position: This chapter does not abolish, annul, repeal or affect an employment contract with a "unit" that an individual is a party to, and is in effect on the date the individual's relative begins serving a term of an "elected office" of the "unit."**

Sec. 13. Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

**SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that states otherwise, the sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.**

Sec. 14. Unless the policy adopted under section 9 of this chapter provides otherwise, an individual:

(1) who served as coroner;

(2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

- (3) who, as coroner, received certification under IC 36-2-14-22.3; and
- (4) whose successor in the office of coroner is a relative of the individual;

may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

**SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that provides otherwise, an individual who served as coroner, who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana, who, as coroner, received certification under IC 36-2-14-22.3; and whose successor in the office of coroner is a relative of the individual, may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.**

Sec. 15. If the township trustee's office is located in the township trustee's personal residence, unless the policy adopted under section 9 of this chapter provides otherwise the township trustee may hire only one (1) employee who is a relative. The employee:

- (1) may be hired to work only in the township trustee's office;
- (2) may be in the township trustee's direct line of supervision; and
- (3) may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year.

**SBOA Audit Position: Unless the "unit" adopts a policy under section 9 of this chapter that disallows the following: In a township where the trustee's office is located in the township trustee's personal residence, the township trustee may hire only one (1) employee who is a relative. The employee may be hired to work only in the township trustee's office, may be in the township trustee's direct line of supervision and may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year. A policy adopted under section 9 may be more restrictive but may not increase total salary, benefits, and compensation allowed under this section.**

Sec. 16. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

**SBOA Audit Position: Each locally elected officer is required to certify under penalties of perjury to the "executive" of the "unit" before December 31 of each year that they have not violated the adopted nepotism policy. Depending on the "unit," the "executive" of the unit may be one of the following: president of the county commissioners, mayor, president of the town council, trustee, or chief executive officer.**

Sec. 17. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

**SBOA Audit Position: Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the president of the board of county commissioners, for a county not having a consolidated city, mayor of a consolidated city for a county having a consolidated city, mayor, for a city, president of the town council for a town, trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. The SBOA will use these reports as the initial verification that a policy has been implemented for a "unit" of government. On February 1, the SBOA will notify the Department of Local Government Finance of any**

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**unit" not submitting this verification by the end of January of each year. The SBOA will also follow up with each "unit" that has not submitted their verification to determine the status. If a unit subsequently files the required report, the SBOA will notify the Department of Local Government Finance that they have received verification from the unit that a policy has been adopted and has been implemented. During the course of the annual or biennial audit, the SBOA will review the policies that have been implemented as the SBOA Field staff determines necessary. If it is found that the policy has not been implemented the report will contain an audit result and comment and forwarded to the Department of Local Government Finance.**

Sec. 18. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

**SBOA Audit Position: The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not certified in accordance with IC 5-11-13-1.1 based upon information obtained from the filing of the "units" yearend personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.**

SOURCE: IC 36-1-21; (12)HE1005.1.8. --> SECTION 8. IC 36-1-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 21. Contracting With a Unit

Sec. 1. This chapter applies only to a unit.

**SBOA Audit Position: This chapter becomes effective July 1, 2012. Therefore, it should be in place and all "units" should be following this section on July 1, 2012.**

**A "unit," for the purpose of this chapter, is any county, city, town, or township in Indiana. All elected or appointed officials and all other employees within a "unit" of government are subject to this chapter. Superior Court Judges, Circuit Court Judges, County Prosecutors, county court employees, and county prosecutor office employees are not included in this definition of a "unit" as Superior Court Judges, Circuit Court Judges, and County Prosecutors are elected to a judicial district and not elected to a specific county. Therefore, they are not subject to the direction of the "elected office" of the county.**

Sec. 2. As used in this chapter, "elected official" means:

- (1) the executive or a member of the executive body of the unit;
- (2) a member of the legislative body of the unit; or
- (3) a member of the fiscal body of the unit.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position:** The term "elected official" for the purpose of this chapter, depending on the "unit" of government refers to the executive, executive body, legislative body, or the fiscal body of the "unit" of government. Depending on the "unit," this would include county commissioners, county council members, mayors, city or town council members, township board members, and trustees of each "unit."

Sec. 3. (a) As used in this chapter, "relative" means any of the following:

- (1) A spouse.
- (2) A parent or stepparent.
- (3) A child or stepchild.
- (4) A brother, sister, stepbrother, or stepsister.
- (5) A niece or nephew.
- (6) An aunt or uncle.
- (7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

**SBOA Audit Position:** A "relative" of an employee is a spouse, parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law, son-in-law, adopted child, half-brother, or half-sister.

Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a unit. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit or restrict an individual from entering into a contract with the unit that is not otherwise prohibited or restricted by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

**SBOA Audit Position:** HEA 1005 establishes minimum requirements that must be adopted by the "unit." The "legislative body" of the "unit" has the ability to adopt additional requirements that are more stringent or detailed and that apply to individuals who are exempted or excluded from the application of the new law. A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA1005 (2012)."

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**A report under this chapter that is submitted after December 31, 2012, must include a statement by the executive (as defined in IC 36-1-2-5) of the unit regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. If a "unit" does not implement a policy under IC 36-1-20.2 and IC 36-1-21, the department of local government finance may not approve the "units" budget or any additional appropriations for the "unit" for the ensuing calendar year.**

Sec. 5. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

- (1) an individual who is a relative of an elected official; or
- (2) a business entity that is wholly or partially owned by a relative of an elected official;

only if the requirements of this section are satisfied and the elected official does not violate IC 35-44-1-3.

(b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

- (1) the elected official files with the unit a full disclosure, which must:

- (A) be in writing;

- (B) describe the contract or purchase to be made by the unit;

- (C) describe the relationship that the elected official has to the individual or business entity that contracts or purchases;

- (D) be affirmed under penalty of perjury;

- (E) be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and

- (F) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:

- (i) the state board of accounts; and

- (ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase;

- (2) the appropriate agency of the unit:

- (A) makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or

- (B) makes a certified statement of the reasons why the vendor or contractor was selected; and

- (3) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) An elected official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**SBOA Audit Position:** A “unit” may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with an individual who is a “relative” of an “elected official”. A “unit” may also enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with a business entity that is wholly or partially owned by a “relative” of an “elected official” only if the requirements of this section are satisfied and the “elected official” does not violate IC 35-44-1-3.

A “unit” may enter into a contract or renew a contract with an individual or business entity described in the preceding paragraph if the “elected official” files with the unit a full disclosure, which must be in writing; describe the contract or purchase to be made by the “unit”; describe the relationship that the “elected official” has to the individual or business entity that contracts or purchases; be affirmed under penalty of perjury; be submitted to the legislative body of the “unit” and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and be filed, not later than fifteen (15) days after final action on the contract or purchase, with the SBOA and the clerk of the circuit court in the county where the unit takes final action on the contract or purchase.

The appropriate agency of the “unit” must also make a certified statement in writing that the contract amount or purchase price was the lowest amount bid or offered or they must make a certified statement in writing of the reasons why the vendor or contractor was selected. The “unit” must also satisfy any other requirements under IC 5-22 or IC 36-1-12.

An “elected official” shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable. This section does not affect the initial term of a contract in existence at the time the term of office of the “elected official” of the “unit” begins.

Sec. 6. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

**SBOA Audit Position:** Each locally elected officer is required to certify under penalties of perjury to the "executive" of the "unit" before December 31 of each year that they have not violated the requirements of this chapter. Depending on the "unit," the "executive" of the unit may be one of the following: president of the county commissioners, mayor, president of the town council, trustee, or chief executive officer.

Sec. 7. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

**SBOA Audit Position:** Any report filed in accordance with IC 5-11-13-1 after December 31, 2012, must include a statement by the president of the board of county commissioners, for a county not having a consolidated city, mayor of a consolidated city for a county having a consolidated city, mayor, for a city, president of the town council for a town, trustee for a township of the "unit" regarding whether the "unit" has implemented a policy under IC 36-1-20.2 and IC 36-1-21. The SBOA will use these reports as the initial verification that a policy has been implemented for a "unit" of government. On February 1, the SBOA will notify the Department of Local Government Finance of any "unit" not submitting this verification by the end of January of each year. The SBOA will also follow up with each "unit" that has not submitted their verification to determine the status. If a unit subsequently files the required report, the SBOA will notify the Department of Local Government Finance that they have received verification from the unit that a policy has been adopted and has been implemented. During the course of the annual or biennial audit, the SBOA will review the policies that have been implemented as the SBOA Field staff determines necessary. If it is found that the policy

**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**has not been implemented the report will contain an audit result and comment and forwarded to the Department of Local Government Finance.**

Sec. 8. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
- (2) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit has adopted a policy under this chapter.

**SBOA Audit Position: The Department of Local Government Finance, not the SBOA, will make all determinations as to whether a budget or any additional appropriations shall be denied based on the requirements of this chapter. The SBOA will send to the Department of Local Government Finance a list of those "units" that have not certified in accordance with IC 5-11-13-1.1 based upon information obtained from the filing of the "units" year-end personnel report (currently known as the 100R) due to be submitted to the SBOA in January of each year. The SBOA will follow up with those that do not comply with this chapter and will notify the Department of Local Government Finance when the "unit" has complied.**

**FREQUENTLY ASKED QUESTIONS ABOUT PL135, HEA 1005**  
**(these are not audit positions)**

**Question 1:** What does it mean to be employed by the "unit" for purposes of the grandfather provision?

**Answer 1:** First, "unit" is defined in IC 36-1-20.2 as a county, city, town, or township. This means that an individual employed by the "unit" means any individual working for any agency of the "unit."

Example: When the "unit" is a county, individuals who work in the county auditor's office and individuals who work in the county clerk's office are both considered to be employees of the "unit."

Second, the nepotism law provides a grandfather clause that applies to any employee working for the "unit" on July 1, 2012, so long as they do not have a break in employment. As mentioned above, a break in employment does NOT occur when the individual is on paid or unpaid leave, or if an individual's termination is immediately followed by reemployment with the same "unit."

Example: Again using a county, if an individual works for the county auditor on July 1, 2012, and subsequently stops working there and is immediately reemployed by the same county's clerk, you are still covered by the grandfather provision because you did not have a break in employment from the "unit."

**Question 2:** Can relatives work in the same agency of a "unit"?

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**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**Answer 2:** Yes, but there are some stipulations. Under the new law, an individual cannot be employed if their "relative" is in "direct line of supervision" over them. "Direct line of supervision" is defined as an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. This means that you cannot have a situation where an individual is reporting directly to their "relative".

Example: A county clerk could NOT have a relative as their chief deputy, but a county clerk could have a relative working in their office so long as the relative is in a position that does not report directly to the clerk.

The statute goes on to say that the term "direct line of supervision" does not include the responsibilities of the executive, legislative body, or fiscal body of the unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

Example: A county commissioner's daughter could be employed by the county clerk even though the county commissioner approves the budget for the county clerk's office.

**Question 3:** Were there any exceptions in the nepotism law?

**Answer 3:** Yes:

A sheriff's spouse may be employed as prison matron and be in the sheriff's direct line of supervision.

A former coroner who cannot run for reelection because of term limits may serve as a deputy coroner to a relative who is the new coroner.

A township trustee whose office is located in their residence may hire one relative that can be in the trustees' direct line of supervision so long as the total salary, benefits, and compensation does not exceed \$5,000.

**Question 4:** Can merit police and firefighters be promoted if they have a relative in the same department who ranks higher than they do?

**Answer 4:** A police officer or firefighter could be promoted, but only if the promotion would not put that individual in a position of reporting directly to their relative.

Example: Brother "A" and Brother "B" serve in the city fire department. Brother "A" receives a promotion and would have direct line of supervision over Brother "B," meaning Brother "B" would be reporting directly to Brother "A." There are three options in this situation: 1) Brother "A" will have to turn down the promotion; 2) Brother "B" or "A" will need to be reassigned to another city firehouse so that Brother "B" no longer is in the direct line of supervision of Brother "A"; or 3) Brother "B" or "A" will need to be reassigned to another shift so that Brother "B" no longer is in the direct line of supervision of Brother "A."

Another scenario using this same example: Brother "A" receives and accepts promotion. Brother "B" is reassigned to another city firehouse. There is a fire where both brothers' firehouses are called to the fire. Brother "A" who is senior in rank directs Brother "B" actions during this fire run. This is not a violation of the "direct line of supervision" because in the general course of business Brother "A" is not in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation on a regular basis.

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**GUIDANCE ON PL 135-2012, HEA 1005 (Continued)**

**Question 5:** Please explain the audit position in regard to the conflict of interest portion of HEA 1005, in particular IC 3-5-9-7:

This section provides that: ". . . a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee; until the term of the elected office that the . . . government employee is serving on January 1, 2013 expires."

**Answer 5:** It is our understanding, through discussions with the authors of the bill; the intent was to allow a person who is currently running for office to be able to both be an elected officer and an employee of the unit. Additionally, our understanding of the intent of this clause would also allow an individual currently running for county council to start working in the county clerk's office on January 1, 2013, which would be the same day as the individual would assume the elected office of county council on January 1, 2013. It seems that the statute is set up to allow this because the individual would both be an employee of the county and an elected officer on January 1, 2013.

**Question 6:** This question deals with the nepotism portion of HEA 1005, in particular what is considered a break in employment.

Many counties hire the same individuals each year for seasonal labor. Does a seasonal worker have a break in employment each year, or would seasonal employment not be considered a break in employment.

**Answer 6:** Through inquiry of the author of the bill, we determined that this specific issue was not discussed. Therefore, there is little guidance as to the intent on the application of this specific language.

"Units" should define for each type of seasonal worker as to whether they meet the criteria established by the "unit" for a break in service. "Units" should consult with their legal council to advise them on this process if they desire to define certain "seasonal workers" not to be considered to have had a break in service from one season to the next.

The choice is the "units." The key factors to look at are the entire relationship, take into consideration the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

**Question 7:** What is perjury?

**Answer 7:** In relation to this chapter, IC 35-44-2-1 states that perjury is when a person makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true. Perjury is also a class D felony.

**Question 8:** If I am the "executive" of a "unit," do I need to certify in writing to myself that I am in compliance with the requirements in IC 36-1-20.2 and IC 36-1-21?

**Answer 8:** Yes. Each elected officer of the "unit" shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with IC 36-1-20.2 and IC 36-1-21. You should sign your compliance statement and retain for audit.

**Question 9:** Is the SBOA going to prescribe a form that contains the certification that all elected officer's need to sign stating that they are in compliance with IC 36-1-20.2 and IC 36-1-21.

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**Answer 9:** No. It is up to each "unit" to come up with their own statement. It can be as simple as a statement that the elected officer signs that states "subject to the penalties for perjury, I have not violated the provisions of IC 36-1-20.2 and IC 36-1-21."

**Question 10:** How detailed does a policy required under IC 36-1-20.2 and IC 36-1-21 need to be?

**Answer 10:** A "unit" could fulfill the requirement of adopting a policy by merely adopting the minimum requirements set forth in HEA1005 (2012)."

**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE**

**Question #1:** We received an "Order approving verified closing statement" from the Circuit Court that had a legal on it. Should it have been stamped in the Auditor's office?

**Answer #1:** IC 36-2-11-14 states: "The recorder may record a deed of partition; a conveyance of land; or an affidavit of transfer to real estate; only if it has been endorsed by the auditor of the proper county as "duly entered for taxation subject to final acceptance for transfer," "not taxable," or "duly entered for taxation" as provided by IC 36-2-9-18." (our emphasis). Therefore, if the order from the court is one of these documents it should have the endorsement of the county auditor prior to recording. You may always ask the court for guidance.

**Question #2:** With the phase out of inheritance tax will we be seeing people bring in affidavits stating they do not owe any inheritance tax? Should we keep them on file if they do want to record them?

**Answer #2:** It is possible that persons will want something on record regarding inheritance tax for public awareness. If the affidavit or other document meets the recording requirements and the person is willing to pay the recording costs, the affidavit or other instrument may be recorded.

**Question #3:** Retention Schedule for UnActive File? Why do some UCC forms indicate they are good for 30 Years. Is this a misprint?

**Answer #3:** No. The state also files Public Finance transactions and Manufactured Homes both having a 30 year lapse date. We also take transmitting utilities which never lapse.

**Question #4:** Are there any documents that we have to keep the originals of other than bonds?

**Answer #4:** We are not aware of any other statutory requirements for the county recorder to retain the original document.

**Question #5:** Can we keep originals in office when they don't scan well?

**Answer #5:** IC 36-2-11-16(e) states: "The recorder shall record a document presented for recording or a copy produced by a photographic process of the document presented for recording if: (1) the document complies with other statutory recording requirements; and (2) the document or copy will produce a clear and unobstructed copy." If a document will not produce a clear image you may ask to keep the original or copy presented if the client wants the document or copy recorded.

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)**

**Question #6:** Can a courthouse staff member (not an office holder or deputy) be a private notary (not paid for by county) and receive payment for notarizing a document while they are working as a county employee?

**Answer #6:** No, per IC 36-2-7-2, with only a few listed exceptions, the compensation fixed for county officers and employees under IC 36 is in full for all governmental services and in lieu of all fees; per diems; penalties; costs; interest; forfeitures; percentages; commissions; allowances; mileage; and other remuneration; which shall be paid into the county general fund.

**Question #7:** Can a part-time employee be paid from perpetuation? What should the county auditor do to add this to perpetuation? Does council have to approve the employee?

**Answer #7:** Yes, if the employee is preserving records or improving the recordkeeping systems and equipment a part-time employee may be paid from the recorder's record perpetuation fund. The county auditor should be informed that a payroll schedule and voucher will be submitted against the recorder's record perpetuation fund for a part-time worker. The county council does not have to approve the position(s) that are part-time per IC 36-2-5-11. Additionally, appropriation is not required so council would not be involved for that reason. Full time positions are set by council per IC 36-2-5-11. Therefore, any full-time positions must be in the salary ordinance even if paid by the recorder's record perpetuation fund without appropriation.

**Question #8:** Does INDOT have to pay a recording fee for a survey (not the attachment on a deed).

**Answer #8:** Yes, INDOT should and generally does pay the recording fee for surveys they bring for recording. The county officials can call Kristen Edmundson at the Attorney General's Office or contact INDOT records if they have any questions.

**Question #9:** If the money in the RPF does not require the county council approval why would our council force the Recorder to appropriate funds for the Recorder's employee's salaries? Is this process being handled correctly? If so, what statute mandates this process? If not, what statute would apply?

**Answer #9:** IC 36-2-7-10(d) states in part: "The county treasurer shall establish a recorder's records perpetuation fund. .... The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment. Money from the fund may not be deposited or transferred into the county general fund and does not revert to the county general fund at the end of a fiscal year."

**Question #10:** When a document is signed by an attorney, in fact, is the power of attorney required to be recorded prior to the document being recorded? If so, is the recording instrument number of the power of attorney required to be on the document being signed by the attorney in fact?

**Answer #10:** The answer can be found beginning on page 8-32 of the Accounting and Uniform Compliance Guidelines Manual for County Recorders and in IC 30-5-3-3.

IC 30-5-3-3 states: " Except as provided in subsection (b), an attorney in fact may act under a power of attorney without recording the power of attorney with the county recorder.

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(b) An attorney in fact shall record the power of attorney authorizing the execution of a document that must be recorded before presenting the document for recording.

(c) A county recorder may not accept a document for recording if the document:

- (1) was executed; and
- (2) is presented;

by an attorney in fact whose power of attorney is unrecorded.

(d) A document creating a power of attorney must comply with recording requirements, including notary and preparation statements, to be recorded under this section.

(e) A document that is presented by an attorney in fact for recording must reference the book and page or instrument number where the instrument creating the power of attorney is recorded before the document may be presented by the attorney in fact.”

**Question #11:** Nepotism: A relative hired before June 30, 2012 will be grandfathered in as long as I am recorder?

**Answer #11:** Effective July 1, 2012 IC 36-1-20.2 (2) states; “An individual who is employed by a unit on July 1, 2012 is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

- (1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker’s compensation.
- (2) The individual’s employment with the unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.”

You should work with your county attorney to determine the application of this statute to specific employee situations.

**Question #12:** Is it permissible to release a DD214 to a person if directed or asked to do so by e-mail from the local veteran service officer?

**Answer #12:** Per IC 10-17-3-4(b) the discharge record is not a public record and lists the persons that the record may be released to. While a service officer who provides photographic identification is listed, there is no provision that allows a record to a person via an e-mail request from the service officer.

**Question #13:** Transfer of perpetuation funds to county general fund. We are aware this is done and we are aware that this transfer by statute is not allowed. Who enforces the statute and why isn’t a transfer always noted in an audit report?

**Answer #13:** Different officials are provided with different mandates and authorities through statute and are responsible for proper compliance for those parts. State Board of Accounts is a reporting entity. We do not audit for 100% of compliance with all statutes but will take exception to those areas that come to our attention and report on those exceptions that are material.

**Question #14:** With a small staff (2-3) how is it best to implement controls over funds?

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)**

- Answer #14:** A small office requires compensating controls when segregation of duties is not always possible. As the elected official with the fiduciary responsibility for the funds received by your office you may need to take on more responsibilities for the processing of funds. You need to get a level of comfort that processes are being followed and that funds are safeguarded. Obtaining that comfort level is different for every office and depends on such things as the level of activity, experience of staff, inherent controls of systems such as the software used in receipting, etc. You should evaluate where the weaknesses occur due to the size of your staff and then determine what compensating controls would reduce the risk. For example, the same person should not receipt funds, make bank deposits, and reconcile. You might want to familiarize yourself with the amount of fees normally received and perform the bank reconciliation yourself or randomly reperform the reconciliation. Another good procedure is to have the processes written out. Familiarizing yourself with what should occur and monitoring that not only the processes are in place, but being able to recognize when there are exceptions occurring are part of the development of good internal controls and reducing risk. State Board of Accounts manual entitled Accounting and Financial Reporting Regulation Manual has a chapter that provides basic internal controls as well as defining what a control is composed of. This may be found on our web site at [www.in.gov/sboa](http://www.in.gov/sboa) under manuals.
- Question #15:** Does the Recorder's office only record UCC fixture filings against real estate as collateral? If a UCC has both personal property and real estate listed as collateral, should it be recorded or rejected? For example, if the secured party is a swimming pool company and has the swimming pool listed as collateral and there is also a legal description attached. If rejected, should they be advised to file the UCC with the Secretary of State?
- Answer #15:** Filing in the wrong jurisdiction is not a reason for rejection. It is up to the filer to make sure it is being filed properly. Having said that, we want to educate our customers the best we can. I would certainly let them know that a portion of the collateral needs to be recorded with the Secretary of State and then leave it to them to do so.
- Question #16:** Define "6 month period" to file a continuation Continuation extends UCC \_\_\_\_years from\_\_\_\_date
- Answer #16:** You can only file a continuation starting 6 months prior to its lapse date. So from 4 ½ years to the anniversary date of the filing at 5 years it can be filed. Anytime prior to 4 ½ years I continuation cannot be filed.
- Question #17:** A 2<sup>nd</sup> continuation extends UCC \_\_\_\_years from \_\_\_\_date
- Answer #17:** Each continuation accounts for a 5 year filing. It always refers back to the initial date of filing. It would be 5 years from the original date, 10 years from the original date, 15 years etc.
- Question #18:** Why isn't TERM UCC viewable on Public Search computers only a fixture UCC is viewable?
- Answer #18:** Terminations can be viewed through our website but you have search for it using the UCC 1 financing statement number and then you will receive any UCC 3 Amendments that relate to the initial filing.

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**QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)**

**Question #19:** UnActive File, a UCC with 2 names as Debtor. Do we keep a copy under each name (ex:Bill Smith and Jane Smith) or is one copy enough?

**Answer #19:** The filing should return on a search under every debtor name listed. It is up to the recorder how they go about this but you would need it indexed under all debtor names.

**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE**

**Question #1:** In regard to HEA 1060, the Hazardous Waste Disposal Tax Fund, who collects it and where does it come from?

**Answer #1:** Per IC 6-6-6.6-2 a tax is imposed on the disposal of the taxable hazardous waste in a disposal facility in Indiana. It is paid to the Department of Revenue. 25% of the tax is distributed to the county in which the facility is located

**Question #2:** In regard to SEA 287, where were the fees that were retained by the county deposited?

**Answer #2:** SEA 287 provided that the % of child abuse prevention fees distributed by the clerk to the Auditor of State be increased from 50% to 100%. Prior to July 1, 2012 50% of these fees are retained by the county and deposited into the county child advocacy fund established under IC 12-17-17.

**Question #3:** Our council would like to give a lump sum payment to employees at the beginning of next year. This would be on the salary ordinance for 2013. Can we do this?

**Answer #3:** It has to be for a county purpose. If it is compensation for working, it cannot be paid in advance of that date or time period of work that is required. If allowed by county council, as with other compensation, it must be properly withheld, paid, and reported.

**Question #4:** Under HEA 1090-PL-56 IC 6-1.1-31-10-1, this says the treasurer can waive penalties (if ordinance is passed). Thought the treasurer could not waive penalties only the Auditor?

**Answer #4:** Both have their statutory roles in the collection of property taxes. The only other statutory waiver of penalty under IC 6-1.1-37-1.07 also states that the treasurer will waive penalty (death in family). However, the auditor would be the one to remove from the tax duplicate.

**Question #5:** HEA 1117 what is the impact of tax sale where the only condition is sewer liens. Clarification?

**Answer #5:** HEA 1117 concerns regional water, sewage, or waste districts. It amended IC 13-26-14-4. Rates, fees or charges made, assessed or established by the district if delinquent are a lien and before should be collected, enforced and if necessary foreclosed in substantially the same manner as provided in IC 36-9-23-3-34 which allows for treatment as a special assessment and so subject to tax sale or court process by going through foreclosure. However, if this is only this one lien then foreclosure through the court is not an option, it must be treated as a special assessment and if not paid the property would go through tax sale.

**Question #6:** Innkeeper's Tax – Whose responsibility to give out and track the hotel/motel tax form that is turned into the Treasurer along with their payment. Currently our Visitor's Center keeps track of this but one VIP Commissioner is questioning this. Should it be Treasurer or Auditor?

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**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)**

- Answer #6:** IC 6-9-18-3 (d) states: "The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer....the tax shall be paid to the county treasurer not more than 20 days after the end of the month." In the January 2010 county bulletin we comment in part that the county treasurers should not release anything regarding Innkeepers tax that can be identifiable to a certain taxpayer and we reference a 2009 informal advisory 09-INF-13 from Public Access Counselor which concurred. We recommend that you consult with the county attorney about confidentiality issues.
- Question #7:** Bonds – all of our elected officials have a bond at the beginning of the year. We have them approved by the appropriate person or body, but who should administer the oath on the bond form? Is there a way to have 1 bond to cover all of these positions?
- Answer #7:** IC 33-42-4-1 describes who may administer an oath. Yes, the county council can choose to use a blanket bond and/or crime insurance policy under IC 5-1-4-18 for coverage of all officials, deputies and employees.
- Question #8:** Our Recorder submitted a claim for the registration for the Recorder's Conference for she and her deputy. Can both registrations come out of the elected official training fund?
- Answer #8:** Per IC 36-2-7-9(d) the money in the fund shall be used solely to provide training of county elected officials required by IC 36-2-11-2.5, IC 36-2-12-2.5 and other similar laws. Training expenses for others must come from other allowable sources.
- Question #9:** We have in our county general fund, a circuit court probation department and a superior court probation department. Can these be combined? With the recent changes in probation, we now have one chief probation officer over both court's probation departments.
- Answer #9:** What departments you use for budget are up to the county, with the Department of Local Government Finance's guidance and approval.
- Question #10:** How long should minutes from a council or Commissioner meeting wait to be approved? For example a set of minutes from 2011 are still not approved, is this ok?
- Answer #10:** IC 5-14-1.5-4 does not have an approval requirement. Per the Public Access Counselor, the draft is a public record. The approval is part of an internal control process. It is the review/approval process that provides assurance that the minutes are representative of the meeting. To be effective you would not want a long period of time to lapse.
- Question #11:** We have a victim's advocate grant. The award changes for each new grant. We have been changing on and off each time a new grant starts with 2 funds that we have set up for these grants. Should we do this or make a new fund with each new grant?
- Answer #11:** If it is working for you, we recommend you continue alternating between the two funds.
- Question #12:** Travel Claims for state called meetings – If travel/seminar money is appropriated do expenses from state called meetings still have to be paid from unappropriated funds?
- Answer #12:** We would not take exception if your county appropriates these funds. For internal control purposes some counties prefer to do this even though for state board of accounts called meetings it is not necessary under IC 5-11-14-1(i).
- Question #13:** If a claim has already been paid, can the Commissioners come back and order that money be paid back to the county?

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This is after the Commissioners approved the claim months ago.

**Answer #13:** This appears to be a specific situation and without knowing the circumstances cannot address the situation. However, we do not know of a statute that would give a commissioner the authority to order a vendor or individual to repay a payment made to them by the county. If a payment was made that was either for the incorrect amount or for which the entity or person was not entitled to, even with commissioners approval, repayment could be requested and legal action pursued.

**Question #14:** Township Trustee's. Do they have to adopt a nepotism policy? Most township trustees have their spouse as deputy; will these people be grandfathered in?

**Answer #14:** IC 36-1-20.2 states that this chapter applies to all units. IC 36-1-2-23 definition of unit includes township. IC 1-20.2-9 states in part, "The legislative body of the unit shall adopt a policy..." IC 36-6-6-2(c) states that the township board is the township legislative body so they would adopt a policy. IC 36-1-20.2-2 states an individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless there is a break in employment under IC 36-1-2.1-13 there are other allowances for a relative as employee for a trustee if the office is in the residence. See also article on HEA 1005 in this bulletin.

**Question #15:** Our county surveyor's wife is his first deputy. When does the nepotism law effect them or does it?

**Answer #15:** The nepotism statute is in effect July 1, 2012. There is a provision under IC 36-1-20.2-2 that "an individual who is employed by a unit on July 1, 2012 is not subjected to this chapter unless the individual has a break in employment with the unit." You should consult with your county attorney to determine compliance with statute for specific situations.

**Question #16:** Nepotism – where do you draw the line? Cousin, relative by marriage, etc...

**Answer #16:** Where to draw the line is a decision that each county must decide based on what is best for your county. The statute sets the minimum under IC 36-1-20.2-8(a). Under IC 36-20.2-9(a) states in part "...The unit may prohibit the employment of a relative that is otherwise not prohibited by this chapter." A well thought out policy considering unintended consequence as well as benefits is a good course.

**Question #17:** If the county attorney is paid a salary and receives benefits, should he be enrolled in PERF?

**Answer #17:** This depends on your PERF plan. You need to contact PERF.

**Question #18:** How is "Highway Maintenance" defined in IC 8-18-8-5? Are employees considered part of "Highway Maintenance"?

**Answer #18:** IC 8-14 provides for the county highway fund and its uses. The statute defines maintenance of highways to mean the constant making of needed repairs, to preserve a smooth surfaced highway, adequately drained, marked and guarded by protective structures for public safety. Highway personnel expenditures are considered part of highway expenditures, which includes highway maintenance. IC 8-18-8-5 provides for funding sources in addition to highway funds that may be used for highway maintenance. SEA 98 amended IC 8-18-8-5 to remove the separate authority that the county fiscal body may appropriate money from General Fund to pay for employees' personal services. However, the same act amended IC 8-18-8-5 to allow highway maintenance to be paid from General Fund, which would include personal, but the highway fund would need to be used first.

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**QUESTIONS AND ANSWERS FROM COUNTY AUDITORS SPRING CONFERENCE (Continued)**

**Question #19:** May we transfer money into the new 1222 (Statewide 911) fund from the General Fund so that all expenses can be tracked through the 1222 fund?

**Answer #19:** No. Permanent transfers between funds should not occur unless specifically allowed by statute. In addition, the purpose of fund accounting is to provide for accountability and transparency of your county's financial activity. When you transfer money from one fund to another you have lost the ability to discern the financial activity of those commingled funds.

**Question #20:** Was legislation passed that prevents "special assessments" from being attached to tax sale parcels?

**Answer #20:** No.

**Question #21:** After a recent Tax Sale in our county, a sewer lien was attached to property after the tax sale date and before redemption deadline. When the lien buyer petitioned the court for tax title deed, he insisted that new legislation had been passed and told us that we needed to remove the "special assessment" (sewer lien)

**Answer #21:** The new legislation was not effective until March 16, 2012, which would make it not applicable to a tax sale prior to that date. Even if applicable at the time, the lien would not have been removed by county officials.

**Question #22:** What is the recommended process for transfer on death deeds? Our county attorney told us to file stamp them and that's all. Do we charge the transfer fee, only the disclosure fee, or nothing?

**Answer #22:** IC 32-17-14-11(i) added April 30, 2011, clarifies that endorsement by the auditor is not necessary for the deed to be recorded because property is not being conveyed until a later event. There is an affidavit to transfer filed at the time of death that is the conveyance document. This document needs to be endorsed by the county auditor, for the required transfer (endorsement) fee. Please refer to the instructions on the sales disclosure form to determine the proper disclosure fee or exemption from the fee.

**Question #23:** What is required with an affidavit to transfer to real estate? No one seems to know for sure in our county. Do we charge for this? How do we endorse it; file stamp, duly transfer?

**Answer #23:** The process starts at the BMV. IC 36-2-11-14 states: the recorder may record an affidavit of transfer to real estate only if it has been endorsed by the auditor. The county auditor should charge the endorsement "transfer fee" in accordance with county ordinance adopted under IC 36-2-9-18.

**Question #24:** Will the reduction of the E-911 funds and additional appropriation of newly created fund need to be advertised and then submitted to DLGF.

**Answer #24:** We recommend you ask the governing body to transfer the appropriation balance when possible to avoid the additional appropriation process and readvertising.

**Question #25:** With the Prosecutor's receiving an increase in pay July 1, 2012, does the sheriff's salary increase then or does it go effective January 1, 2013? If wait till then, do they get the extra added on from change of July 1, 2012.

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**Answer #25:** If the sheriff is being paid in accordance with IC 36-2-13-2.8, at a percentage of the Prosecutor's annual minimum salary that would be paid by the state, we would not take audit exception to the increase in pay July 1 to comply with this code. We will need your county attorney's written legal support for taking this action considering IC 36-2-5-13 which prohibits changes to an elected official's compensation except for some specific conditions.

**Question #26:** Congressional Common School Funds – The form has changed from the last several years. The new form has 10 lines compared to 23 lines in the past. The old form only asked for the amount of interest received and it was at the bottom of the form. It did not calculate with anything else on the form. The new form asks for interest received and interest paid to schools. It then asks for a total which has to match the total of the funds at the end of the form. Our confusion is that we have paid the same amount of interest to both schools per year regardless of the fact that we did not collect that amount of interest during the year. This is the same process done under the previous auditor. If we pay this amount to the schools and report this amount on the new form it will not balance.

**Answer #26:** The form required to report congressional school fund principle and interest has been changed by the Indiana Department of Education (DOE). The purpose is to report info to DOE not to audit or show reconciliation. Please follow the instructions provided by DOE and contact DOE with any questions you have regarding the new form.

**Question #27:** Under Claims Processing – When is an appropriation not required for federal grants. If a federal grant is a reimbursable grant, do the funds need to be appropriated? Currently we do not appropriate any federal grants. We hold the checks until the funds are received.

**Answer #27:** For advance grants – The county will receive the money; deposit; and post to the separate fund. Disbursements for proper claims without may then be paid without appropriation.

For Reimbursement grants – There are two possible ways of accounting for these grants. 1) The county council approves an interfund loan. The loan is received and posted to the grant fund. Disbursements for proper claims from the grant fund are posted against the loan receipts. 2) Disbursements for proper claims are paid from the grant fund creating a negative balance.

Under either scenario, reimbursement is claimed and received from the grantor. Deposits are made and receipts are posted to the grant fund regardless of the accounting method above that is used. 1) If an interfund loan was made to the grant fund a transaction to repay the loan amount must be posted. Appropriation of the amount repaid to the loaning fund is needed before these monies may be disbursed. 2) Under the second method of accounting the reimbursements from the grant zero out the negative balance in the grant fund.

**Question #28:** WIC grants continue on and on. Should we change to a new fund each time one grant ends and a new one starts?

**Answer #28:** You may. You may also use program codes for receipt accounts and distribution accounts to distinguish grant years, when using a single grant fund.

**Question #29:** Can the SBOA or AIC send the Auditor's a list of approved vendor education conferences so when a department turns in a claim to get reimbursement out of the Elected Officials Training Fund, we can approve it. Or give us the name of a person that will respond to our emails about this list.

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**Answer #29:** We will work with the AIC to get the schedules on their website. The schedules do change each time a vendor meeting or new training is approved for credit. Please check the AIC website and feel free to E-mail Debbie Gibson or Tammy White.

**Question #30:** What are the requirements for converting capital assets from books to electronic storage? How many years of history would need to be input?

**Answer #30:** Guidance on electronic records policies and retention is in IC 26-2-8-111. The County Auditor's record retention schedule AU 10-13 states the Form 146 is a permanent record.

**Question #31:** What is the recommendation for storing W9's? If we keep them electronically can we shred the originals?

**Answer #31:** IC 26-2-8-11 provides guidance on electronic records that are created and retained in accordance with this, other statutes, county policy and fed law, including public record laws. You can only destroy records in accordance with public records laws in IC 5-14-3. Please review the Indiana Commission on Public Records website and contact that office with questions in this area.

**Question #32:** Is there any IC on the Tourism Board in reference to whether or not the board's financials (funds, claims?) should be processed through the Auditor's office? The Commissioners in our county want more internal control and auditing and had stated the board's financials are processed through the county as an entity. Any recommendations or guidance?

**Answer #32:** You will have to locate the code that authorizes the "tourism board" to exist and have powers. You may want to ask the tourism board for the applicable enabling Indiana Code or not-for-profit / corporate by-laws. If you are talking about the commission for promotion of convention visitor and tourism created by the board of county commissioners under IC 6-9-18-5 (Uniform Innkeeper's statute), this commission is a separate government, from the county. Their financial records and statements should be completely separate from the county records. Greater control by the county board of commissioners would have to come from their appointments to the board and the county council's approval of their budget.

**Question #33:** Can we put delinquent taxes and penalties on a new split parcel number from parent parcel number?

**Answer #33:** IC 6-1.1-5-5.5 states in part: ...before the county auditor may enter or transfer real property created either from a larger previously existing parcel or a combination or previously existing smaller parcels, or apportion the AV among the owners, the owner must pay all property taxes for which the due date has passed as of transfer on each parcel.

**Question #34:** Can you go over an appropriation in order to pay a bond payment, if you have Council approval?

**Answer #34:** IC 36-2-5-2(b) requires appropriation, unless you have a statutory exception. We are not aware of such exception in law.

**Question #35:** At what point should there be a transfer of money out of County General Fund to Rainy Day Fund.

**Answer #35:** IC 36-1-8-5(f) allows transfers to Rainy Day Fund at anytime in accordance with IC 36-1-8-5 and IC 36-1-8-5.1 and county ordinance.

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**Question #36:** What fund should the CAGIT money go into?

**Answer #36:** Agency Fund 7311 should be used to deposit monies from the state and make required distributions to other entities. Certified Shares 1110 should be used to account for the county's certified shares. The county may also have special legislation for a juvenile detention center, jail or other purpose, which should be accounted for in fund 1109. Excess balance distributions should be deposited and accounted for in fund 1186 (Rainy Day). Other LOIT monies for Levy Freeze and Public Safety may flow through specific funds in the Organizational Area for Settlement funds.

**Question #37:** What can we spend the elected officials training fund for? Can the registration for this meeting come out of that fund?

**Answer #37:** Yes the registration fee can be covered for the elected official that is required to have training credit hours may be paid from this fund. All expenses of obtaining training required by IC for clerks, recorders and surveyors may be paid from the fund. In the future auditors and treasurers that are elected this Fall or thereafter will also be allowed to use the fund as appropriated for required training expenses.

**Question #38:** We had a discussion regarding CAGIT being receipted into county general fund...whatever happen to that?

**Answer #38:** We had a discussion about CAGIT PTR which in Steuben County is budgeted for deposit in county general. The CAGIT PTR will continue to be deposited and accounted for in the fund designated by the county to receive the CAGIT PTR. CAGIT certified shares will be accounted for in a separate fund so that taxpayers can see the resources and uses of these monies from income taxes.

**Question #39:** Can GAL/CASA appropriate money to have a volunteer banquet at the end of the year?

**Answer #39:** GAL / CASA is a program of the court. Many of these programs receive grant monies from the Supreme Court. Please check the grant agreement for allowable uses to audit the claim documentation. Any clarifications on allowable expenses of the program should come from the grantor. You should also check the county's policies on purchasing food for this purpose.

**Question #40:** We include the election worker pay on our salary ordinances. This includes the per diem pay for precinct members (poll workers) and itemized amounts for attending meetings, inspector's additional amount received for pick up/delivery of supplies and opposite party judge of inspector to return supplies. They are paid out of our own personal services line item. Does this need to be in the salary ordinance or can it just be listed in the Budget Form 1?

**Answer #40:** IC 36-2-5-3 and IC 36-2-5-11 require the salary ordinance to set compensation for all officers, deputies, and employees unless it is set by another statute or by means under some other chapter of the code. We don't see exception for elections workers set in salary ordinance to satisfy IC 36-2-7-2.

**Question #41:** We would like clarification for updated Indiana Code on the requirements for processing election pay (claims or payroll).

**Answer #41:** There is not and never has been guidance in Indiana Code. Updated information must come from the Internal Revenue Service (IRS). We will request they attend an auditor's conference or provide written guidance for Indiana in the near future. You may contact them directly if you have questions that cannot wait for answer.

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**Question #42:** Grant Match – please explain how we are to handle grants that require a match from another fund. Should we issue a check from the fund and put it with the grant fund? Or just track it?

**Answer #42:** We recommend you use the grant fund to account for all grant funding from the grantor and match. Please follow the procedures for state grants in the Accounting and Uniform Compliance Guidelines Manual for County Auditors, page 6-11.

**Question #43:** Are judges claims mandated to be advertised?

**Answer #43:** Court allowances must be published in accordance with IC 36-2-6-3.

**Question #44:** A split was done after 3-1-2011, new owners split will then be billed in 12 pay 13. Seller sold it to 3 different buyers. Seller brought tax statement to me on 5-10-2012 and said, “I sold my property last year. Here is the tax statement. You need to bill the 3 new owners.” How should I handle this problem? Do I do nothing and let the taxes become delinquent, then split those delinquent taxes next year in 12 pay 13 when those 3 parcels became active or taxable? Is it the responsibility of the 3 new owners to check to see if they owe taxes?

**Answer #44:** Let’s say the transfer to split the parcel into three smaller parcels was posted 3-2-1011. In this example the county treasurer would have made certain all taxes were paid through Fall 2010 installment. The single owner owned the property on March 1, 2011, the assessment date for 11 Pay 12 taxes and is; therefore, liable under IC 6-1.1-2-4. The county auditor will split the AV for the 12 Pay 13 taxes so that the 3 new owners will receive the proper tax statement for that year. The 11 Pay 12 taxes were properly billed to the single owner of record on March 1, 2011. If the seller and purchasers made other arrangements to apportion the taxes, it is up to them to work that out and you may assist them with the calculation if you want to but it is not required. If the 11 Pay 12 taxes are not paid in full, it becomes a legal matter for which you should seek guidance from the county attorney and tax sale consultant, if the county has one.

**Question #45:** The utility department in our county always seems to wait and bring in their sewer liens for certification just a couple of days before May 10<sup>th</sup>. Our county attorney said I had to enter them on the tax bill as soon as I received them and I couldn’t hold them after May 10<sup>th</sup>. So now I need to go in to all of these parcels and remove the penalties that the computer will generate? Is this correct?

**Answer #45:** Although, IC 36-9-23-33 requires you to immediately enter the liens on the duplicate, there are ways to make certain you accept and track the liens and notify the county treasurer to collect on the liens while you wait to actually enter the amounts on the duplicate. We recommend you use an alternate procedure until after penalties are applied so that you can avoid these corrections of penalties on the duplicate. Please make certain that any subsidiary records used to accept and track the certified amounts and collections are available to searchers that need this information.

**Question #46:** Regarding the tax sale legislation, allowing the county fiscal body to adopt an ordinance authorizing the county treasurer to accept the minimum bid or 75% of the assessed value of the tract whichever is less, how are the funds then allocated to the taxing districts? Do the funds get allocated to the taxing units only or to both the taxing units and special assessments?

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**Answer #46:** IC 6-1.1-24-7(b)(2) as amended by PL 56-2012, states: In addition to the application of any payment received to taxes, special assessments, penalties and costs included in the minimum bid, each taxing unit having an interest in the taxes on the tract shall be charged with the part of the tax due to the taxing unit equal to an amount that bears the same relationship to the tax due to the taxing unit as the minimum bid, minus the selling price bears to the amount minimum bid. You may need to read this section a few times.

**Question #47:** We have a Local Health Maintenance Fund and a Tobacco Settlement Fund. Is it permissible to combine these 2 funds?

**Answer #47:** Some tobacco master settlement agreement monies were directed to the local health maintenance fund. Other monies that resulted from the master settlement agreement were distributed in the form of grants and other funding. All of which came from the Indiana Department of Health. Before any combining of funds can be justified, research must be done by the county to determine the receipt source and authorizing legislation to show that the funds should have been put into the same fund. Otherwise, the county should maintain the separate funds until the balances are properly expended.