

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES
ISSUED BY STATE BOARD OF ACCOUNTS

JUNE 2013

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2013 LAWS AFFECTING CITIES AND TOWNS

The following is a listing of laws enacted by the General Assembly that are related to cities, towns and municipally owned utilities. This is not intended to be an expression of a legal opinion. If you have any questions regarding legal interpretation, please consult your city or town attorney. We have listed the laws in public law number sequence and the references are to the Indiana Code.

PUBLIC LAW 7 - HOUSE ENROLLED ACT 1359 – EFFECTIVE MAY 15, 2013

AGE-RESTRICTED HOUSING PROGRAMS - Adds IC 36-7-14-49, IC 36-7-14-50, IC 36-7-14-51, IC 36-7-14-52, IC 36-7-15.1-59, IC 36-7-15.1-60, IC 36-7-15.1 61 and IC 36-7-15.1-62 - Allows a redevelopment commission to establish a program for age-restricted housing.

PUBLIC LAW 11 - HOUSE ENROLLED ACT 1261 – EFFECTIVE APRIL 10, 2013

PROPERTY TAXES - LAPORTE COUNTY – Adds IC 6-1-1.1-22.6-26.5 - Permits current owners of property to receive deductions and credits for all assessment dates that have been delayed. Allows the county to authorize a 2% discount for taxes paid within 30 days after tax statements are mailed and exempt all property from tax sale for 12 months.

PUBLIC LAW 19 - HOUSE ENROLLED ACT 1215 – EFFECTIVE JULY 1, 2013

FIRE PROTECTION DISTRICTS - CONDITIONAL SALE OR MORTGAGE CONTRACTS – Amends IC 36-8-11-26 - Allows all fire protection districts to purchase firefighting apparatus and equipment on an installment conditional sale or mortgage contract for a period not exceeding 15 years.

PUBLIC LAW 20 – HOUSE ENROLLED ACT 1225 – EFFECTIVE JULY 1, 2013

SALE OF ELECTRONIC CIGARETTES TO MINORS - Adds IC 7.1-1-3-15.5 and IC 35-46-1-1.5 - Amends IC 7.1-6-2-4, IC 35-43-5-3.5, IC 35-46-1-1.5, IC 35-46-1-10.2, IC 35-46-1-10.5, IC 35-46-1-11, IC 35-46-1-11.5, and IC 35-46-1-11.8 - Makes it a Class C infraction for a person under 18 to purchase, accept for personal use, or possess an electronic cigarette. Requires fines assessed to be deposited in the Richard D. Doyle Youth Tobacco Education and Enforcement Fund.

PUBLIC LAW 28 - SENATE ENROLLED ACT 175 – EFFECTIVE JULY 1, 2013

E-VERIFY-CONTRACTS FOR SERVICES – Amends IC 22-5-1.7-6 - Requires all public contracts for services that are in writing to contain a provision that the contractor enroll in the E-Verify program.

PUBLIC LAW 35 - SENATE ENROLLED ACT 567 – EFFECTIVE JULY 1, 2013

UNIFORM CRIME REPORTING SYSTEM - Amends IC 5-2-6-10.5 and IC 10-13-2-6 - Allows the Indiana Criminal Justice Institute to withhold funds due to a city or town if a city or town public official or public agency fails to comply with the Institute's reporting requirements.

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PUBLIC LAW 36 - HOUSE ENROLLED ACT 1077 – EFFECTIVE APRIL 8, 2013

COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT) - TRANSFERS – Amends IC 6-3.5-7-12.7 - Allows the executive of a city or town to transfer to:

- (1) its general fund; or
- (2) any other fund of the city or town that the executive serves;

money that has been deposited in the economic development income tax fund established by the city or town. The executive shall adjust the city's or town's capital improvement plan to reflect the transfer. After appropriation of the money by the fiscal body of the city or town in a budget or supplemental budget (as required by law), the money transferred may be used for the purposes of the fund to which the money is transferred. Such transfer may be made at any time.

A city or town may not transfer money if the amount transferred would impair the city's or town's ability to satisfy any debts, liabilities, or obligations for which county economic development income taxes are pledged or otherwise encumbered, including transfers required by IC 36-7.5-4-2.

PUBLIC LAW 41 - SENATE ENROLLED ACT 153 – EFFECTIVE APRIL 9, 2013

EMPLOYMENT OF CHILDREN - Adds IC 20-33-3-31.5 - Amends IC 20-33-3-6 and IC 20-33-3-31 - States that an employment certificate is not required for a child who is at least 12 years of age but less than 18 years of age and is employed as a youth athletic program referee, umpire, or official under IC 20-33-3-31.5. Makes certain children at least 12 years of age but less than 18 years of age exempt from the requirements of IC 20-33-3 if they are referees, umpires, or officials meeting certain conditions.

PUBLIC LAW 47 - SENATE ENROLLED ACT 249 – EFFECTIVE JULY 1, 2013

RETIREMENT PLAN REPORTING - Adds IC 5-11-20 - Requires certain information on retirement plans to be reported on the Gateway Annual Report portal beginning next year. These would include pension plans of housing authorities, airport authorities, public transportation corporations, hospitals, local health departments, and utilities.

PUBLIC LAW 50 - SENATE ENROLLED ACT 387 – EFFECTIVE JULY 1, 2013

ILLEGAL PARKING IN A SPACE RESERVED FOR PERSONS WITH A PHYSICAL DISABILITY OR DISABLED VETERANS - Amends IC 5-16-9-5 and IC 5-16-9-8 - Raises the civil judgment from \$50 to \$100.

PUBLIC LAW 59 - SENATE ENROLLED ACT 620 – EFFECTIVE JULY 1, 2013

PROOF OF FINANCIAL RESPONSIBILITY - Adds IC 9-25-8-6 - Amends IC 9-13-2-177.3, IC 9-25-3, IC 9-25-4, IC 9-25-5, IC 9-25-6, IC 9-25-7 and IC 9-25-9 - Allows the Bureau of Motor Vehicles (BMV) to adopt rules regarding proof of financial responsibility. Permits the BMV to verify that a person has legally required financial responsibility in effect. Makes changes to the laws on suspension of a person's driver's license where a person fails to provide proof of financial responsibility.

PUBLIC LAW 65 - HOUSE ENROLLED ACT 1133 – EFFECTIVE JULY 1, 2013

NASHVILLE MUNICIPAL FOOD AND BEVERAGE TAX – Amends IC 6-9-24-8 - Allows money in the food and beverage tax receipts fund to be used to finance, construct, improve, equip, operate, and maintain sidewalks and other streetscape improvements.

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PUBLIC LAW 68 - HOUSE ENROLLED ACT 1270 – EFFECTIVE JULY 1, 2013

TAX INCREMENT FINANCE - HOUSING PROGRAM – Amend IC 36-7-14-47 - Enlarges the maximum area within a city or town that is included in any allocation area established for a housing program from 150 acres to 300 acres.

PUBLIC LAW 71 - HOUSE ENROLLED ACT 1325 – EFFECTIVE JULY 1, 2013

DISASTER RELIEF PERSONNEL - Adds IC 10-14-3-0.5 and IC 10-14-4-0.3 - Amends IC 10-14-3-15, IC 10-14-3-19, IC 10-14-4-2, IC 10-14-4-6, IC 10-14-4-11, IC 22-3-6-1, and IC 22-3-7-9 - Authorizes the State to reimburse a city or town for a backfill employee necessary for the city or town to fill the position and duty of an employee deployed to a mobile support unit, if the cost of the backfill employee represents an extra cost to the city or town.

PUBLIC LAW 72 - HOUSE ENROLLED ACT 1450 – EFFECTIVE JULY 1, 2013

COMMUTER TRANSPORTATION DISTRICT JOINT STUDY COMMITTEE - NONCODE - Creates a study committee to study the composition of the board, the use of Public Mass Transit funds, and all funding sources and expenditures concerning the board including capital expenditures, ridership, and expansion of the Chicago, South Shore, and South Bend Railroad.

PUBLIC LAW 79 - SENATE ENROLLED ACT 365 – EFFECTIVE JULY 1, 2013

UTILITY RELOCATIONS- Adds IC 36-9-42 - Requires a unit to identify each facility located in a public right of way within the geographical limits of a major project by investigating field conditions and reviewing base map data that is maintained by an association under IC 8-1-26-3. Requires notification of each utility identified. States that if, as part of an improvement project, the unit shall pay for the relocation costs in arrears in accordance with accounting procedures established by the State Board of Accounts.

PUBLIC LAW 84 - SENATE ENROLLED ACT 535 – EFFECTIVE APRIL 24, 2013

CLARK COUNTY AIRPORT AUTHORITY - Adds IC 8-22-3-4.5 - Amends IC 8-22-3-4 - Allows Clark County to establish an airport authority which shall be named the South Central Regional Airport Authority. Requires one authority board member to be appointed by the legislative body of the Town of Sellersburg.

PUBLIC LAW 85 - SENATE ENROLLED ACT 538 – EFFECTIVE JULY 1, 2013

MOTOR VEHICLES - Makes numerous changes to IC 9-13-2, IC 9-24, IC 9-27, IC 9-30, IC 33-37-5-14, and IC 35-34-1-2 - Amends several motor vehicle laws concerning credentials, convictions, restrictions, and suspensions. Defines a "moving traffic offense" to mean a violation of a statute, an ordinance, a rule, or a regulation relating to the operation or use of a motor vehicle while the motor vehicle is in motion. Defines a "nonmoving traffic offense" to mean a violation of a statute, an ordinance, a rule, or a regulation concerning the following:

- (1) the parking or standing of motor vehicles, or
- (2) motor vehicles that are not in motion.

Defines "operate" to mean to navigate or otherwise be in actual physical control of a vehicle.

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PUBLIC LAW 88 - SENATE ENROLLED ACT 213 – EFFECTIVE JULY 1, 2013

EMPLOYEE BENEFITS - Adds IC 22-2-16 - States that a city or town may not establish, mandate, or otherwise require an employer to provide to an employee a benefit, term of employment, working condition or attendance or leave policy that exceeds federal or state requirements.

PUBLIC LAW 95 - HOUSE ENROLLED ACT 1016 – EFFECTIVE JULY 1, 2013

PROBLEM SOLVING COURTS - Adds IC 33-23-16-9.1 - Amends IC 33-23-16-13, IC 33-23-16-20, and IC 33-23-16-23 - Allows problem solving courts to offer rehabilitative services. Requires problem solving court fees to be transferred to the fiscal officer within thirty days after the fees are collected.

PUBLIC LAW 101 - HOUSE ENROLLED ACT 1080 – EFFECTIVE JULY 1, 2013

PERF - 13TH CHECK - NONCODE – Provides for a thirteenth check for PERF members, survivors, and beneficiaries.

PUBLIC LAW 103 - HOUSE ENROLLED ACT 1102 – EFFECTIVE JULY 1, 2013

EXECUTIVE SESSIONS – Amends IC 5-14-1.5-2 - Defines litigation to include any judicial action or administrative law proceeding under federal or state law.

PUBLIC LAW 105 – HOUSE ENROLLED ACT 1145 – EFFECTIVE JULY 1, 2013

RAINY DAY FUND – Amends IC 36-1-8-5.1 – Allows a city or town, in any fiscal year, at any time to do the following:

- (1) Transfer any unused and unencumbered funds specified in IC 36-1-8-5.1(b)(2)(A) from any fiscal year to the rainy day fund.
- (2) Transfer any other unobligated cash balances from any fiscal year that are not otherwise identified in IC 36-1-8-5.1(b)(2)(A) or IC 36-1-8-5 to the rainy day fund as long as the transfer satisfies the following requirements:
 - (A) The amount of the transfer is authorized by and identified in an ordinance or resolution.
 - (B) The amount of the transfer is not more than ten percent (10%) of the political subdivision's total annual budget adopted under IC 6-1.1-17 for that fiscal year.

A political subdivision may use only the funding sources specified in IC 36-1-8-5.1(b)(2)(A) or in the ordinance or resolution establishing the rainy day fund. The political subdivision may adopt a subsequent ordinance or resolution authorizing the use of another funding source.

The Department of Local Government Finance may not reduce the actual or maximum permissible levy of a political subdivision as a result of a balance in the rainy day fund of the political subdivision.

A city or town may at any time, by ordinance or resolution, transfer to:

- (1) its general fund; or
- (2) any other appropriated funds of the city or town; money that has been deposited in the rainy day fund of the city or town.

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PUBLIC LAW 105 - HOUSE ENROLLED ACT 1145 - (Continued)

BANK CARDS/CREDIT CARD - CONVENIENCE FEE – Amends IC 36-1-8-11 – Allows a city or town or municipally owned utility may contract with a bank card or credit card vendor for acceptance of bank cards or credits cards. However, if there is a vendor transaction charge or discount fee, whether billed to the political subdivision or municipally owned utility or charged directly to the political subdivision's or municipally owned utility's account, the political subdivision or municipally owned utility may collect from the person using the card either or both of the following:

- (1) An official fee that may not exceed the transaction charge or discount fee charged to the political subdivision or municipally owned utility by bank or credit card vendors.
- (2) A reasonable convenience fee:
 - (A) that may not exceed three dollars (\$3); and
 - (B) that must be uniform regardless of the bank card or credit card used.

The fees described in subdivisions (1) and (2) may be collected regardless of retail merchant agreements between the bank and credit card vendors that may prohibit such fees. These fees are permitted additional charges under IC 24-4.5-3-202.

The city or town or municipally owned utility may pay any applicable bank card or credit card service charge associated with the use of a bank card or credit card.

PUBLICATION OF ORDINANCES - TOWNS - Amends IC 36-5-2-10 - States that an ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under IC 36-5-2-10(c); or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts.

Except as provided in IC 36-5-2-10(e), if a town publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published, it takes effect two (2) weeks after publication of the book or pamphlet. Publication, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

REDEVELOPMENT COMMISSIONS - ANNUAL REPORT - Amends IC 36-7-14-13 and IC 36-7-15.1-36.3 - Changes the due date for the redevelopment commission's annual report to the DLGF from within thirty (30) days after the close of the year to not later than March 15.

PUBLIC LAW 106 - HOUSE ENROLLED ACT 1219 – EFFECTIVE JULY 1, 2013

RESTRICTED ADDRESSES – Adds IC 34-30-2-152.7 and IC 36-1-8.5 - Requires cities and towns to restrict from disclosures the home address of a judge, law enforcement officer, or a victim of domestic violence if such person submits a written request for such restriction. Requires compliance to begin after June 30, 2014. Allows a city or town that operates a public property data base web site to charge a reasonable fee to such persons for restricting access to their home addresses on the web site. States that a written request, notification of name change, or any other information submitted by a covered person is confidential under IC 5-14-3-4(a).

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PUBLIC LAW 110 - HOUSE ENROLLED ACT 1317 – EFFECTIVE JULY 1, 2013

LAND BANK STUDY COMMITTEE - Adds IC 2-5-36.8 - Establishes an interim study committee to study issues related to the creation of municipal land banks.

PUBLIC LAW 112 - HOUSE ENROLLED ACT 1392 – EFFECTIVE JULY 1, 2013

CRIMINAL HISTORY INFORMATION – Amends IC 24-4-18-1, IC 24-4-18-2, IC 24-4-18-3, IC 24-4-18-6, IC 24-4-18-8, and IC 34-28-5-15 - Repeals IC 34-28-5-16 - Provides that a clerk of a city or town court is not a criminal history provider. Repeals the provision where a court clerk must restrict disclosure of an infraction five years after it has been satisfied and permits a person to petition a court to restrict disclosure of an infraction five years after it has been satisfied.

PUBLIC LAW 116 - HOUSE ENROLLED ACT 1536 – EFFECTIVE JULY 1, 2013

SOLID WASTE MANAGEMENT DISTRICTS - LIMITATION OF POWERS – Amends IC 13-21-3-14 - Prohibits a district from registering, issuing a permit for, or licensing a vehicle as a condition of allowing a solid waste hauler to render services within the district.

PUBLIC LAW 117 - HOUSE ENROLLED ACT 1561 – EFFECTIVE JULY 1, 2013

1977 POLICE AND FIRE PENSION FUND – Amends IC 36-8-8-7 and IC 36-8-8-8 - States that a police officer or firefighter who:

- (1) is an active member of the 1977 fund with an employer that participates in the 1977 fund;
- (2) separates from that employer; and
- (3) not later than one hundred eighty (180) days after the date of the separation described in subdivision (2), becomes employed as a full-time police officer or firefighter with a second employer that participates in the 1977 fund;

is a member of the 1977 fund without meeting for a second time the age limitation under IC 36-8-8-7(a) and the requirements under IC 36-8-8-19 and IC 36-8-8-21. A police officer or firefighter is entitled to receive credit for all years of 1977 fund covered service as a police officer or firefighter with all employers that participate in the 1977 fund.

The one hundred eighty (180) day limitation described in IC 36-8-8-7(m)(3) does not apply to a member of the 1977 fund who is eligible for reinstatement under IC 36-8-4-11.

PUBLIC LAW 118 - HOUSE ENROLLED ACT 1568 – EFFECTIVE JULY 1, 2013

REAL PROPERTY SUBJECT TO TAX SALE – Amends several sections of IC 6-1.1-24 and 25 - Provides that a vacant parcel or the certificate of sale for the vacant parcel will be sold to the successful applicant for \$1, plus the amount of certain costs incurred by the county in the sale.

ALTERNATIVE URBAN HOMESTEADING PROGRAM - Adds IC 36-7-17.1 - Allows a city or town to designate an agency or quasi - public corporation, or establish a new agency to administer an urban homesteading program.

PUBLIC LAW 121 - SENATE ENROLLED ACT 293 – EFFECTIVE JULY 1, 2013

INTERIM STUDY COMMITTEE ON GOVERNMENT ACCOUNTING - Adds IC 2-5-36.5 - Creates an interim study committee to study issues concerning state and local government accounting, including issues related to the implementation of generally accepted accounting principles. (GAAP), as adopted by the Government Accounting Standards Board (GASB).

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PUBLIC LAW 141 - HOUSE ENROLLED ACT 1067 – EFFECTIVE JULY 1, 2013

FEDERAL FUND EXCHANGE PROGRAM - Adds IC 36-9-42.2 - Establishes a federal fund exchange program to provide eligible cities and towns and the Indiana Department of Transportation with greater flexibility in funding transportation projects.

PUBLIC LAW 143 – HOUSE ENROLLED ACT 1124 – EFFECTIVE JULY 1, 2013

LATE PAYMENT FEE - Amends IC 33-37-5-22 - States that notwithstanding IC 33-37-4-2(f), IC 34-28-5-5(a), and IC 34-28-5-5(b), the defendant shall pay a late payment fee of twenty-five dollars (\$25) if the defendant:

- (1) is found to have committed a violation constituting a Class D infraction or Class C infraction under IC 5-16-9-5 or IC 5-16-9-8 for unlawfully parking in a space reserved for a person with a physical disability;
- (2) is required to pay a fine or civil judgment;
- (3) is not determined by the court imposing the fine or civil judgment to be indigent; and
- (4) fails to pay the fine or civil judgment in full before the later of:
 - (A) the end of the business day on which the court imposes the fine or civil judgment; or
 - (B) the end of the period specified in a payment schedule set for the payment of fines and civil judgments under the rules adopted for the operation of the court.

However, the court may suspend a late payment fee if the court finds that the defendant has demonstrated good cause for failure to make timely payment of the fee.

PUBLIC LAW 147 - HOUSE ENROLLED ACT 1186 – EFFECTIVE JULY 1, 2013

INCORPORATION OF A TOWN – Amends IC 36-5-1-2, IC 36-5-1-4, IC 36-5-1-7, IC 36-5-1-7.1, IC 36-5-1-8, and IC 36-5-1-9. Requires the written petition to incorporate a town to be signed by at least 10% of the owners of land in the territory. Requires the petition to contain the name, telephone number and email address (if available) of the contact person for the petitioners. The petition must also contain a statement that the petitioners agree to pay the costs of a special election if the petitioners want the incorporation to be approved by public question. Requires a second or third class city to consent or deny consent of such incorporation not later than 90 days after the city council receives the petitioner's written request if the proposed town is within 3 miles of the corporate boundaries of the city. Requires the County Commissioners to either:

- (1) adopt an ordinance incorporating the town,
- (2) deny the petition, or
- (3) adopt a resolution to place a public question concerning incorporation on the ballot at an election.

States that if a petition is denied, a new petition for incorporation may not be refiled for a period of two years for petitions filed after June 30, 2013.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 149 – HOUSE ENROLLED ACT 1313 – EFFECTIVE MARCH 1 AND JULY 1, 2013

REGULATION OF RESIDENTIAL LANDLORDS, BUILDERS AND REMODELERS - Adds IC 36-1-20-4 - States that a city or town may not adopt a regulation after February 28, 2013 and before July 1, 2014 relating to landlord and tenant relations, rental agreements, or real property subject to a rental agreement that:

- (1) requires an owner or landlord to be licensed or to obtain a permit from the political subdivision to lease a rental unit;
- (2) requires an owner or landlord to enroll or participate in a class or government program as a condition for leasing a rental unit; or
- (3) imposes or increases a fee or other assessment for inspection of a rental unit, registration of an owner, landlord, or rental unit, or for any other purpose relating to landlord and tenant relations, rental agreements, or real property subject to a rental agreement.

Provides that a city or town is not prohibited from:

- (1) imposing or increasing a fee relating to the construction of a rental unit, such as a building permit fee; or
- (2) establishing a rental unit inspection program.

Prohibits a city or town from adopting an ordinance or other requirement after February 28, 2013, and before July 1, 2015, that would require a builder or remodeler to be licensed, certified, permitted, registered, or listed by the political subdivision as a condition to the builder or remodeler constructing or remodeling a residential dwelling. States that a city or town is not prohibited from licensing, permitting, or registering specific trades or issuing permits and approvals that regulate the use, planning, and development of property.

PUBLIC LAW 154 – HOUSE ENROLLED ACT 1457 – EFFECTIVE JULY 1, 2013

NEW HIRES - Amends IC 22-4.1-4-2 - Requires employees rehired after at least a 60 day break in service to be reported to the Department of Workforce Development.

PUBLIC LAW 157 - HOUSE ENROLLED ACT 1070 – EFFECTIVE JULY 1, 2013

FOOD AND BEVERAGE TAX - TOWNS OF CLOVERDALE AND FISHERS – Adds IC 6-9-43 and IC 6-9-44 - Allows the towns of Cloverdale and Fishers to establish a food and beverage tax. Requires creation of a food and beverage tax receipts fund for deposit of such revenue. Allows the Town of Cloverdale to use such money for sanitary sewers, wastewater treatment facilities, water treatment, storage or distribution facilities, or drainage or flood control facilities. Allows the Town of Fishers to use such revenue to reduce the Town's property tax levy or for economic development purposes.

PUBLIC LAW 158 – HOUSE ENROLLED ACT 1006 – EFFECTIVE JULY 1, 2013

GHOST EMPLOYMENT - Amends IC 35-44.1-1-3 - Makes it a Level 6 felony if a public servant is found to have committed ghost employment.

CONFLICT OF INTEREST - Amends IC 35-44.1-4 - Makes it a Level 6 felony if a public servant is found to have committed conflict of interest.

PUBLIC LAW 161 - HOUSE ENROLLED ACT 1093 – EFFECTIVE JULY 1, 2013

LAW ENFORCEMENT ANIMALS – Amends IC 5-2-6.1-12, IC 5-2-6.1-21.1, IC 5-2-6.1-23, IC 5-2-6.1-26, IC 5-2-6.1-32, IC 5-2-6.1-34, and IC 35-46-3-11. Makes law enforcement agencies that own law enforcement animals that are permanently disabled, or killed as a result of a violation of IC 35-46-3-11 eligible for assistance from the State's Violent Crime Compensation Fund. Such compensation would include the cost of replacing the animal, which may include the cost of training the animal.

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PUBLIC LAW 163 - HOUSE ENROLLED ACT 1137 – EFFECTIVE JULY 1, 2013

EXTRATERRITORIAL WATER RATES - IURC REVIEW - Amends IC 8-1.5-3-8.3 and IC 8-1.5-3-9.1 - Requires petitions for review by the IURC of extraterritorial water rates must be signed by each individual seeking review or by the attorney representing them. Allows the IURC to extend the 120 day deadline for approving or disapproving the petition for up to 60 days.

PUBLIC LAW 169 - HOUSE ENROLLED ACT 1387 – EFFECTIVE JULY 1, 2013

CITY VETERANS' SERVICE OFFICERS - Adds IC 10-17-12-13 - Amends IC 10-17-1-4, IC 10-17-1-10, IC 10-17-12-0.7, and IC 10-17-12-8 - Requires city service officers to be certified by the Department of Veterans' Affairs. Allows a city that employs a veterans' service officer to apply for a grant of up to \$1,200 for reimbursement of computer equipment and software to enable the officer to access data bases for benefits for veterans.

PUBLIC LAW 184 - SENATE ENROLLED ACT 243 – EFFECTIVE MAY 7, 2013

PUBLIC RECORDS – Amends IC 5-14-3-4 - Adds the home address, home telephone number, and emergency contact information for any:

- (1) emergency management worker (as defined in IC 10-14-3-3);
- (2) public safety officer (as defined in IC 35-47-4.5-3);
- (3) emergency medical responder (as defined in IC 35-42-2-6); or
- (4) advanced emergency medical technician (as defined in IC 16-18-2-6.5)

to the list of public records which can be kept confidential at the discretion of the city or town.

PUBLIC LAW 186 - SENATE ENROLLED ACT 250 – EFFECTIVE JULY 1, 2013

PETITION CARRIERS FOR CANDIDATES AND PUBLIC QUESTIONS - Adds IC 3-6-12 - Sets out requirements for persons who circulate petitions to place a candidate or a public question on the ballot.

PUBLIC LAW 191 - SENATE ENROLLED ACT 415 – EFFECTIVE MAY 7, 2013 AND JULY 1, 2013

HEALTH DEPARTMENTS - Adds IC 16-19-3-30 - Amends IC 4-12-7-4, IC 4-12-7-5, IC 4-12-7-6, IC 16-38-5-1, and IC 16-38-5-2 - Makes several changes to the requirements for local health departments to obtain grants from the State Department of Health. Changes requirements for persons employed to administer immunizations.

PUBLIC LAW 193 - SENATE ENROLLED ACT 496 – EFFECTIVE JULY 1, 2013

REGULATION OF EPHEDRINE AND PSEUDOEPHEDRINE - Amends IC 35-48-4-14.5 and IC 35-48-4-14.7 - States that ephedrine and pseudoephedrine may only be sold by a pharmacy or retailer that uses the NPLEX tracking system. Limits the amount of such chemical reagents to no more than 61.2 grams in a 365 day period.

PUBLIC LAW 195 - SENATE ENROLLED ACT 526 – EFFECTIVE JULY 1, 2013

PUBLIC EMPLOYEES RETIREMENT FUND (PERF) - Amends IC 5-10.2-3-3, IC 5-10.2-4-8, IC 5-10.2-4-9, IC 5-10.2-4-10, and IC 5-10.3-7-1 - Provides that a retired member of PERF who, after June 30, 2013, begins a period of reemployment in a position covered by PERF, continues to receive a retirement benefit, but does not earn a supplemental retirement benefit for the member's period of reemployment. Provides that a retired member of PERF who, before July 1, 2013, begins a period of reemployment in a position covered by PERF earns a supplemental benefit for the member's entire period of reemployment.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 202 - SENATE ENROLLED ACT 343 – EFFECTIVE JULY 1, 2013 AND JANUARY 1, 2014

LOCAL GOVERNMENT REORGANIZATION - Amends and adds to several sections of IC 36-1.5-4 - Adds IC 36-4-1-1.5, IC 36-4-3-1.4, IC 36-7-4-107, IC 36-7-4-202.5 and IC 36-7-4-901.5 Repeals IC 36-1.5-2-6, IC 36-1.5-4-15, IC 36-1.5-4-16, and IC 36-1.5-4-17 - Makes several changes to the laws governing local government reorganization. Requires an approval threshold for reorganizations voted on after December 31, 2013. Specifies that a reorganized political subdivision created from two or more townships and at least one municipality that have reorganized:

- (1) may exercise park and recreation powers and establish a parks and recreation board; and
- (2) may exercise planning and zoning power, if the reorganized political subdivision's plan of reorganization includes such powers.

PUBLIC LAW 203 - SENATE ENROLLED ACT 433 – EFFECTIVE JULY 1, 2013

SALE OR TRANSFER OF REAL PROPERTY IN CITIES OR TOWNS - Adds IC 6-1.1-24-6.2 - States that for property located within the boundaries of a city or town, before the transfer of real property under IC 6-1.1-24-6.7, the sale of real property under IC 6-1.1-24-6.8, or the transfer of real property under IC 6-1.1-24-6.9, the county executive of the county in which the real property is located shall notify the executive of the city or town in which the real property is located of the opportunity to accept a transfer of the property to the city or town as negotiated between the city or town and the county.

After receiving notice from a county executive under subsection (b), the executive of the city or town shall respond to the notice not later than twenty (20) days after the executive receives the notice.

ABANDONED REAL PROPERTY - Adds IC 32-30-10.6-3.5 - Provides that an alternative to seeking a determination of abandonment under any other statute, the executive of a city or town that:

- (1) has jurisdiction in the location of a property; and
- (2) does not have a person designated as a hearing authority, as defined by IC 36-7-9-2; may petition a court for a determination that the property is abandoned.

A petition filed with the court under this section must do all the following:

- (1) Include a statement of the enforcement authority's jurisdiction in the location of the property.
- (2) Allege that the property is abandoned.
- (3) Include evidence that one (1) or more of the conditions set forth in IC 32-30-10.6-5(a) or IC 32-30-10.6-5(b).

A petition shall be served on:

- (1) the creditor and the debtor, if the property is subject to a mortgage; and
- (2) any other appropriate party;

in the manner prescribed by the Indiana Rules of Trial Procedure.

WEED CUTTING ASSESSMENTS - Amends IC 36-7-10.1-3 and IC 36-7-10.1-4 - Eliminates the requirement to notify a property owner of a violation by certified mail. Requires a property owner to be notified by first class mail. States that if the owner of real property fails to pay a bill issued under IC 36-2-10.1-3 within the time specified in the ordinance, the municipality may bring an action in an appropriate court to collect the amount of the bill, plus any additional costs incurred in the collection, including court costs and reasonable attorney's fees. If the municipality obtains a judgment, the municipality may obtain a lien in the amount of the judgment on any real or personal property of the owner.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 205 - HOUSE ENROLLED ACT 1001 – EFFECTIVE JULY 1, 2013

STATE BUDGET - Establishes a budget for State government for the next two years. Provides new road funding from sales tax on gasoline to cities and towns

OTHER POST EMPLOYMENT BENEFITS (OPEB) - Adds IC 36-1-8-17.5 - Requires all political subdivisions to report to the DLGF before February 1 of each year the political subdivision's OPEB liability, unfunded OPEB liability, OPEB assets, contributions, and expenses and expenditures for the preceding year.

WHEEL TAX/SURTAX - Amends IC 6-3.5-4 and IC 6-3.5-5 - Provides for the adoption of the wheel tax/surtax in CAGIT counties using the provisions of the County Income Tax Council in COIT counties before July 1, 2013.

PUBLIC LAW 206 - SENATE ENROLLED ACT 4 – EFFECTIVE JULY 1, 2013

HISTORIC PRESERVATION DISTRICTS - Adds IC 36-7-11-23 - Sets out procedures to be used for removing the designation of a historic district.

PUBLIC LAW 212 - HOUSE ENROLLED ACT 1011 – EFFECTIVE MAY 9, 2013

CENTRAL INDIANA TRANSIT STUDY COMMITTEE - Adds IC 36-1-7-17 and IC 36-9-3-0.5 - Creates an interim study committee to identify potential funding sources and expenditures for bus and bus rapid transit and light rail transportation. Prohibits certain central Indiana counties, and cities and towns located in those counties from establishing a new regional transportation authority.

PUBLIC LAW 217 - HOUSE ENROLLED ACT 1112 – EFFECTIVE JULY 1, 2013

WRITE-IN CANDIDATES - Amends IC 3-8-2-2.5, - States that a write-in candidate for election may not claim affiliation with any political party in the State whose nominee received at least two percent of the total vote cast for secretary of state at the last election.

PUBLIC LAW 218 - HOUSE ENROLLED ACT 1116 – EFFECTIVE JULY 1, 2013

BUDGETS, TAX RATES, AND LEVIES - Amends and adds to several chapters of IC 6-1.1 - Requires the Department of Local Government Finance (DLGF) to conduct a public hearing on a political subdivision's budget, tax rate, and tax levy if requested in writing by a taxpayer. Allows the DLGF to conduct hearings for multiple political subdivisions at the same hearing. Eliminates amounts to be paid from donations and other gifts for a capital project from the total project cost when determining whether a project is a controlled project and whether the petition and remonstrance process or referendum process apply to the project. Eliminates the requirement that the county auditor notify each political subdivision of the property tax reductions resulting from the circuit breaker credit.

REDEVELOPMENT COMMISSIONS - Amends IC 36-7-14-13, IC 36-7-14-39, and IC 36-7-15.1-36.3 - Requires redevelopment commissions to submit a report to the city or town council before August 1 each year on revenues received, expenses paid, fund balances, debt obligations payments and balances, and a listing of parcels included in each tax increment financing (TIF) district allocation area and the base assessed value and incremental assessed value for each parcel on the list. Requires a city or town council to compile such reports and submit a comprehensive report to the DLGF before October 1 each year. Makes changes to effects tax abatements and reassessment have on the base assessed values of TIF properties.

LIBRARIES - BUDGETS AND TAX LEVIES - NONCODE - Requires the Commission on State Tax and Financing Policy to study whether public libraries should remain subject to the budget and property tax levy review laws that were in effect January 1, 2013.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 219 - HOUSE ENROLLED ACT 1157 – EFFECTIVE VARIOUS DATES

ELECTIONS - Makes numerous changes to the laws affecting elections and voter registration in Title 3.

PUBLIC QUESTIONS - Amends IC 36-1.5-4-11 and IC 36-1.5-4-30 - Changes laws dealing with deadlines for certification and withdrawal of public questions for controlled projects.

PUBLIC LAW 226 - SENATE ENROLLED ACT 349 – EFFECTIVE JULY 1, 2013

UTILITIES - ECONOMIC DEVELOPMENT - Adds IC 36-1-14-1.5 - Allows the City of Peru municipal legislative body, with the approval of the board (as defined in IC 8-1.5-3-2) of the municipality's municipally owned utility, to donate funds from a municipally owned utility's surplus earnings (as defined in IC 8-1.5-3-11) to a local economic development organization, as long as terms and conditions of any bond ordinance, resolution, indenture, contract under IC 8-1-2.2, or similar instrument binding upon the municipally owned utility are complied with before the donation is made.

Defines a local economic development organization to include the following:

- (1) A nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana.
- (2) A nonprofit educational organization whose primary purpose is education and developing local leadership for economic development initiatives.
- (3) Any similar organization, including a partnership between private enterprise and one (1) or more units, the purposes of which include:
 - (A) promoting development activities in one (1) or more units;
 - (B) coordinating local efforts to attract jobs and new business investment;
 - (C) providing assistance to existing businesses to foster growth and job retention; and
 - (D) sustaining and improving the quality of life in the units served.

PUBLIC LAW 229 - SENATE ENROLLED ACT 528 – EFFECTIVE MAY 10, 2013

GAMING - Adds and amends several chapters of IC 4-31, IC 4-33, IC 4-35 and IC 5-14-3.8-3 - Provides that certain local development agreement reports be made available through the Indiana Transparency Website for local government.

PUBLIC LAW 230 - SENATE ENROLLED ACT 585 – EFFECTIVE JULY 1 AND SEPTEMBER 1, 2013

CITY OF GARY - GARY AIRPORT AUTHORITY - Adds IC 2-5-28.5-4.6, IC 6-1.1-18.5-22.5, and IC 36-7.5-5 - Amends IC 6-1.1-18.5-2, IC 8-22-3-4.3, IC 8-22-3-9, and IC 8-22-3-19 - Requires the DLGF to increase the maximum property tax levy for the City of Gary and decrease the maximum property tax levy of the Gary Sanitary District to zero. Terminates the terms of existing board members of the Gary Airport Authority. Provides that the Governor's appointment to the Authority serves as president of the board. Makes several changes to the laws governing debt and audit of the authority.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 233 - HOUSE ENROLLED ACT 1544 – EFFECTIVE MAY 10, 2013

INDIANA MOTORSPORTS COMMISSION - Adds IC 4-10-23, IC 5-1-17.5, IC 5-28-36, and IC 6-3-2-3.2 - Establishes the Indiana Motorsports Commission which can establish a motorsports investment district.

PUBLIC LAW 238 - SENATE ENROLLED ACT 169 – EFFECTIVE JULY 1, 2013

INSURANCE PROCEEDS SET ASIDE - Adds IC 27-2-15-2.5, IC 27-2-15-3.2, IC 27-2-15-4.2, IC 27-2-15-4.3, and IC 27-2-15-4.4 - Amends IC 27-2-15-4.5, IC 27-2-15-5, IC 27-2-15-6, IC 27-2-15-9, IC 27-2-15-11 and IC 34-30-2-111 - Allows cities and towns to participate in an insurance set aside program with the Department of Insurance to recover demolition or rehabilitation costs incurred by a city or town for certain buildings destroyed by arson or fraud.

PUBLIC LAW 240 - SENATE ENROLLED ACT 226 – EFFECTIVE JULY 1, 2013

ELECTED OFFICIAL STUDY COMMITTEE - NONCODE - Urges the legislative council to establish a study committee on the topic of suspension from office for officials charged with a felony.

PUBLIC LAW 241 - SENATE ENROLLED ACT 235 – EFFECTIVE JULY 1, 2013

REGULATION OF VIDEO SERVICE PROVIDERS - Adds IC 8-1-34-30 - Amends IC 8-1-2.6-4 - Authorizes the IURC to grant direct marketing authority to a holder of a video service franchise. Allows the holder, through its designated employees, to market its services and products to households in its service area. Permits a holder to market services and products within a city or town without obtaining a city or town required license. Allows cities and towns to regulate the hours and manner in which the services or products are sold.

PUBLIC LAW 243 - SENATE ENROLLED ACT 285 – EFFECTIVE MAY 11, 2013

ANNEXATION - Amends IC 36-4-3-4.1, IC 36-4-3-9, and IC 36-9-22-2 - States that a town may not annex within an area that extends one mile outside the corporate boundaries of a second or third class city. Allows a town to annex within an area that extends more than one mile and not more than three miles outside the corporate boundaries of a second or third class city, if the annexation does not include territory that extends more than one mile outside the corporate boundaries of the town. Allows for the establishment of an interim study committee on annexation.

SIGNED MEMORANDUM OF AGREEMENT - SANITARY DISTRICTS - Amends IC 36-9-25-14 - Allows for a signed memorandum of sewer service agreement to be entered into and be recorded. Allows for a waiver of rights to remonstrate to be entered into after June 30, 2013

PUBLIC LAW 251 - SENATE ENROLLED ACT 385 – EFFECTIVE JANUARY 1, 2013 AND JULY 1, 2013

WHOLESALE SEWAGE SERVICE - Adds IC 8-1-2-61.7 - Amends IC 8-1-2-70, IC 8-1-6-2, and IC 36-9-22-2 - Provides that a utility that either provides or receives wholesale sewage service and negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract, may file a petition for review of rates and charges with the IURC or the circuit or superior court in the county where the utility has its principal office. Requires the IURC or a court to issue an order on such petitions. Urges the legislative council to establish a study committee to study water and wastewater rates imposed on users inside and outside the corporate boundaries or service territory of a utility.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 255 - SENATE ENROLLED ACT 459 – EFFECTIVE MAY 11, 2013

LOCAL GOVERNMENT REORGANIZATION - Amends several sections of the Indiana Code - Makes several changes to eliminate double taxation for services or goods provided by a reorganized political subdivision or eliminate any excess by which property taxes imposed by the reorganized political subdivision exceeds the amount necessary to pay for services or goods provided. Adds procedures for the use of excess funds which are determined to be generated as a result of the reorganization. Provides for transfer of a development area from one redevelopment commission to another adjacent city or town's redevelopment commission.

PUBLIC LAW 257 - SENATE ENROLLED ACT 517 - EFFECTIVE VARIOUS DATES

DEPARTMENT OF LOCAL GOVERNMENT FINANCE - Amends and adds to several chapters and sections of Title 6 - Allows the DLGF to establish a three year pilot program for three counties concerning nonbinding review of budgets, tax rates, and levies.

PUBLIC LAW 258 - SENATE ENROLLED ACT 519 – EFFECTIVE JULY 1, 2013

ELECTIONS - Makes numerous changes to the election laws in Title 3 - Adds IC 3-14-1-17 - States that a government employee may not knowingly or intentionally use the property of the employee's government employer to do any of the following:

- (1) Solicit a contribution.
- (2) Advocate the election or defeat of a candidate.
- (3) Advocate the approval or defeat of a public question.

A government employee may not knowingly or intentionally distribute campaign materials advocating:

- (1) the election or defeat of a candidate; or
- (2) the approval or defeat of a public question;

on the government employer's real property during regular working hours.

This does not prohibit activities permitted under IC 6-1.1-20.

A government employee who knowingly or intentionally performs several actions described in IC 3-14-1-17(d) or (e) in a connected series that are closely related in time, place, and circumstance may be charged with only one (1) violation of IC 3-14-1-17 for that connected series of actions.

A government employee who violates commits a Class A misdemeanor. However, the offense is Class D felony if the person has a prior unrelated conviction under IC 3-14-1-17.

PUBLIC LAW 259 - SENATE ENROLLED ACT 523 - EFFECTIVE JULY 1, 2013

OFF-ROAD VEHICLES - Amends IC 9-21-3-3, IC 9-21-3-3.3, IC 9-21-8-57, and IC 9-21-9-0.5 - Allows a city or town to adopt an ordinance that allows off-road vehicles to operate on a city or town highway or street.

PUBLIC LAW 261 - SENATE ENROLLED ACT 544 – EFFECTIVE JULY 1, 2013

STATE AND LOCAL TAXES - Amends and adds numerous section of Title 6 - Urges the Legislative Council to assign the topics of imposition, administration, and distribution of local income taxes to an interim study committee.

PUBLIC LAW 266 - SENATE ENROLLED ACT 621 – EFFECTIVE JULY 1, 2013

MARION COUNTY GOVERNMENT - Adds IC 3-11.5-4-0.5 and IC 36-3-6-10 - Amends IC 36-3-1-5.1, IC 36-3-2-10, IC 36-3-4-2, IC 36-3-4-3, IC 36-3-5-2, IC 36-6-6-2, and IC 36-7-4-207 - Reduces the membership of the city-county council from 29 to 25. Allows the controller to allot amounts appropriated to an office, department, or agency of the consolidated city or county. Makes several other changes to the laws governing Marion County government.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 270 - HOUSE ENROLLED ACT 1307 – EFFECTIVE MAY 11, 2013 AND JULY 1, 2013

UTILITIES - PURCHASE OF UTILITY COMPANIES - Adds IC 8-1.5-2-15.5 and IC 8-1.5-2-33 - Amends IC 8-1-2-92, IC 8-1-2-93, IC 8-1-30-6, IC 8-1.5-2 and IC 8-1.5-3-8.3 - Allows a municipally owned utility from purchasing the property of a utility company that provides water or sewer service where the IURC has found the utility company is in violation of the IURC's orders or has failed to remedy any severe deficiencies.

PUBLIC LAW 271 - HOUSE ENROLLED ACT 1311 - EFFECTIVE JULY 1, 2013

ELECTIONS - Amends several chapters and sections of Title 3, IC 36-4-6, and IC 36-5-2-4.1 - Makes several changes to the laws dealing with recertifying city and town boundaries.

PUBLIC LAW 272 – HOUSE ENROLLED ACT 1312 – EFFECTIVE JULY 1, 2013

EARN INDIANA PROGRAM - Adds IC 21-16-1-4.5 and IC 21-16-2-9 - Amends IC 21-16-1-6, IC 21-16-1-8, IC 21-16-1-10, IC 21-16-2-1, IC 21-16-2-2, IC 21-16-2-3, IC 21-16-2-4, IC 21-16-2-6, and IC 21-16-2-8 - Repeals IC 21-16-2-5 - Changes the name of the College Work Study Program to the Earn Indiana Program. Makes the program a year-round program. Makes several changes to the laws dealing with eligibility and funding.

PUBLIC LAW 275 - HOUSE ENROLLED ACT 1320 - EFFECTIVE JULY 1, 2013

WORKERS COMPENSATION - Amends IC 22-3-3-10 and IC 22-3-3-22 - Raises the maximum average weekly wage by 20% and increases degrees of impairment and disablement effective July 1, 2014.

PUBLIC LAW 277 - SENATE ENROLLED ACT 1324 – EFFECTIVE JULY 1, 2013

ALTERNATIVE FUELS - Adds IC 2-5-36.3, IC 6-6-12 and IC 6-3.1-34.6 - Amends IC 5-22-5-8.2, IC 6-2.5-5-27 AND IC 6-6-2.1 - Creates several tax credits for vehicles using alternative fuels.

PUBLIC LAW 284 - HOUSE ENROLLED ACT 1393 – EFFECTIVE MAY 1, 2013

AUTOMATED RECORD KEEPING FEE – Amends IC 33-37-5-21 - Raises the automated record keeping fee on all civil, criminal, infraction, and ordinance violation actions from five dollars (\$5) to seven dollars (\$7) after June 30, 2013 and before July 1, 2015. If an accused person enters into a pretrial diversion program or deferral program agreement, the automated record keeping fee is five dollars (\$5) after June 30, 2013, and before July 1, 2015.

PUBLIC LAW 288 - HOUSE ENROLLED ACT 1545 – EFFECTIVE VARIOUS DATES

TAXATION - Makes many changes to IC 6-1.1-12.1 concerning deductions, abatements, and circuit breaker credits.

LOGISTICS INVESTMENTS - Adds IC 6-3.1-26-8.5 - Adds logistic investments as a type of qualified investment under the Hoosier business investment tax credit.

AVIATION FUEL EXCISE TAX - Adds IC 6-6-13 - Creates an aviation fuel excise tax.

RAINY DAY FUND - Amends IC 36-1-8-5.1 - Prohibits transfers from a debt service fund to the rainy day fund.

2013 LAWS AFFECTING CITIES AND TOWNS

PUBLIC LAW 290 - HOUSE ENROLLED ACT 1579 – EFFECTIVE JULY 1, 2013

OPEN CONTAINER LAWS - Amends IC 9-30-15-3 - Provides that for the purposes of the open container laws, the exemption for the person who is in the passenger compartment of a vehicle used to transport passengers for compensation or the living quarters of a house coach or trailer does not apply to the operator of the vehicle.

GARNISHMENT OF SALARIES AND WAGES

An employer who is required to make deductions from an employee's pay due to a garnishment order may impose a fee equal to the greater of twelve dollars (\$12) or three percent (3%) of the total amount deducted.

If the fee is imposed, one-half may be deducted directly from the employee's pay and one-half may be retained by the employer from the amount otherwise due the creditor. These deductions do not increase the amount of the judgment debt for which the fee is collected.

We suggest you have your city or town attorney review IC 24-4.5-5-105 and also refer them to several Attorney General official opinions (Numbers 72-10, 80-7, and 80-29) on this same subject.

INTEREST ON PAYMENTS FOR ROAD WORK

IC 36-1-12-17 requires that each contract for roadwork must provide for final payment within one hundred twenty (120) days after final acceptance and completion of the contract. Final payment may not be made on any amount that is in dispute, but final payment may be made on that part of a contract or those amounts that are not in dispute.

For each day after one hundred twenty (120) days, the city or town shall pay to the contractor interest for late payment of money due to the contractor. However, interest may not be paid for those days that the delay in payment is not directly attributable to the municipality. The annual percentage rate of interest on the unpaid balance is twelve percent (12%).

INTEREST ON PUBLIC CONTRACTS WHEN NOT PAID TIMELY

IC 5-17-5 provides that every "political subdivision shall pay a late payment penalty at the rate of one percent (1%) per month on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel whenever . . . the political subdivision fails to make timely payment."

Payment made by a political subdivision is timely if:

- (1) a date for payment is not specified in an applicable contract;
- (2) a claim;
 - (A) for payment for goods or services; and
 - (B) that must be approved by a local legislative body or board; is submitted to the body or board; and
- (3) the political subdivision pays the claim within thirty-five (35) days following the first regularly scheduled meeting of the body or board that is held at least ten (10) days after the body or board receives the claim.

The interest requirement does not apply to the following:

- (1) Interagency or intergovernmental transactions.
- (2) Amounts payable to employees or prospective employees of state agencies or political subdivisions as reimbursement for expenses.
- (3) Claims subject to a good faith dispute, if before the date of timely payment notice of the dispute is:
 - (A) sent by certified mail;
 - (B) personally delivered; or
 - (C) sent in accordance with the procedure in the contract.
- (4) Contracts entered into before September 1, 1983.
- (5) Contracts related to highway or road construction, reconstruction, or maintenance, if:
 - (A) the Indiana Department of Transportation authorizes partial progress payments under IC 8-23-9-14; and
 - (B) each progress payment does not exceed five hundred dollars (\$500).
- (6) Claims, contracts, or projects that are to be paid for exclusively with federal funds.

As used in IC 5-17-5-2(a)(3), "good faith dispute" means:

 - (i) a contention by the state or political subdivision that goods delivered or services rendered were:
 - (a) of less quantity or quality than ordered or specified by contract;
 - (b) faulty; or
 - (c) installed improperly; or
 - (ii) any other reason giving cause for the withholding of payment by the state or political subdivision until such dispute is settled.

ALLOWANCE OF CITY CLAIMS – WHO SHOULD APPROVE

From present city administration statutes, IC 36-4-8, Home Rule, IC 36-1-3, and inferences contained in the old, repealed statutes, (IC 18-1-20-1), we formulated the following audit position. The State Board Of Accounts will not challenge the authority for either the Board of Public Works and Safety or the Common Council to approve and allow city claims. (Presently in a few cities, both groups are reviewing claims.) This refers to those claims not required, by statute, to be reviewed and allowed by some other city department or city agency.

In those few instances where there is a dispute regarding who has this authority, we feel the Common Council has authority, by ordinance, to delegate this authority to a city body such as the Board of Public Works and Safety or themselves or, with continued dispute, pursuant to IC 36-4-4-5, the question can be presented to a court of competent jurisdiction.

ALLOWANCE OF WATER, GAS & ELECTRIC UTILITY CLAIMS

It is our audit position that a city or town council may, by ordinance, provide for the control of any or all of its municipal utilities by:

- (1) the municipal works board;
- (2) a board consisting of the members of the municipal legislative body;
- (3) a utility service board; or
- (4) the board of directors of a department or waterworks. (IC 8-1.5-3-3)

IC 36-9-23-3 allows a city or town legislative body, by ordinance, to transfer the control of its wastewater utility from its municipal works board to a sanitary board or utility service board.

As to which governing body approves the claims for a municipal utility, we feel the board given the control in the aforementioned ordinance should approve the claims.

WASTEWATER UTILITY DEPOSITS

For those cities and towns that require wastewater utility deposits, the amount of the deposit required may not exceed the average payment due from the property served by the sewage works for a three (3) month period. A wastewater utility is not required to pay interest on any amounts refunded and a wastewater utility may retain any deposits remaining for more than seven (7) years after termination of service. (IC 36-9-23-28)

COST SAVING INCENTIVE PROGRAM

Cities and towns may establish a cost saving incentive program to develop and implement cost saving measures. The program may include awards to employees who suggest cost saving measures and must be established by ordinance. (IC 36-1-13)

SALE OF TOBACCO TO MINORS – PENALTIES

IC 7.1-6-2 and IC 35-46-1 list specific penalties for selling tobacco products to persons under eighteen (18) years of age. Such penalties, if collected by a court, are to be receipted to a city or town court's trust records and sent to the Auditor of State semiannually.

AFFORDABLE CARE ACT PENALTIES, FINES, OR TAX

The State Board of Accounts has received many questions regarding our audit position with regards to the Affordable Care Act. Most of the questions have inquired specifically about the penalties, fines, or tax associated with this law. While our general audit guidelines prohibit the paying of penalties and interest and states that those payments would be a personal charge to the fiscal officer, administrator, or board, we do not believe this general guideline should apply to this controversial, mandated, and complicated law.

We also believe that the governing boards should be making the fiscal decisions associated with their unit of government and the implementation of this law. Therefore, if the fiscally wise decision of the board is to pay the penalties, fines, or tax instead of the cost of the insurance then we will not personally charge the officials involved. One of the conditions necessary to not charging the penalties, fines, or tax is to have the governing board officially document their decision to not comply with the Affordable Care Act. This could be a motion in the board minutes, a resolution, or an ordinance.

In summary, as long as there is an official action of the board to choose to pay the fines, penalties, or tax, the State Board of Accounts will not personally hold anyone in that unit of government accountable for reimbursing the cost of those penalties, fines, or tax.

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.

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.

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

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.

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.

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

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.

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)HE 1005.1.2. --> 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.

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

(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.

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."

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

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]:

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.

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

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.

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.

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

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.

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 HEA 1005 (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 "unit's" 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.

(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.

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

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;
- (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

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

- (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 6-1-21. 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 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.

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

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."

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.

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

(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 HEA 1005 (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. 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.

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

(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.

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.

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

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 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.

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

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 PL 135, 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"?

Answer 2: Yes, but there are some stipulations. Under the new law, an individual cannot be employed if their "relative" is in the "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, and advancement or performance evaluation. This means that you cannot have a situation where an individual is reporting directly to their "relative."

It is also our understanding through discussions with legislative members that an elected official not have decision making power of hiring of a staff person who is also a relative to that elected official.

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

Answer 2: Example: A county clerk could NOT have a relative as their chief deputy, *neither could a county clerk have a relative working in their office unless the county clerk removed themselves from the responsibility for affecting the terms and conditions of ALL individual's employment in their office, including, making decisions about work assignments, compensation, grievances, advancement, or performance evaluations. A county clerk could NOT remove themselves from the "direct line of supervision" for a relative if they are in the "direct line of supervision" for a relative if they are in the "direct line of supervision" of other employees in addition to the chief deputy, in the 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.

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 counsel 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.

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

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?

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 HEA 1005 (2012)".

PAYMENT OF CLAIMS - ELECTRONIC FUNDS TRANSFER

The fiscal body of a city or town or the board of a municipally owned utility may adopt a resolution to authorize an electronic funds transfer method of payment of claims. If the proper body adopts a resolution, the city or town may pay money from its funds by electronic funds transfer.

A city or town or municipally owned utility that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by political subdivisions or municipal utilities.

"Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. [IC 36-1-8-11.5]

ISSUING DUPLICATE WARRANTS

When a city or town warrant is lost or for some other reason has not been presented for payment by the depository on which drawn, and evidence of this fact is submitted, the city or town is authorized to issue a duplicate warrant to replace the original warrant; however, certain safeguards should be exercised before the duplicate warrant is issued, as recommended in the following outline:

1. The person, firm, or corporation requesting the duplicate warrant should submit to the city or town fiscal officer an affidavit setting out all pertinent information with reference to such warrant. A separate affidavit should be furnished by the payee and by each party to whom it was endorsed. A suggested form of affidavit will be found on page 38.
2. Immediately upon receipt of the affidavit, the fiscal officer should issue a stop payment order on the original warrant to the bank on which it was drawn.
3. Delay issuing the duplicate warrant until the warrants for the month in which the stop payment order was issued are returned by the bank and the fiscal officer has verified that the original warrant has not been cashed.

ISSUING DUPLICATE WARRANTS (Continued)

4. Issue the duplicate warrant on the next warrant number of the current series, under current date (not the date it was originally issued), bearing the payee's name, amount and other details shown on the original warrant, but clearly indicate thereon that it is "issued to replace warrant number ____, dated _____, 20__." In this manner no problems should arise when the warrant is presented to the bank for payment, which sometimes happens when it is given the date and number of the original warrant on which payment was stopped. It is not permissible to have unnumbered warrants furnished by the printer for this purpose; always use the next warrant number in the current series but show thereon the warrant number it replaces.
5. The duplicate warrant is not to be posted to the ledgers since it is issued only for the purpose of replacing the original warrant. To identify it as a duplicate so it will not be posted and added with the disbursements for the month, simply circle the copy in the warrant register or otherwise identify it as a "Duplicate."

A duplicate warrant might, under emergency conditions, be issued within a short time after the stop payment order is given the bank where the bank furnishes a statement that they have checked the paid warrants to date and the warrant in question has not been paid. However, a safe position is to wait until the canceled warrants for the month in which the stop payment order was issued are returned by the bank and the fiscal officer has verified the warrant has not been paid.

 *FOR USE OF CITY/TOWN FISCAL OFFICER *
 *Duplicate Issued on *
 * Warrant Number _____ *
 * Date _____, 20__ *

AFFIDAVIT FOR ISSUANCE OF DUPLICATE WARRANT

STATE OF INDIANA)
)SS:
 COUNTY OF _____)

I, _____, presently residing at _____
 _____ County, Indiana, being first duly sworn upon my oath, say:

1. That I have been informed a city/town warrant was issued from the _____
 Fund, in the sum of \$_____, said warrant bearing number _____, dated _____,
 20__, payable to _____ for _____.

2. That I am the person to whom said warrant was payable, or am the owner, partner or an
 officer in the firm or corporation to which payable or to which the warrant was subsequently endorsed.

(Strike out 3a or 3b, whichever is not applicable)

3a. That payment has not been received on said warrant or on any other warrant for the sum due
 as described above, for the reason that said warrant was (describe whether lost, destroyed or stolen; the
 date of the occurrence, if known; and all other pertinent facts).

3b. That payment was received on said warrant from _____
 to whom it was subsequently endorsed.

4. That I fully understand payment will be stopped on the original warrant and, if a duplicate
 warrant is issued and payment is obtained thereon, that I will not be entitled to receive payment on the
 original warrant; and, further, should said original warrant ever come into my possession I will
 immediately forward it to the city/town fiscal officer.

 (Signature of Affiant)

Subscribed and sworn to before the undersigned, a Notary Public, in and for said county and
 state, this ____ day of _____, 20__.

 Notary Public

My Commission Expires: _____

Note: If the payee did not receive payment, strike out paragraph 3b. If the payee and any subsequent
 endorser received payment, strike out paragraph 3a. In the latter instance the last party to whom the
 warrant was endorsed should complete paragraph 3a. A separate affidavit should be obtained from the
 payee and from each party to whom the warrant was endorsed.

INTERNAL CONTROLS

Internal controls are the policies and procedures used by management to ensure that their programs and functions operate efficiently and effectively in conformance with applicable laws and regulations. One purpose of internal control is to ensure that financial reporting of the financial statements and the schedule of expenditures of federal awards are completed accurately. It is also used to reduce the risk associated with fraud related to the operations of the governmental unit. Internal control is essentially a check and balance system over the operations. The foundation for a good internal control system starts with making sure that there are appropriate procedures in place to ensure that errors and fraud are either prevented or detected and corrected in a timely manner.

In order to have an effective internal control system, it is important to have proper segregation of duties. Segregation of duties is a common term referred to in relation to internal control. This means to have a separation of functions over certain activities that would provide internal control. The fundamental premise of segregation of duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action. An example of appropriate segregation of duties would be having one individual prepare claims, having another individual review and approve the claims, and having a third individual sign the checks for payment of the claims. Without proper segregation of duties, it is difficult to have an effective system of internal control. Sufficient compensating controls would then need to be implemented. This might entail random verification and approval by the official at different points in the process or switching duties. There are two main advantages to implementing segregation of duties. The first is that fraud is more difficult to perpetrate when proper segregation of duties is in place because it would require collusion of two or more individuals. Secondly, with several individuals involved in the process, innocent errors are more likely to be detected and corrected. Officials have the fiduciary responsibility to ensure the proper accountability of financial activity. This is accomplished by making sure there is proper oversight, reviews and approvals.

The Accounting and Uniform Guidelines Manual for each unit provides that internal controls be established and put into operations. Therefore, a sound internal control system should be put into place to ensure accurate reporting of the financial statements and the schedule of expenditures of federal awards. Additionally, a sound internal control system should be put into place to ensure that all requirements related to federal awards received are complied with. The requirements of a federal program can be obtained from various sources which include but are not limited to the grant agreement with the Federal agency/pass-through entity, the appropriate section of the Code of Federal Regulations and United States Code, and applicable handbooks and other guidance provided by the Federal agency and/or pass-through entity.

In addition to the guidance noted above, the A-102 Common Rule and OMB Circular A-110 (2 CFR part 215) require that non-Federal entities receiving Federal awards (i.e., auditee management) establish and maintain internal control designed to reasonably ensure compliance with Federal laws, regulations, and program compliance requirements. OMB Circular A-133 requires auditors to obtain an understanding of the non-Federal entity's internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs, plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program, and, unless internal control is likely to be ineffective, perform testing of internal control as planned.

As the auditor of your local governmental entity, the State Board of Accounts will be assessing the controls you have in place over the preparation of the financial statements and schedule of expenditures of federal programs and over the compliance with the requirements of federal programs. If we determine that controls for any of these areas are either not in place or are not operating effectively, we are required by the standards we follow to report those issues. This reporting is required to be made in the form of written Federal findings included in the audit report. In order for us to be able to determine operating effectiveness of the controls, we must have documentation of the controls to audit. Therefore, any review completed over the preparation of the financial statement or schedule of expenditure of federal awards should be documented in some way. Additionally, the oversight given to ensure compliance with requirements of the federal programs should be documented.

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