

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Counties, Municipalities, Townships, and Redevelopment Commissions

FROM: Wesley R. Bennett, Commissioner

RE: Legislation Affecting Fire Protection and Emergency Medical Service Funding Matters

DATE: June 21, 2023

Introduction

The Department of Local Government Finance (“Department”) issues this memorandum to inform interested parties about changes made to laws concerning the funding of fire protection and emergency medical services. The affecting legislation includes House Enrolled Act 1454-2023 (“HEA 1454”), signed by Governor Eric J. Holcomb on May 4, 2023. This memorandum is for informative purposes only and is not a substitute for reading the law.

I. Options for Township Fire and EMS Funding

HEA 1454 makes multiple amendments to the Indiana Code which authorizes townships to establish one or more funds specific to fire protection and emergency medical services (“EMS”) expenses. These changes are effective January 1, 2024.

Section 203 amends Ind. Code § 36-8-13-4 to provide that a township shall annually establish either:

- (1) a township firefighting and emergency services fund (“fire & EMS fund”); or
- (2) both
 - (A) a township firefighting fund (“fire fund”); and
 - (B) a township emergency services fund (“EMS fund”).

The fire & EMS fund is fundamentally the successor to the township firefighting fund (DLGF fund number 1111). While HEA 1454 changes the name of the fund, its administration will be generally unaffected. The Department will continue to assign DLGF fund number 1111 to this fund. This fund will continue to be placed under the maximum levy limit described in Ind. Code § 6-1.1-18.5-10.2 (the “fire maximum levy limit”). What follows summarizes the changes to the law that describe when a township establishes both a fire fund and EMS fund.

The fire fund “is to be used by the township for the payment of costs attributable to providing fire protection under the methods prescribed in [Ind. Code § 36-8-13-3] and for no other

purposes.” The EMS fund “is to be used by the township for the payment of costs attributable to providing emergency services under the methods prescribed in [Ind. Code § 36-8-13-3] and for no other purposes.” It appears the purpose of the separate fire fund and EMS fund is to maintain the separation of expenses and receipt of revenues related to fire protection and EMS to the respective funds.

If the township establishes a separate fire fund and an EMS fund, Section 203 provides that the township may annually levy for both funds. The combined levies are to be an amount sufficient to pay costs attributable to fire protection and EMS. Section 30 of HEA 1454 amends Ind. Code § 6-1.1-18.5-1 to provide that a fire fund and EMS fund “shall be combined and considered as a single levy” for purposes of determining the fire maximum levy. Therefore, whether the township establishes a single fire & EMS fund, or have a separate fire fund & EMS fund, the levy for either option will be subject to the fire maximum levy limit under Ind. Code § 6-1.1-18.5-10.2.

Sections 200 through 202, and 204 through 207 make technical corrections to reflect the option to have separate funds for fire protection and EMS, including:

- (1) A township providing services within a municipality without a contract. (Ind. Code § 36-8-13-4.5)
- (2) Adjusting maximum levies when a township provides services to a municipality by contract. (Ind. Code § 36-8-13-4.6)
- (3) Adjusting maximum levies when a township provides services to an included town within Marion County. (Ind. Code § 36-8-13-4.7)

Section 28 also makes a technical correction to Ind. Code § 6-1.1-18-28 with respect to a petition to increase a township’s fire maximum levy limit in light of population increases, as enacted by HEA 1065-2020.

II. Property Tax Revenue Pass Back to Fire Territories in TIF Districts

Section 179 of HEA 1454 amends Ind. Code § 36-7-14-39, effective retroactive to January 1, 2023. The changes under this section apply to a fire protection territory established after December 31, 2022.

If a unit becomes a participating unit of a fire protection territory established after the creation of a TIF district, the excess proceeds of the property taxes attributable to an increase in the property tax rate for the participating unit of a fire protection territory must be determined using this 3-step formula:

STEP ONE: Divide the unit’s tax rate for fire protection for the year before the establishment of the fire protection territory by the participating unit’s tax rate as part of the fire protection territory.

STEP TWO: Subtract the STEP ONE amount from one (1).

STEP THREE: Multiply the STEP TWO amount by the allocated property tax attributable to the participating unit of the fire protection territory.

The amount determined under STEP THREE shall be allocated to and distributed in the form of an allocated property tax revenue pass back to the participating unit of the fire protection territory for the assessment date with respect to which the allocation is made. This calculation determines the amount of increased property tax revenue, by virtue of the establishment of a levy for a fire protection territory, and provides that the increased revenue remains with the participating unit rather than be distributed to the redevelopment commission. However, this amount shall be reduced by an amount that the redevelopment commission determines is necessary to meet its debt service obligations of the TIF district allocation area.

The redevelopment commission must calculate the amount of allocated property tax revenue pass back, in collaboration with the county auditor. This calculation must be submitted to the Department for verification.

III. Countywide Fire Protection Districts

Section 198 of HEA 1454 adds Ind. Code § 36-8-11-12.5 as a new section, effective July 1, 2023. This new section applies only to a county for which a fire protection district includes all of the incorporated and unincorporated areas of the county, i.e., a countywide fire protection district.

The county legislative body may adopt an ordinance to establish a nine (9) member governing board for the countywide fire protection district. The composition of the governing board is as follows:

(1) Eight (8) members are appointed by the county legislative body. Each of these members must be an active member of the board of fire trustees (established under Ind. Code § 36-8-11-12) at the time of appointment. However, upon appointment, the member ceases to be a member of the board of fire trustees. In addition, two (2) of the members must reside in each of the following four (4) geographic areas of the county:

- (i) Northwest.
- (ii) Northeast.
- (iii) Southwest.
- (iv) Southeast.

The geographic areas must be as close to having an equal area in square miles as possible.

(2) One (1) governing board member must be a member of the county executive. Notwithstanding Ind. Code § 36-8-11-14(c), this member may not receive any

compensation for serving on the governing board but may be compensated for expenses.

Appointed members to the governing board serve in four (4) year terms, and expire on the first Monday of January of the year the appointments expire. The county legislative body may provide in the ordinance establishing the governing board for the staggering of terms for the originally appointed governing board members. The county legislative body shall fill a vacancy on the governing board by appointing a member with the qualifications set forth in Ind. Code § 36-8-11-12.5 for the unexpired term.

Beginning on the date specified in the ordinance establishing the governing board, the following occurs:

- (1) Only the governing board shall have the powers and duties of a board of fire trustees set forth in Ind. Code § 36-8-11-15 or in any other statute. Any reference to the board of fire trustees or a member of the board of fire trustees is to be treated as a reference to the governing board or a member of the governing board, unless expressly provided otherwise.
- (2) The board of fire trustees will continue in existence solely as an advisory body to the governing board and will not have any powers or duties set forth in Ind. Code § 36-8-11-15 or in any other statute. However, Ind. Code §§ 36-8-11-12 through 14 will continue to apply to the administration of the board of fire trustees.

Sections 197 and 199 of HEA 1454 amend Ind. Code § 36-8-11-12 and 36-8-11-15, respectively, to make technical corrections when a governing body is established.

IV. Distribution of Public Safety LIT Revenue

Section 81 of HEA 1454 amends Ind. Code § 6-3.6-6-8 by adding subsection (d). Effective July 1, 2023, this provides the adopting body (as defined in Ind. Code § 6-3.6-3-1) may adopt a resolution to allocate an amount of local income tax revenue allocated for public safety purposes (“public safety LIT”) to one (1) or more of the following:

- (1) Township fire departments.
- (2) Volunteer fire departments.
- (3) Fire protection territories.
- (4) Fire protection districts.

The resolution must include information on the service area for each of the above entities, as applicable. The distribution allowed by the resolution is limited to the amount of revenue generated by five one-hundredths of one percent (0.05%) of the public safety LIT rate. The distribution to each entity must be based on the assessed value of real property, not including land, that is served by each applicable entity. Any amount of LIT revenue distributed under Ind. Code § 6-3.6-6-8(d) shall be distributed before the remainder of tax revenue is allocated under

Ind. Code § 6-3.6-6-8(b). In other words, the distribution of public safety LIT revenue to the above entities is made after the PSAP allocation and before the allocation to the county and municipality to other public safety purposes.

Not more than fifteen (15) days after adoption, the adopting body shall provide a copy of the resolution to the county auditor and the Department. A resolution adopted and timely provided to the county auditor and the Department applies only to distributions in the following calendar year.

V. Inclusion of Fire Territories in Tax Increment Finance District

Section 169 of HEA 1454 amends Ind. Code § 36-7-14-1.7 to provide that the proceeds of property taxes imposed by a participating unit of a fire protection territory established after December 31, 2022, will not be affected by a tax increment finance district created where the participating unit is located. This amendment is effective retroactive to January 1, 2023.

VI. Fire Territory Reporting to Department

Section 210 of HEA 1454 adds Ind. Code § 36-8-19-16.5 as a new section, effective July 1, 2023. Ind. Code § 36-8-19-16.5 applies to a fire territory:

- (1) established by the adoption of an ordinance or resolution by the legislative body of a participating unit effective before July 1, 2022; or
- (2) established or expanded by the adoption of an ordinance or resolution by the legislative body of a participating unit effective after June 30, 2022.

Therefore, this section applies to a fire territory that is in existence on or after July 1, 2023, whether or not the fire territory has expanded by additional units. However, this section does not apply to a fire territory dissolved under Ind. Code § 36-8-19-15 before June 30, 2023.

The provider unit of a fire territory subject to this section must provide the Department with the following:

- (1) The ordinance and resolution establishing the territory, as applicable.
- (2) Any documents outlining the contents of an agreement to establish or extend a territory, including an operating agreement.
- (3) Any documents outlining the description of planned services for a territory that were prepared when a territory was established.
- (4) If the participating units agreed to change the provider unit under Ind. Code § 36-8-19-6.5, each ordinance and resolution (as applicable) that agrees to and specifies the new provider unit.

The provider unit must maintain copies of the documents described above throughout the existence of the fire territory.

If there is a change in the operations or structure of a fire territory, the provider unit must submit a report to the Department within thirty (30) days of the effective date of the change.

The fire territory must submit the documents in the manner prescribed by the Department.

VII. Modification to Fire Territory Establishments in Calendar Year 2023

Section 207 of HEA 1454 amends Ind. Code § 36-8-19-6, effective retroactive to January 1, 2023, and changes the process for establishing a fire protection territory for calendar year 2023.

The changes made by Section 207 to Ind. Code § 36-8-19-6 are as follows:

- (1) The ordinance or resolution (as applicable) to establish a fire territory must be adopted after January 1 and before August 2. This extends the deadline to establish a fire protection territory to August 1, 2023.
- (2) Before adopting an ordinance or resolution (as applicable) to establish a fire territory, the legislative body must hold three (3) public hearings to receive public comment. This is already a requirement prior to the passage of HEA 1454, except the timing of the hearings must be as follows:
 - (A) At least one (1) public hearing must be held at least twenty-five (25) days (rather than thirty (30) days) before the legislative body adopts the ordinance or resolution. As currently required, the legislative body must provide the public with the information described in Ind. Code § 36-8-19-6(c) at this hearing.
 - (B) At least two (2) public hearings must be held after the first public hearing, with the last hearing held not later than five (5) days (rather than ten (10) days) before the legislative body adopts the ordinance or resolution.

Public notice of the hearings, including compliance with Ind. Code 5-3-1, is still required.

It should be noted that these changes do not affect the fire territory establishments that were done between January 1 and April 1, 2023, prior to the passage of HEA 1454. In addition, these changes apply only to calendar year 2023; the process outlined in Ind. Code § 36-8-19-6 prior to the passage of HEA 1454 will apply to ordinances or resolutions establishing a fire territory starting in calendar year 2024.

To summarize, the timeline changes under HEA 1454 to establish a fire territory is as follows:

	CY 2023	After CY 2023
Last day to adopt ordinance or resolution	August 1	March 31
First public hearing	25 days before the adoption	30 days before the adoption
Last public hearing	5 days before the adoption	10 days before the adoption

Contact Information

Questions may be directed to David Marusarz, Deputy General Counsel at dmarusarz@dlgf.in.gov.