

**DEPARTMENT OF LOCAL GOVERNMENT FINANCE
100 NORTH SENATE AVENUE
IGC-N, ROOM N1058
INDIANAPOLIS, INDIANA 46204**

**IN THE MATTER OF THE PETITION)
OBJECTING TO THE RE-ESTABLISHMENT)
OF A MAJOR BRIDGE FUND BY) OBJ 19-001
ST. JOSEPH COUNTY)**

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana law allows a county to establish or re-establish a major bridge fund, DLGF Fund Number 0792 (“Fund”) to provide money for any purposes recognized by IC 8-16-3.1-4. Ten or more taxpayers may object to a county’s proposed Fund establishment. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund establishment.
2. This Order is a response to a petition filed by at least 10 taxpayers within St. Joseph County (“County”) objecting to the re-establishment of the County’s Fund, which is one type of cumulative fund governed by IC 6-1.1-41. The County proposes to re-establish its Fund with a tax rate increase from \$0.0180 to \$0.0333 per \$100 of assessed valuation.
3. Since at least 10 taxpayers in the County timely filed a valid petition objecting to the re-establishment of the Fund, the Department was required to conduct a public hearing on the taxpayers’ objection petition.
4. For the reasons stated below, the Department approves the County’s proposed Fund re-establishment.

RELEVANT PROCEDURAL HISTORY

5. In certain counties¹, a county executive may establish or re-establish a Fund under IC 6-1.1-41 to provide money for

(1) The construction of major bridges².

(2) In Allen County, the construction, maintenance, and repair of bridges, approaches, and grade separations with respect to structures other than major bridges.

(3) For a county that is a member of a commuter transportation district established under IC 8-15-5:

(A) making grants to a commuter transportation system (as defined in IC 8-5-15-1) only for the benefit of the commuter transportation system (as defined in IC 8-5-15-1);

(B) making debt service payments for revenue bonds issued under IC 8-5-15-5.4 for a railroad project of a commuter transportation system (as defined in IC 8-5-15-1); and

(C) making grants to the northwest Indiana regional development authority established by IC 36-7.5-2-1 for the benefit of a commuter transportation system (as defined in IC 8-5-15-1), if the northwest Indiana regional development authority has issued bonds for a railroad project of a commuter transportation system (as defined in IC 8-5-15-1).

IC 8-16-3.1-4(a).

6. To provide for the Fund, a county fiscal body may levy a tax on all taxable property within the county in compliance with IC 6-1.1-41. The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in a county in which the county option income tax or the county adjusted gross income tax is in effect on January 1 of that year is \$0.0333. IC 8-16-3.1-4(c).

7. As explained in IC 8-16-3.1-4(a), the establishment of a Fund is also governed by IC 6-1.1-41, which delineates the procedures for establishing cumulative fund tax levies, of which a major bridge fund is a type.

8. Notice of the County's proposal to re-establish its Fund was given to the affected taxpayers in the *Mishawaka Enterprise* and the *South Bend Tribune* on January 17 and 24, 2019. *Publisher's Claims for the Mishawaka Enterprise (January 17 and 24, 2019)*; *Publisher's Claims for the South Bend Tribune (January 16, 2019)*; *Proponents' Exhibits 2, 5*. IC 6-1.1-41-3(a).

¹ Specifically, a county with a population between 100,000 and 700,000 and has a major obstruction between commercial and population centers which is capable of causing an economic hardship because of excess travel required to conduct a normal level of commerce between the two centers. "Major obstruction" is defined as a physical barrier to the passage of motor vehicle traffic that inhibits the use of the customary highway construction techniques to bridge the barrier without use of a grade separation structure, but does not include barriers that form part of a county or state boundary. IC 8-16-3.1-1(a).

² A "major bridge" is defined as (1) a structure that is two hundred (200) feet or more in length and that is erected over a depression or an obstruction for the purpose of carrying motor vehicle traffic or other moving loads; or (2) an underpass of any length that is designed to carry motor vehicle traffic or other moving loads. IC 8-16-3.1-1(b). Bridges over one hundred (100) feet or more are counted as major bridges in cities within certain population ranges, none of which are in the County.

9. On February 5, 2019, the County Commissioners held a public hearing and adopted an ordinance re-establishing the proposed Fund. This ordinance indicates that there were 2 commissioners voting 'aye' and 1 voting 'nay'. *Ordinance No. R-2-C-2019; Proponents' Exhibits 2, 5.* IC 6-1.1-41-3(a), (e).

10. On February 14, 2019, the County published a Notice of Adoption in the *Mishawaka Enterprise* and *South Bend Tribune*. Publication of this Notice triggered a 30-day remonstrance period. *Publisher's Claims for the Mishawaka Enterprise (February 14, 2019); Publisher's Claims for the South Bend Tribune (February 12, 2019); Proponents' Exhibits 2, 5.* IC 6-1.1-41-3(e).

11. An objection petition containing in excess of 10 total signatures was timely filed with the County Auditor on March 12, 2019, and was duly certified to the Department on March 12, 2019. *Proponents' Exhibits 2, 5; Certification of Objection Petition.* IC 6-1.1-41-6(4).

12. The Department set the date for a public hearing on the objection petition for May 8, 2019, and mailed notice of the hearing to the County Auditor and the first ten taxpayers whose names appeared on the petition. *Notice of Hearing to County Auditor; Notice of Hearing to Taxpayer; Proponents' Exhibit 2.* IC 6-1.1-41-7, 8.

13. The Department conducted a public hearing on May 8, 2019, at the County Courthouse 1, 101 S Main St., South Bend, beginning at 1:00 p.m. EDT. David Marusarz, Deputy General Counsel for the Department, conducted the public hearing. *Notice of Hearing to County Auditor; Notice of Hearing to Taxpayer; Hearing Officer's Report.* IC 6-1.1-41-7.

14. The following spoke on support of the Fund re-establishment:

Jamie Woods, County Attorney
Jessica Clark, County Engineer
Steve Dalton, Deputy County Auditor
John Murphy, Financial Advisor for County
Deborah Fleming, County Commissioner

The following spoke in opposition to the Fund re-establishment

Philip Buckmaster, Economic Director for Town of Walkerton, Indiana
Debra Durall, Private Citizen
Dave Thomas, County Commissioner

Hearing Officer's Report.

15. Objectors presented the following exhibits, which are thus part of the Record:

Objectors' Exhibit 1: Written Statement of Jennifer Betz

Hearing Officer's Report.

16. Proponents presented the following exhibits, which are thus part of the Record:

Proponents' Exhibit 1: Pre-Hearing Brief
Proponents' Exhibit 2: St. Joseph County Submission to DLGF, March 12, 2019

Proponents' Exhibit 3: DLGF Memorandum on Cumulative Funds, February 8, 2019
Proponents' Exhibit 4: DLGF Memorandum on Cumulative Funds, February 15, 2018
Proponents' Exhibit 5: Adoption Timeline
Proponents' Exhibit 6: Major Bridge Fund and Financial Summary
Proponents' Exhibit 7: DLZ Indiana, LLC Final Bridge Inspection Report
Proponents' Exhibit 8: Bridge Inventory Key Map
Proponents' Exhibit 9: Priority Schedule for Bridges
Proponents' Exhibit 10: Summary of Changes or Deficiencies
Proponents' Exhibit 11: Summary of Maintenance Costs
Proponents' Exhibit 12: Sufficiency Rating and Classification Table
Proponents' Exhibit 13: Artistry and Ingenuity in Artificial Stone, Indiana's Concrete Bridges
Proponents' Exhibit 14: Affidavit of Andrew Kostielney, County Board President
Proponents' Exhibit 15: Program Overview
Proponents' Exhibit 16: County's Post-Hearing Brief in Support of Major Bridge Fund Re-establishment

Hearing Officer's Report.

17. The Department recognizes the following additional items as part of the Record: (1) the Hearing Officer's Report; (2) the Hearing Procedures Script; (3) the Hearing Record of Evidence; (4) a digital recording of the hearing; (5) transcript of the hearing; and (6) the hearing sign-in sheet. Throughout this Order, all citations to an individual's testimony will also be considered a citation to the Hearing Officer's Report, the Hearing Transcript, and the digital recording of the hearing.

SUMMARY OF THE PARTIES' CONTENTIONS

A. Summary of Objectors' Contentions

18. The County first established a major bridge fund 12 years ago. Due to trending³ the maximum allowable tax rate has diminished over time to the current rate, thereby reducing available revenue for the Fund. *Testimony of Deborah Fleming.*

19. The County's pre-hearing brief, affidavit from the Board President, and associated testimony stated that a comprehensive bridge inspection by DLZ Indiana, LLC ("DLZ") concluded that there is an immediate need for major bridge maintenance with a cost of \$8 million. According to the brief, the Board of Commissioners of the County ("Board") "desires to re-set the rate funding in order to more adequately act to repair, rehabilitate, and protect the vital major bridges of the County and maintain public safety." After a "comprehensive and well-reasoned review by the County," the County Commissioners properly adopted the Fund in an open and deliberate manner. The brief added that the

³ "Trending" here refers to an action under IC 6-1.1-18-12. A rate-controlled fund, including cumulative funds, have their maximum rates adjusted downward to account for incremental growth in the assessed value of the unit.

major bridges largely provide transportation over waterways in St. Joseph County, the Indiana Toll Road, and railroad tracks. Maintenance of major bridges, and the funding for that maintenance, is a County responsibility. None of the municipalities in the County have provided financial assistance for bridges, though South Bend has provided road funding and assisted with a study on bridge maintenance. *Proponents' Exhibits 1, 14, & 16; Testimony of Jamie Woods; Testimony of Jessica Clark; Testimony of Steve Dalton; Testimony of Deborah Fleming.*

18. The County has 24 major bridges, most of which are 4 lane-wide bridges or grade separations. Two of them are claimed to have historic import: one is a Luten arch bridge⁴ and another is a World War I memorial⁵ site. The Fund would mainly be spent on bridges around the Indiana Toll Road, thoroughfares across the St. Joseph River, and certain rail lines. Most of the major bridges lay within the municipal boundaries of South Bend, Mishawaka, and Osceola. Some, including 6 river bridges, 2 grade separations, and the Rogers Ditch Cultural Canal, lay outside municipal boundaries. *Proponents' Exhibit 8; Testimony of Jamie Woods.*

19. The County conducts a biennial inspection of all of its bridges. Since 2012, DLZ was hired to perform the inspections. DLZ completed its most recent inspection in 2018 and prepared a report in March 2019. This report was signed off by the County. *Proponents' Exhibits 7.* Based on the DLZ report, the County purported the following needs:

- Zero major bridges have to be completely replaced.
- 7-8 major bridges require complete deck replacement. This is an immediate need and will cost about \$6.9 million.
- 5 major bridges require repairs. This is also an immediate need and will cost about \$1.1 million.
- Other maintenance needs include cleaning, draining, guardrail repair, new paint, etc. Not all of these are for major bridges but overall incur an expense of \$135,000.

Testimony of Jessica Clark; Proponents' Exhibits 6, 8-12, 15. The County has concrete infrastructure needs. Specifically, 57% of county roads are rated 'poor' to 'failed' according to American Society of Civil Engineers (ASCE) standards, with another 32% rated as 'fair.' *Proponents' Exhibit 16.*

20. The County schedules its major bridge maintenance using 5-year plans. These plans assume adequate funding is available. The goal of these plans is to extend the life of the bridges and preemptively prevent bridge failure. The County expects to generate \$990,000 per year from the increase. The County has used other funding resources for the last 15 years, including TIF revenue and general fund money. More recently, the County has used money from the local road and street fund, although at least one of the Commissioners has preferred to stop relying on that fund because it takes away funding

⁴ A Luten arch refers to a concrete arch design patented by Indianapolis architect Daniel B. Luten. "Luten arch," Wikipedia.com, last accessed June 1, 2019. The bridge referenced is located in Mishawaka, St. Joseph County Bridge 203. *Proponents' Exhibit 13.*

⁵ The Kline Street-Twyckenham Drive Bridge, St. Joseph County Bridge 207, located in South Bend. *Proponents' Exhibit 13.*

for road repair. *Testimony of Deborah Fleming*. A federal grant is also available, and the County has leveraged its costs against the grant.⁶ However, federal grant selection is 'extremely competitive.' *Proponents' Exhibit 16*. For the Kline Street-Twyckenham Drive Bridge, the County does not receive state grant money even though it is a war memorial. The County does not want to use the debt service fund. *Testimony of Jessica Clark; Testimony of John Murphy*. The County went on to state that especially in rebuilding of a catastrophic bridge failure (i.e., a collapse), the County taxpayers would pay more than what is requested with the Fund re-establishment due to also having to pay for interest payments. *Proponents' Exhibit 16*.

21. Causes of deterioration include heavy vehicle traffic in areas along the St. Joseph River. These areas have a lot of hospital, school, airport, and university traffic. Another cause cited include influx of traffic during Notre Dame football games. *Testimony of Jessica Clark*.

22. The overall immediate need is \$8 million. This includes the aforementioned \$6.9 million for rehabilitation and \$1.1 million for repair based on the DLZ report, which is likely understating the needed money. Current annual shortfalls for the cumulative bridge fund, major bridge fund, and local road and street fund were represented to be as follows:

Cumulative bridge fund - \$1.9 million

Major bridge fund - \$1 million

Local road and street⁷ - \$8-9 million

Proponents' Exhibits 15 & 16; Testimony of Jessica Clark; Testimony of John Murphy.

23. Another consideration the County has had to make is the impact of circuit breaker credits. Specifically, since the application of these credits puts constraints on the County's budget and expenses, immediate needs of the major bridges have been delayed to allow for better preparation of the County's finances. The County Engineer has determined that the delays can no longer continue. *Proponents' Exhibit 14; Testimony of Jessica Clark*. Without the re-establishment of the Fund, the County would experience a \$4,880,000 shortfall in revenue dedicated to major bridge work over 4 years. *Proponents' Exhibit 16*.

24. In rebuttal to the claim that the County has not wisely prepared its budget, the County claimed that the budget process and the County's budget are not appropriate for discussing the Fund re-establishment. The County also argued that the tax burden as a result of the property tax caps is a matter to discuss with the Indiana Legislature, not the County. *Proponents' Exhibit 16*.

B. Summary of Objectors' Contentions

24. Three main points were made by those who spoke in opposition of the Fund re-establishment. First, that the adoption of the Fund was done without adequate

⁶ The expected federal grant is claimed to be \$22 million. *Proponents' Exhibit 15*. The County already has 6 federal aid projects totaling over \$49 million, payable through 2025. *Proponents' Exhibit 16*.

⁷ The Department notes that local road and street funds are not funded by property tax.

transparency and information given to the public. Second, that the tax increase for the re-establishment will disproportionately burden taxpayers in small towns and unincorporated areas of the County. Third, that there are already available funding sources that can be used as an alternative to a tax increase for the Fund.

25. Regarding the first objection, the Board meetings discussing the proposed Fund were scheduled at times when taxpayers, especially those in opposition, are working and cannot attend. Even though the procedures were properly followed, a lot of the information presented before the Department was not previously made available to the public. This includes the Board minutes. Moreover, video links to the Board meetings on the County website do not work. *Objectors' Exhibit 1; Testimony of Debra Durall.*

26. Regarding the second objection, disparity of the tax burden comes mainly from the fact that South Bend and Mishawaka have already reached the property tax caps, as opposed to the small towns and rural areas where that is not the case. This will increase the tax burden on the poor and the farmers. *Testimony of Philip Buckmaster; Testimony of David Thomas.* Residents on small towns and the unincorporated areas do not use the major bridges, adding to the disproportionate nature of the tax increase. Both also claimed this will adversely affect the government services in these areas. The Town of Walkerton, for example, will lose about an additional \$8,000 in revenue due to circuit breaker credits. Moreover, assessed values in the small towns and rural areas are declining, which puts additional burdens on the local governments to live within their means. *Testimony of Philip Buckmaster.*

27. To the third point, several other revenue sources were suggested. These include payments in lieu of taxes (or PILOTs), the County Major Moves Fund, financial assistance from the University of Notre Dame, and local income tax ("LIT").⁸ *Testimony of Debra Durall; Testimony of David Thomas.*

28. All of the Objectors also stated that the County has overly used tax abatements, which causes an additional loss of revenue, and created TIF districts, which divert revenue away from essential government services like bridge repair to economic development. *Testimony of Philip Buckmaster; Testimony of David Thomas; Testimony of Debra Durall.* The increase in development has led to heavy equipment moving over these major bridges, accelerating their deterioration. *Testimony of Debra Durall.* The County also gives "large gifts" which could be used for funding major bridge work, instead. *Testimony of David Thomas.*

29. Other objections were also raised, including as follows:

- The need for the Fund is questionable. The bridges are already being well-maintained and presence of rust and scour on them is typical of any structure. The conditions of the bridge are not nearly as bad as what the Proponents' claim them to be.

⁸ In questioning during the hearing, it was represented that the County's LIT expenditure rate is 1.75%. For counties other than Marion County, the maximum LIT expenditure rate is 2.50%. IC 6-3.6-6-2(b). *Testimony of David Thomas.*

- Unlike in most counties, the Board of Commissioners is not the legislative body but the County Council is. That being the case, there are no checks and balances because the fiscal body did not vote on the tax rate or the Fund; they simply have to go along with what the Board decided.
- It is irresponsible to silo off money into one fund; instead, the money should be left in an undedicated fund.

Testimony of David Thomas.

ANALYSIS

30. No testimony nor evidence has been given alleging that the County violated any statutory procedural requirements in re-establishing the Fund. Nor does the Department find any such defect based on the County's submission.

31. The Department will defer to the findings of the DLZ report and the conclusion by the Board as to the need to fix its major bridges. The Board relied on an independent review by a third party to study the need for bridge repair. Claims about overstated bridge deterioration notwithstanding, the Department finds no reason to question the need for the County's proposed plans.

32. The Department infers from some of the Objectors' testimony and evidence that they do not necessarily oppose funding bridge work in the County, but that they have concerns about the manner of funding those repairs. *Testimony of Philip Buckmaster; Testimony of David Thomas.* Specifically, rather than raising property taxes, the County ought to pursue other tax revenue sources, cut down on the use of TIFs and tax abatements, and have cooperative agreements with the University of Notre Dame and others.

33. Admittedly, granting tax abatements and creating TIF districts does affect how much revenue is available for government services. The former acts as a kind of deduction on taxable assessed value for a taxpayer. In the case of the latter, property taxes from incremental assessed value that would otherwise go to the unit is instead given to the redevelopment commission or similar entity. The claim, then, is that the County has been giving too many abatements and creating too many TIF districts, reducing the amount of property taxes otherwise available to the County for funding major bridge work. Regarding LIT, the Department notes that the County has not fully reached the maximum allowed local income tax. Currently, the expenditure rate is at 1.75% while the maximum allowed by law is 2.50%.

34. As a general practice, the Department does not inject itself into local affairs and therefore is hesitant to override the policy decisions of popularly elected officials. The Department in this case does not see a sufficient reason to depart from that practice. Choosing to grant or not grant abatements, create or not create TIF districts, and overall how tax revenue ought to be used, subject to limits in state law, all are at the discretion of local officials. Moreover, the decision whether to increase the LIT rate remains with the County Council, not the Board. State law gives the Board the responsibility for setting up a major bridge fund and levy.

35. The Department also agrees with the County that arguments about how the County should budget its monies, be it in the major bridge fund or any other fund, is a discussion best left for the budgeting period later in the year. It is not appropriate here, when the discussion is only about one of the County's funds. The Department also does not believe that, but for the County not spending its money wisely, it would have enough to spend in the Fund, is convincing. How the County ought to spend its funds is a decision of local elected officials. The Department cannot put itself in the shoes of the County officials and the many choices they have to make regarding use of their funds.

36. Finally, the Department cannot accept the Objectors' claims about the disproportionate tax burden. The legislature has vested the duty of maintaining the major bridges on the counties. The buck therefore stops with the County to see that the major bridges are maintained wherever they are located. As they have demonstrated a need, and as long as they remain within the legal bounds of collecting taxes and spending on the Fund, the County has the prerogative to fulfill that duty. The imposition of any tax creates some level of disparity between taxpayers in different areas, especially in St. Joseph County which has large urban and rural areas. Nonetheless, a tax burden is the result of local elected officials, who have to weigh the good and bad of any policy decision. As for the property tax caps, that claim also fails. The property tax caps were the act not only of the legislature, but also the Indiana voters via a referendum. Any action or policy concerning supposed deleterious effects of the property tax caps on local revenues are best addressed to the legislature.

37. In sum, the Objectors have expressed policy-related concerns with the County's proposed Fund re-establishment. The Objectors have not pointed to any purpose not permitted by statute that the County intends to use for the Fund. Nor did the Objectors point to any improper procedure the County engaged in in adopting the Fund. The Department does not deny that individuals may disagree as to the appropriateness of the Fund's tax increase in relation to how the County has previously chosen or currently chooses to spend monies elsewhere. These differing opinions notwithstanding, the adoption of the Fund was properly and lawfully done.

38. These concerns stem from the Objectors' belief that the County has not clearly explained the rationale behind the County's choice to fund bridge repair by means of a Fund rate increase, as well as their belief that the County will use these dollars unwisely. The Department appreciates these concerns and strongly recommends that the County increase its efforts to communicate more clearly with taxpayers and address their questions. However, the Objectors have not presented the Department with any legal grounds for denying the County's proposed Fund re-establishment.

CONCLUSION

39. After weighing the testimony and evidence, the Department is not persuaded by the Objectors' contention that the Fund re-establishment should be denied. Although

Objectors may disagree with the County's policy on this issue, the Department concludes that there is no legal basis for denying the County's proposed Fund re-establishment.

40. Consequently, the Department hereby **APPROVES** the County's proposed Fund re-establishment. Fund dollars may only be used for those purposes outlined in IC 8-16-3.1.

41. The Department approves the levying of a tax in the amount of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100.00) of assessed valuation for 2019 Pay 2020 and thereafter until the rate is reduced or rescinded, subject to existing maximum levy limits under IC 6-1.1-18.5-3. Any levy previously established for this purpose is hereby rescinded. To obtain the rate, the County must advertise and adopt the rate and the appropriate levy amount as part of its 2020 budget in compliance with the provisions of IC 6-1.1-17-3.

42. The Department notes that it is exempt from the Administrative Orders and Procedures Act (IC 4-21.5-2-4).

Dated this 21st day of July, 2019.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE


Wesley R. Bennett, Commissioner