

IC 36-9

ARTICLE 9. TRANSPORTATION AND PUBLIC WORKS

IC 36-9-1

Chapter 1. Definitions

IC 36-9-1-0.1

Application of certain amendments to chapter

Sec. 0.1. The addition of section 8.5 of this chapter by P.L.220-1986 does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.220-1986 had not been enacted.

As added by P.L.220-2011, SEC.680.

IC 36-9-1-1

Application of chapter

Sec. 1. The definitions in IC 36-1-2 and in this chapter apply throughout this article.

As added by Acts 1980, P.L.211, SEC.4. Amended by Acts 1981, P.L.309, SEC.67.

IC 36-9-1-2

"Improvement"

Sec. 2. "Improvement" includes the construction, equipment, remodeling, extension, repair, and betterment of structures, including:

- (1) sanitary sewers and sanitary sewer tap-ins;
- (2) sidewalks;
- (3) curbs;
- (4) streets;
- (5) alleys;
- (6) pedestrian-ways or malls set aside entirely or partly, or during restricted hours, for pedestrian rather than vehicular traffic;
- (7) other paved public places;
- (8) parking facilities;
- (9) lighting;
- (10) electric signals;
- (11) landscaping, including trees, shrubbery, flowers, grass, fountains, benches, statues, floodlighting, gaslighting, and structures of a decorative, educational, or historical nature;
- (12) for units that own and operate a water utility, water main extensions from the water utility; and
- (13) for units that establish and operate a department of public sanitation under IC 36-9-25, sewage works that are:
 - (A) overhead plumbing or backflow prevention devices;
 - (B) installed in private dwellings; and
 - (C) financed in whole or in part through assistance provided

under IC 36-9-25-42.
As added by Acts 1981, P.L.309, SEC.68. Amended by P.L.152-1992, SEC.1; P.L.168-2009, SEC.8.

IC 36-9-1-3

"Parking facility"

Sec. 3. "Parking facility" includes the:

- (1) land;
- (2) structures and other improvements above, at, or below ground level;
- (3) entrances, exits, equipment, and fences; and
- (4) other accessories or appurtenances;

that are necessary or desirable for safety and convenience in the offstreet parking of vehicles, are owned or leased by a municipality, and are used for the offstreet parking of vehicles.

As added by Acts 1981, P.L.309, SEC.69.

IC 36-9-1-4

"Public place"

Sec. 4. "Public place" includes any tract owned by the state or a political subdivision.

As added by Acts 1981, P.L.309, SEC.70.

IC 36-9-1-5

"Utility regulatory commission"

Sec. 5. "Utility regulatory commission" means the Indiana utility regulatory commission.

As added by Acts 1981, P.L.309, SEC.71. Amended by P.L.23-1988, SEC.118.

IC 36-9-1-5.5

"Public transportation agency"

Sec. 5.5. "Public transportation agency" means any entity that operates a public transportation system and is established by a legislative body to provide public transportation services.

As added by P.L.235-1997, SEC.1.

IC 36-9-1-6

"Public transportation system"

Sec. 6. "Public transportation system" means any common carrier of passengers for hire.

As added by Acts 1981, P.L.309, SEC.72.

IC 36-9-1-7

"Public way"

Sec. 7. "Public way" includes highway, street, avenue, boulevard, road, lane, or alley.

As added by Acts 1981, P.L.309, SEC.73.

IC 36-9-1-8

"Sewage works"

Sec. 8. "Sewage works" means:

- (1) sewage treatment plants;
- (2) intercepting sewers;
- (3) main sewers;
- (4) submain sewers;
- (5) local sewers;
- (6) lateral sewers;
- (7) outfall sewers;
- (8) storm sewers;
- (9) force mains;
- (10) pumping stations;
- (11) ejector stations;
- (12) any other structures necessary or useful for the collection, treatment, purification, and sanitary disposal of the liquid waste, solid waste, sewage, storm drainage, and other drainage of a municipality; and
- (13) for purposes of IC 36-9-25, overhead plumbing or backflow prevention devices that are financed in whole or in part through assistance provided under IC 36-9-25-42.

As added by Acts 1981, P.L.309, SEC.74. Amended by Acts 1982, P.L.77, SEC.25; P.L.168-2009, SEC.9.

IC 36-9-1-8.5

"Thoroughfare"

Sec. 8.5. "Thoroughfare" means a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains.

As added by P.L.220-1986, SEC.29.

IC 36-9-1-9

"Urban mass transportation system"

Sec. 9. (a) "Urban mass transportation system" means a public transportation system that:

- (1) operates buses or other vehicles designed to carry more than six (6) passengers, exclusive of the driver; and
- (2) operates over designated and definite routes:
 - (A) within one (1) municipality and its suburban territory; or
 - (B) within and between two (2) or more municipalities located not more than ten (10) miles apart, and within their suburban territories.

(b) For purposes of this section, the suburban territory of a municipality consists of the areas within one (1) mile outside its corporate boundaries and one (1) additional mile for each fifty thousand (50,000) population, or major fraction thereof, in the municipality.

As added by Acts 1981, P.L.309, SEC.75.

IC 36-9-1-10

"Watercourse"

Sec. 10. (a) "Watercourse" includes lakes, rivers, streams, and any other body of water.

(b) The term does not include an underground aquifer or water in an underground aquifer.

As added by Acts 1982, P.L.77, SEC.26. Amended by P.L.87-2012, SEC.2.

IC 36-9-2

Chapter 2. General Powers Concerning Transportation and Public Works

IC 36-9-2-1

Application of chapter

Sec. 1. This chapter applies to all units except townships. However, with respect to a public transportation system, this chapter does not apply after December 31, 2009, to a county that is a member of the northern Indiana regional transportation district established under IC 8-24 and that has a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000);

or a unit located in such a county.

As added by Acts 1980, P.L.211, SEC.4. Amended by P.L.182-2009(ss), SEC.444; P.L.119-2012, SEC.223.

IC 36-9-2-2

Transportation systems; establishment, aid, and operation

Sec. 2. (a) A unit may establish, aid, maintain, and operate transportation systems.

(b) This subsection applies to an eligible county (as defined by IC 8-25-1-4) that establishes a public transportation system through a public transportation project authorized and funded under IC 8-25. The unit must establish fares and charges that cover at least twenty-five percent (25%) of the operating expenses of the public transportation system. For purposes of this subsection, operating expenses include only those expenses incurred in the operation of fixed route services that are established or expanded as a result of a public transportation project authorized and funded under IC 8-25. The unit annually shall report on the unit's compliance with this subsection not later than sixty (60) days after the close of the unit's fiscal year. The report must include information on any fare increases necessary to achieve compliance. The unit shall submit the report to the department of local government finance and make the report available electronically through the Indiana transparency Internet web site established under IC 5-14-3.8.

(c) If a unit fails to prepare and disclose the annual report in the manner required by subsection (b), any person subject to a tax described in IC 8-25 may initiate a cause of action in the circuit court of the eligible county to compel the appropriate officials of the unit to prepare and disclose the annual report not later than thirty (30) days after a court order mandating the unit to comply with subsection (b) is issued by the circuit court.

As added by Acts 1980, P.L.211, SEC.4. Amended by P.L.153-2014, SEC.19.

IC 36-9-2-3

Transportation facilities; establishment, aid, and operation

Sec. 3. A unit may establish, aid, maintain, and operate airports, bus terminals, railroad terminals, wharves, and other transportation facilities.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-4

Vehicles for public hire; regulation of services

Sec. 4. A unit may regulate the services offered by persons who hold out for public hire the use of vehicles. This includes the power to fix the price to be charged for that service.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-5

Public ways; establishment

Sec. 5. A unit may establish, vacate, maintain, and operate public ways.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-6

Public ways; rights-of-way through, under, or over

Sec. 6. A unit may grant rights-of-way through, under, or over public ways.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-7

Public ways; regulation of use; school corporation grounds

Sec. 7. A unit may regulate the use of public ways. A unit also may regulate the use of school corporation grounds if requested by the fiscal body of the school corporation.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-8

Watercourses; establishment and control

Sec. 8. A unit may establish, vacate, maintain, and control watercourses.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-9

Watercourses; channel alterations

Sec. 9. A unit may change the channel of, dam, dredge, remove an obstruction in, straighten, and widen a watercourse.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-10

Watercourses; taking or permitting escape of water

Sec. 10. A unit may regulate the taking of water, or causing or permitting water to escape, from a watercourse.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-11**Watercourses; altering temperature or affecting flow of water**

Sec. 11. A unit may regulate conduct that might alter the temperature of water, or affect the flow of water, in a watercourse.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-12**Watercourses; introduction of any substance**

Sec. 12. A unit may regulate the introduction of any substance into a watercourse or onto its banks.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-13**Watercourses; purification**

Sec. 13. A unit may purify the water in a watercourse.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-14**Waterworks**

Sec. 14. A unit may regulate the furnishing of water to the public. A unit also may establish, maintain, and operate waterworks.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-15**Utility service to public**

Sec. 15. A unit may furnish, or regulate the furnishing of, utility service to the public.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-16**Disposal of waste substances and domestic or sanitary sewage; regulation of services and charges**

Sec. 16. A unit may regulate the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage. This includes the power to fix the price to be charged for that service.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-17**Disposal of waste substances and domestic or sanitary sewage; systems**

Sec. 17. A unit may collect, process, and dispose of waste substances and domestic or sanitary sewage, and may establish, maintain, and operate sewers, sewage disposal systems, and systems to collect and dispose of waste substances.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-18**Extraterritorial powers; four mile limit**

Sec. 18. A municipality may exercise powers granted by sections

2, 3, 14, 16, and 17 of this chapter in areas within four (4) miles outside its corporate boundaries.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-2-19

Extraterritorial powers; ten mile limit

Sec. 19. A municipality may exercise powers granted by sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10) miles outside its corporate boundaries.

As added by Acts 1980, P.L.211, SEC.4.

IC 36-9-3

Chapter 3. Regional Transportation Authorities

IC 36-9-3-0.5

Expired

(Expired 3-15-2014 by P.L.212-2013, SEC.2.)

IC 36-9-3-1

Application of chapter

Sec. 1. This chapter applies to all counties and municipalities.
As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.2.

IC 36-9-3-2

Establishment of authority; name; abolition of bus authority or transportation authority in certain counties

Sec. 2. (a) Except as provided in subsection (d), a fiscal body of a county or municipality may, by ordinance, establish a regional transportation authority (referred to as "the authority" in this chapter) for the purpose of acquiring, improving, operating, maintaining, financing, and generally supporting a public transportation system that operates within the boundaries of an area designated as a transportation planning district by the Indiana department of transportation. However, only one (1) public transportation authority may be established within an area designated as a transportation planning district by the Indiana department of transportation.

(b) The ordinance establishing the authority must include an effective date and a name for the authority. Except as provided in subsection (c), the words "regional transportation authority" must be included in the name of the authority.

(c) After December 31, 2009, this subsection applies if a county is not a member of the northern Indiana regional transportation district established under IC 8-24. The words "regional bus authority" must be included in the name of an authority that includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(d) After December 31, 2009, this subsection applies if a county is a member of the northern Indiana regional transportation district established under IC 8-24 and has a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000).

In such a county the regional bus authority or regional transportation authority, whichever applies, is abolished effective January 1, 2010. After December 31, 2009, a regional transportation authority may not be established by a fiscal body of such a county or a municipality in such a county.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.12-1983, SEC.23; P.L.18-1990, SEC.295; P.L.235-1997, SEC.3;

P.L.214-2005, SEC.74; P.L.182-2009(ss), SEC.445; P.L.119-2012, SEC.224.

IC 36-9-3-3

Expansion to include additional counties or municipalities; procedure

Sec. 3. Except as provided in section 3.5 of this chapter, the authority may be expanded to include one (1) or more additional counties or municipalities within the same planning district if resolutions approving the expansion are adopted by the fiscal bodies of:

- (1) the counties or municipalities to be added to the authority; and
- (2) a majority of the counties and municipalities already in the authority.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.4; P.L.70-2007, SEC.1.

IC 36-9-3-3.1

Transfer of urban mass transportation powers to public transportation corporation

Sec. 3.1. If an existing public transportation corporation operates within the boundaries of an authority established under section 2 or 3 of this chapter, the legislative body that established the public transportation corporation may adopt an ordinance to shift any of the powers set forth under IC 36-9-4 to the authority.

As added by P.L.235-1997, SEC.5.

IC 36-9-3-3.5

Expansion to include certain counties and municipalities; procedure

Sec. 3.5. (a) This section applies to a county with a population of more than one hundred eleven thousand (111,000) but less than one hundred fifteen thousand (115,000) and any second class city located in the county.

(b) A county or city described in subsection (a) shall become a member of an authority described in section 5(c) of this chapter if the fiscal body of the county or city adopts a resolution authorizing the county or city to become a member of the authority and the board of the authority approves the membership of the county or city.

As added by P.L.70-2007, SEC.2. Amended by P.L.119-2012, SEC.225.

IC 36-9-3-4

Removal of county or municipality from authority

Sec. 4. If the fiscal body of any county or municipality finds that the county or municipality should be removed from the authority, it shall adopt a resolution favoring the removal of that county or municipality from the authority. The resolution must establish a date upon which the membership ceases, but that date must be at least six

(6) months after the date of the adoption of the resolution. Removal of the county or municipality from the authority does not relieve the county or municipality from any obligations incurred on the county's or municipality's behalf by the authority while the county or municipality was a member of the authority.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.6.

IC 36-9-3-5

Management by board; membership

Sec. 5. (a) An authority is under the control of a board (referred to as "the board" in this chapter) that, except as provided in subsections (b) and (c), consists of:

- (1) two (2) members appointed by the executive of each county in the authority;
- (2) one (1) member appointed by the executive of the largest municipality in each county in the authority;
- (3) one (1) member appointed by the executive of each second class city in a county in the authority; and
- (4) one (1) member from any other political subdivision that has public transportation responsibilities in a county in the authority.

(b) An authority that includes a consolidated city is under the control of a board consisting of the following:

- (1) Two (2) members appointed by the executive of the county having the consolidated city.
- (2) One (1) member appointed by the board of commissioners of the county having the consolidated city.
- (3) One (1) member appointed by the executive of each other county in the authority.
- (4) Two (2) members appointed by the governor from a list of at least five (5) names provided by the Indianapolis regional transportation council.
- (5) One (1) member representing the four (4) largest municipalities in the authority located in a county other than a county containing a consolidated city. The member shall be appointed by the executives of the municipalities acting jointly.
- (6) One (1) member representing the excluded cities located in a county containing a consolidated city that are members of the authority. The member shall be appointed by the executives of the excluded cities acting jointly.
- (7) One (1) member of a labor organization representing employees of the authority who provide public transportation services within the geographic jurisdiction of the authority. The labor organization shall appoint the member.

(c) After December 31, 2009, this subsection applies if both a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) and a county having a population of more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000) are

not members of the northern Indiana regional transportation district established under IC 8-24. An authority that includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is under the control of a board consisting of the following twenty-one (21) members:

(1) Three (3) members appointed by the executive of a city with a population of more than eighty thousand (80,000) but less than eighty thousand four hundred (80,400).

(2) Two (2) members appointed by the executive of a city with a population of more than eighty thousand five hundred (80,500) but less than one hundred thousand (100,000).

(3) One (1) member jointly appointed by the executives of the following municipalities located within a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) A city with a population of more than four thousand nine hundred fifty (4,950) but less than five thousand (5,000).

(B) A city with a population of more than twenty-nine thousand six hundred (29,600) but less than twenty-nine thousand nine hundred (29,900).

(4) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) A town with a population of more than sixteen thousand five hundred (16,500) but less than twenty thousand (20,000).

(B) A town with a population of more than twenty-three thousand seven hundred (23,700) but less than twenty-four thousand (24,000).

(C) A town with a population of more than twenty thousand (20,000) but less than twenty-three thousand seven hundred (23,700).

(5) One (1) member who is jointly appointed by the fiscal body of the following municipalities located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) A town with a population of more than fourteen thousand (14,000) but less than sixteen thousand (16,000).

(B) A town with a population of more than twenty-four thousand (24,000) but less than thirty thousand (30,000).

(C) A town with a population of more than sixteen thousand (16,000) but less than sixteen thousand five hundred (16,500).

(6) One (1) member who is jointly appointed by the following authorities of municipalities located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) The executive of a city with a population of more than twenty-five thousand (25,000) but less than twenty-nine

thousand (29,000).

(B) The fiscal body of a town with a population of more than ten thousand (10,000) but less than fourteen thousand (14,000).

(C) The fiscal body of a town with a population of more than five thousand (5,000) but less than ten thousand (10,000).

(D) The fiscal body of a town with a population of less than one thousand five hundred (1,500).

(E) The fiscal body of a town with a population of more than two thousand two hundred (2,200) but less than five thousand (5,000).

(7) One (1) member appointed by the fiscal body of a town with a population of more than thirty thousand (30,000) located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(8) One (1) member who is jointly appointed by the following authorities of municipalities that are located within a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):

(A) The executive of a city having a population of more than twenty-nine thousand (29,000) but less than twenty-nine thousand five hundred (29,500).

(B) The executive of a city having a population of more than twelve thousand five hundred (12,500) but less than twelve thousand seven hundred (12,700).

(C) The fiscal body of a town having a population of more than one thousand five hundred (1,500) but less than two thousand two hundred (2,200).

(9) Three (3) members appointed by the fiscal body of a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(10) One (1) member appointed by the county executive of a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(11) One (1) member of a labor organization representing employees of the authority who provide public transportation services within the geographic jurisdiction of the authority. The labor organization shall appoint the member. If more than one (1) labor organization represents the employees of the authority, each organization shall submit one (1) name to the governor, and the governor shall appoint the member from the list of names submitted by the organizations.

(12) The executive of a city with a population of more than thirty-one thousand seven hundred twenty-five (31,725) but less than thirty-five thousand (35,000), or the executive's designee.

(13) The executive of a city with a population of more than thirty-six thousand eight hundred twenty-five (36,825) but less than forty thousand (40,000), or the executive's designee.

(14) One (1) member of the board of commissioners of a

county, with a population of more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000), appointed by the board of commissioners, or the member's designee.

(15) One (1) member appointed jointly by the township executive of the township containing the following towns:

- (A) Chesterton.
- (B) Porter.
- (C) Burns Harbor.
- (D) Dune Acres.

The member appointed under this subdivision must be a resident of a town listed in this subdivision.

(16) One (1) member appointed jointly by the township executives of the following townships located in Porter County:

- (A) Washington Township.
- (B) Morgan Township.
- (C) Pleasant Township.
- (D) Boone Township.
- (E) Union Township.
- (F) Porter Township.
- (G) Jackson Township.
- (H) Liberty Township.
- (I) Pine Township.

The member appointed under this subdivision must be a resident of a township listed in this subdivision.

If a county or city becomes a member of the authority under section 3.5 of this chapter, the executive of the county or city shall appoint one (1) member to serve on the board.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.7; P.L.64-1998, SEC.1; P.L.90-1999, SEC.1; P.L.14-2000, SEC.85; P.L.170-2002, SEC.165; P.L.114-2005, SEC.1; P.L.1-2006, SEC.584; P.L.169-2006, SEC.79; P.L.1-2007, SEC.245; P.L.70-2007, SEC.3; P.L.182-2009(ss), SEC.446; P.L.119-2012, SEC.226.

IC 36-9-3-6

Appointment of board members; time limits; term of office

Sec. 6. (a) Except as provided in subsection (d), the appointments required by section 5 of this chapter must be made as soon as is practical, but not later than sixty (60) days after the adoption of the ordinance establishing the authority. If any appointing authority fails to make the required appointment within the sixty (60) day time limit, the circuit court from the jurisdiction of the appointing authority shall make the appointment without delay.

(b) The term of office of a member of the board is:

- (1) two (2) years, for a member of a board located in a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), if such a board exists under this chapter; and
- (2) four (4) years for all other boards;

and continues until the member's successor has qualified for the office. A member may be reappointed for successive terms.

(c) A member of the board serves at the pleasure of the appointing authority.

(d) An appointment to an authority located in a county with a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), if such an authority exists under this chapter, must be made not later than sixty (60) days after the adoption of the ordinance establishing the authority, or for the purpose of reappointments, sixty (60) days after a scheduled reappointment. If the appointing authority designated in section 5(c)(3), 5(c)(4), 5(c)(5), 5(c)(6), or 5(c)(8) of this chapter fails to make an appointment, the appointment shall be made by the governor. If a county or city becomes a member of the authority under section 3.5 of this chapter and the executive of the county or city fails to make an appointment to the board within sixty (60) days after the county or city becomes a member of the authority, the appointment shall be made by the governor. The governor shall select an individual from a list comprised of one (1) name from each appointing authority for that particular appointment.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.2; P.L.70-2007, SEC.4; P.L.182-2009(ss), SEC.447.

IC 36-9-3-7

Board; officers; records; meetings

Sec. 7. (a) Except as provided in subsection (e), As soon as is practical, but not later than ninety (90) days after the authority is established, the members shall meet and organize themselves as a board.

(b) Except as provided in subsection (f), At its first meeting, and annually after that, the board shall elect from its members a president, a vice president who shall perform the duties of the president during the absence or disability of the president, a secretary, and a treasurer. If the authority includes more than one (1) county, the president and vice president must be from different counties.

(c) The regional planning commission staff or the metropolitan planning organization if the authority includes a consolidated city shall serve as staff to the board secretary for the purpose of recording the minutes of all board meetings and keeping the records of the authority.

(d) The board shall keep its maps, plans, documents, records, and accounts in a suitable office, subject to public inspection at all reasonable times.

(e) After December 31, 2009, this subsection applies if a county is not a member of the northern Indiana regional transportation district established under IC 8-24. If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the first meeting of the board shall be at the call of the county council of the county having a population of more than four hundred thousand (400,000)

but less than seven hundred thousand (700,000). The president of the county council shall preside over the first meeting until the officers of the board have been elected.

(f) After December 31, 2009, this subsection applies if a county is not a member of the northern Indiana regional transportation district established under IC 8-24. If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the board shall first meet in January. At the first meeting the board shall elect from its members a president, a vice president who shall perform the duties of the president during the absence or disability of the president, a secretary, a treasurer, and any other officers the board determines are necessary for the board to function.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.12-1992, SEC.175; P.L.235-1997, SEC.8; P.L.64-1998, SEC.2; P.L.90-1999, SEC.3; P.L.182-2009(ss), SEC.448.

IC 36-9-3-8

Board meetings

Sec. 8. (a) The board shall fix the time and place for holding regular meetings, and it must meet at least once during each calendar quarter of each calendar year.

(b) Special meetings of the board may be called by the chairman or by five (5) members of the board upon written request to the secretary. The secretary must send to all members, at least forty-eight (48) hours in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-9

Board; quorum; approval of actions

Sec. 9. (a) A majority of the members appointed to the board constitutes a quorum for a meeting.

(b) Except as provided in subsection (c), The board may act officially by an affirmative vote of a majority of those present at the meeting at which the action is taken.

(c) After December 31, 2009, this subsection applies if a county is not a member of the northern Indiana regional transportation district established under IC 8-24. If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), then:

- (1) an affirmative vote of a majority of the board is necessary for an action to be taken; and
- (2) a vacancy in membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.4; P.L.114-2005, SEC.2; P.L.1-2006, SEC.585; P.L.169-2006, SEC.80; P.L.1-2007, SEC.246; P.L.182-2009(ss), SEC.449.

IC 36-9-3-10

Board; compensation and expenses of members

Sec. 10. (a) Except as provided in subsection (b), The members of the board are not entitled to a salary but are entitled to an allowance for actual expenses and mileage at the same rate as other county officials.

(b) After December 31, 2009, this subsection applies if a county is not a member of the northern Indiana regional transportation district established under IC 8-24. If the authority includes a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), a member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided:

(1) in the procedures established by the department of administration and approved by the budget agency for state employee travel; or

(2) by ordinance of the county fiscal body.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.90-1999, SEC.5; P.L.182-2009(ss), SEC.450.

IC 36-9-3-11

Executive director

Sec. 11. The board shall appoint a qualified person to be executive director of the authority. The executive director is the chief executive officer of the authority.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-12

Controller

Sec. 12. (a) The board shall appoint a person to act as controller for the authority.

(b) The controller shall give bond in the sum and with the conditions prescribed by the board, and with surety to the approval of the board. The bond must be filed and recorded in the office of the county recorder for the county in which the office of the authority is located.

(c) The term of office of the controller is one (1) year, and he may be appointed for additional terms of one (1) year each.

(d) All money payable to the authority must be paid to the controller, who shall deposit it in the manner prescribed by IC 5-13-6. The money deposited may be invested under the applicable statutes, including IC 5-13-9.

(e) The controller shall keep an accurate account of all appropriations made and all taxes levied by the authority, all money owing or due to the authority, and all money received and disbursed.

(f) The board may authorize the controller to pay a per diem in advance to a public transportation employee or board member who will attend a training session or other special meeting required as a duty of the public transportation employee or board member.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.19-1987, SEC.52; P.L.327-1995, SEC.1.

IC 36-9-3-12.5

Repealed

(Repealed by P.L.182-2009(ss), SEC.469.)

IC 36-9-3-13

Powers and duties of board

Sec. 13. The board may:

- (1) exercise the executive and legislative powers of the authority as provided by this chapter;
- (2) as a municipal corporation, sue and be sued in its name;
- (3) sell, lease, or otherwise contract for advertising in or on the facilities of the authority;
- (4) protect all property owned or managed by the board;
- (5) adopt an annual budget;
- (6) incur indebtedness in the name of the authority in accordance with this chapter;
- (7) acquire real, personal, or mixed property by deed, purchase, or lease and dispose of it for use in connection with or for administrative purposes;
- (8) receive gifts, donations, bequests, and public trusts, agree to conditions and terms accompanying them, and bind the authority to carry them out;
- (9) receive federal or state aid and administer that aid;
- (10) erect the buildings or structures needed to administer and carry out this chapter;
- (11) determine matters of policy regarding internal organization and operating procedures not specifically provided for by law;
- (12) adopt a schedule of reasonable charges and rents, and collect them from all users of facilities and services within the jurisdiction of the authority;
- (13) purchase supplies, materials, and equipment to carry out the duties and functions of the board, in accordance with procedures adopted by the board and under applicable statutes;
- (14) employ the personnel necessary to carry out the duties, functions, and powers of the board;
- (15) sell any surplus or unneeded real and personal property in accordance with procedures adopted by the board and under applicable statutes;
- (16) adopt rules governing the duties of its officers, employees, and personnel, and the internal management of the affairs of the board;
- (17) fix the compensation of the various officers and employees of the authority, within the limitations of the total personal services budget;
- (18) purchase public transportation services from public or private transportation agencies upon the terms and conditions set forth in purchase of service agreements between the

- authority and the transportation agencies;
- (19) acquire, establish, construct, improve, equip, operate, maintain, subsidize, and regulate public transportation systems within the jurisdiction of the authority;
- (20) after receiving a request for assistance from a public transportation system, enter into agreements with government agencies, political subdivisions, private transportation companies, railroads, and other persons providing for:
- (A) construction, operation, and use by the other party of any public transportation system and equipment held or later acquired by the authority; and
 - (B) acquisition of any public transportation system and equipment of another party if all or part of the operations of that party take place within the jurisdiction of the authority;
- (21) rent or lease any real property, including air rights above real property owned or leased by a transportation system, for transportation or other purposes, with the revenues from those rentals to accrue to the authority and to be used exclusively for the purposes of this chapter;
- (22) negotiate and execute contracts of sale, purchase, or lease, or contracts for personal services, materials, supplies, equipment, or passenger transportation services;
- (23) establish at or near its terminals and stations the off-street parking facilities and access roads that are necessary and desirable, and charge fees for or allow free use of those facilities;
- (24) enter into agreements with other persons for the purpose of participating in transportation planning activities;
- (25) administer any rail services or other use of rail rights-of-way that may be the responsibility of state or local government under the Federal Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. sections 701-794);
- (26) determine the level and kind of public transportation services that should be provided by the authority; and
- (27) do all other acts necessary or reasonably incident to carrying out the purposes of this chapter.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.9.

IC 36-9-3-14

Repealed

(Repealed by P.L.235-1997, SEC.18.)

IC 36-9-3-15

Standards for grants and purchase of service agreements; promotional programs

Sec. 15. (a) The board shall, to the extent it considers feasible, adopt uniform standards for the making of grants and purchase of service agreements. These grant contracts or purchase of service agreements may be for the number of years or duration agreed to by

the authority and the transportation agency.

(b) If the authority provides grants for operating expenses or participates in any purchase of service agreement, the purchase of service agreement or grant contract must state the level and nature of fares or charges to be made for public transportation services, and the nature and standards of public transportation to be so provided. In addition, any purchase of service agreements or grant contracts must provide, among other matters, for:

- (1) the terms or cost of transfers or interconnections between different public transportation agencies;
- (2) schedules or routes of transportation service;
- (3) changes that may be made in transportation service;
- (4) the nature and condition of the facilities used in providing service;
- (5) the manner of collection and disposition of fares or charges;
- (6) the records and reports to be kept and made concerning transportation service; and
- (7) interchangeable tickets or other coordinated or uniform methods of collection of charges.

The authority shall also undertake programs to promote use of public transportation and to provide ticket sales and passenger information. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.10.*

IC 36-9-3-16

Provision of public transportation service by authority; fares and standards; discontinuance of service

Sec. 16. (a) The authority may provide public transportation service by operating public transportation facilities only if the board finds that no public or private transportation agency or corporation is willing or able to provide public transportation service.

(b) The authority may enter into operating agreements with any private or public person to operate transportation facilities on behalf of the authority only after the board has made an affirmative effort to seek out and encourage private owners and operators to provide the needed public transportation service.

(c) Whenever the authority provides any public transportation service by operating public transportation facilities, it shall establish the level and nature of fares or charges to be made for public transportation services, and the nature and standards of public transportation service to be provided within the jurisdiction of the authority.

(d) If the fiscal body of any county receives notice that any public transportation system intends to cease providing public transportation service within the county, the fiscal body shall approve or disapprove the cessation of service at its first regular meeting after receiving the notice. Failure of the fiscal body to take any action within thirty (30) days is considered to be approval of the cessation of service. If the fiscal body adopts a resolution disapproving the cessation of service, and the authority is negotiating with the public transportation system

for continuation of service within the county, the county shall join the negotiations and participate in any program that results in a continuation of public transportation service within its boundaries. *As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.11.*

IC 36-9-3-17

Acquisition and construction of transportation facilities

Sec. 17. At the request of the public transportation system serving the territory of the authority, the authority may:

- (1) construct or acquire any public transportation facility for use by the authority or any transportation agency; and
- (2) acquire transportation facilities from any transportation agency, including:
 - (A) reserve funds;
 - (B) employees' pension or retirement funds;
 - (C) special funds;
 - (D) franchises;
 - (E) licenses;
 - (F) patents;
 - (G) permits; and
 - (H) papers and records of the agency.

In making acquisitions from a transportation agency, the authority may assume the obligations of the agency regarding its property or public transportation operations.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-18

Acquisition of facilities within 100 yards of terminals

Sec. 18. The authority may acquire, improve, maintain, lease, and rent facilities, including air rights, that are within one hundred (100) yards of a terminal, station, or other facility of the authority. If these facilities generate revenues in excess of their cost to the authority, the authority must use the excess revenues to improve transportation services or reduce fares for the public.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-19

Limitations and obligations of authority

Sec. 19. (a) In connection with any construction or acquisition, the authority shall make relocation payments in the manner prescribed by IC 8-23-17.

(b) A private company lawfully providing public transportation service within the territory of the authority when the authority is established may continue to operate the same route or routes and levels of service as approved by the department of state revenue.

(c) Only the proceedings prescribed by this chapter are required in connection with the granting of franchise contracts provided for in this chapter.

(d) Notwithstanding section 13 of this chapter, the board may not

act in a manner that would adversely affect a common carrier's freight operations.

(e) The board may not exercise the power of eminent domain.
As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.23-1988, SEC.119; P.L.18-1990, SEC.296; P.L.235-1997, SEC.12.

IC 36-9-3-20

Repealed

(Repealed by P.L.72-1988, SEC.10.)

IC 36-9-3-21

Collective bargaining agreements; authorization

Sec. 21. The authority shall deal with and enter into written contracts with its employees through accredited representatives of those employees or representatives of any labor organization authorized to act for those employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-22

Application of federal statutes to employees affected by actions of authority

Sec. 22. (a) The rights, benefits, and other employee protective conditions and remedies that:

- (1) are set forth in Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. section 1609(c)) and Section 405(b) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. section 565(b)); and

- (2) are prescribed by the United States secretary of labor under those statutes;

apply to employees of the authority and employees of any public transportation agency affected by actions of the authority, including the acquisition and operation of public transportation facilities, the execution of purchase of service agreements with a public transportation agency, the coordination, reorganization, combining, leasing, or merging of operations or the expansion or curtailment of public transportation service or facilities under this chapter.

(b) The authority may take any of the actions specified in subsection (a) only after meeting the requirements of this chapter. In addition, whenever the authority operates the public transportation facilities of a public transportation agency engaged as of April 25, 1975, in the transportation of persons by railroad, it may do so only in a manner that insures the continued applicability to the affected railroad employees of the federal statutes applicable on that date to them and the continuation of their collective bargaining agreements until those agreements can be renegotiated by representatives of the authority and the representatives of those employees designated under the Railway Labor Act, as amended (45 U.S.C. sections 151-188).

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997,

SEC.13.

IC 36-9-3-23

Employees; retention of benefits after action of authority

Sec. 23. An employee of the authority is entitled to at least the same worker's compensation, pension, seniority, salary, wages, sick leave, vacation, health and welfare insurance, and other benefits that the employee enjoyed as an employee of the authority or of the public transportation agency before an action of the authority.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.28-1988, SEC.117; P.L.235-1997, SEC.14.

IC 36-9-3-24

Displacement of employees as a result of new facilities; selection of employees to perform work

Sec. 24. (a) Whenever the authority proposes to operate or to enter into a contract to operate a new public transportation facility that may result in the displacement of employees or the rearrangement of the working forces of the authority or of a public transportation agency, the authority must give at least ninety (90) days' written notice of the proposed operations to the representatives of the employees affected.

(b) The authority must provide for the selection of forces to perform the work of the new facility on the basis of agreement between the authority and the representatives of the employees affected.

(c) Immediately after receipt of the notice, the representatives of all parties interested in the intended changes shall agree on the date and place of a conference for the purpose of reaching agreements under this section. The conference must begin within ten (10) days after receipt of the notice.

(d) If the parties fail to agree, the matter may be submitted by the authority or by any representative of the employees affected to final and binding arbitration by an impartial arbitrator to be selected by the American Arbitration Association from a current listing of arbitrators of the National Academy of Arbitrators.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.15.

IC 36-9-3-25

Labor disputes; arbitration procedure

Sec. 25. (a) If a labor dispute involving the authority and its employees is not governed by the Federal Labor Management Relations Act, as amended (29 U.S.C. sections 141-197 and 557), or by the Railway Labor Act, as amended (45 U.S.C. sections 151-188), the authority shall offer to submit the dispute to an arbitration team composed of one (1) member appointed by the authority, one (1) member appointed by the labor organization representing the employees, and one (1) member agreed upon by the labor organization and the authority. The member agreed upon by the labor organization and the authority shall serve as chairman of the team.

The determination of the majority of the arbitration team is final and binding on all matters in dispute.

(b) If within the first ten (10) days after the date of the appointment of the arbitrators representing the authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the American Arbitration Association to furnish from a current listing of the membership of the National Academy of Arbitrators the names of seven (7) members of the National Academy from which the third arbitrator shall be selected. After receipt of the list, the arbitrators appointed by the authority and the labor organization shall promptly determine by lot the order of elimination and then alternately eliminate one (1) name from the list at a time until only one (1) name remains. The remaining person on the list is the third arbitrator.

(c) For purposes of this section, the term "labor dispute" shall be broadly construed and includes any controversy regarding the collective bargaining agreements and any grievance that may arise.

(d) Each party shall pay one-half (1/2) of the expenses of arbitration under this section.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-26

Pension systems and retirement benefits

Sec. 26. (a) The authority may:

- (1) establish and maintain systems of pensions and retirement benefits for the officers and employees of the authority designated or described by resolution of the authority;
- (2) fix the classifications in those systems;
- (3) take the steps necessary to provide that persons eligible for admission to the pension systems as officers and employees of any other public transportation employer whose operations are financed in whole or in part by the authority retain eligibility for admission to or continued coverage and participation under Title II of the federal Social Security Act, as amended (42 U.S.C. sections 401-422), and the related provisions of the Federal Insurance Contributions Act, as amended (26 U.S.C. sections 3101-3125), or the federal Railroad Retirement Act (45 U.S.C. sections 231-231t), as amended, and the related provisions of the Railroad Retirement Tax Act, as amended (26 U.S.C. sections 3201-3233), whichever is applicable; and
- (4) provide in connection with the pension systems a system of benefits payable to the beneficiaries and dependents of any participant in the pension systems after that participant's death, whether or not the death is accidental or occurs in the performance of duty, and subject to the exceptions, conditions, restrictions, and classifications provided by resolution of the authority.

(b) Pension systems established by the authority may be financed or funded in a manner that the authority finds to be economically feasible.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-27

Acquisition of facilities from public transportation agency; obligations to employees

Sec. 27. (a) Whenever the authority acquires the public transportation facilities of a public transportation agency and operates those facilities, all employees engaged in the operation of the facilities shall be transferred to and appointed as employees of the authority, subject to all the rights and benefits of this chapter, and the authority shall assume and observe all current labor contracts and pension obligations.

(b) The authority must give the employees of any public transportation agency it acquires seniority credit, sick leave, vacation, insurance, and pension credits in accordance with the records or labor agreements from the acquired transportation agency. Members and beneficiaries of any pension or retirement system or other system of benefits established by the acquired transportation agency continue to have rights, privileges, benefits, obligations, and status under that system. The authority must assume the obligations of the acquired public transportation agency regarding wages, salaries, hours, working conditions, sick leave, health and welfare, and pension or retirement provisions for employees.

(c) The authority must assume the provisions of any collective bargaining agreement between a public transportation agency acquired by the authority and the representative of the employees of the acquired agency. The authority and the employees, through their representatives for collective bargaining purposes, may take whatever action is necessary to preserve the pension rights of the employees, including the transfer of pension trust funds under the joint control of the transportation agency and the participating employees through their representatives to the trust fund to be established, maintained, and administered jointly by the authority and the participating employees through their representatives.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.16.

IC 36-9-3-28

Audits; accounting forms and records

Sec. 28. The state board of accounts shall:

- (1) audit the records of the authority; and
- (2) prescribe or approve all accounting forms and records used by the authority.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-29

Annual budget

Sec. 29. The board shall prepare an annual budget for the authority's operating and maintenance expenditures and necessary capital expenditures. Each annual budget is subject to review and

modification by the:

(1) fiscal body of the county or municipality that establishes the authority; and

(2) county board of tax adjustment and the department of local government finance under IC 6-1.1-17.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.233-2001, SEC.2; P.L.90-2002, SEC.503; P.L.224-2007, SEC.132; P.L.146-2008, SEC.785.

IC 36-9-3-30

Payment of organizational expenses

Sec. 30. (a) The county or municipality that establishes the authority shall pay the expenses incurred in the organization of the authority; however, the amount of expenses paid may not exceed the amount for authority expenses set by the fiscal body of the establishing county or municipality.

(b) If two (2) or more counties or municipalities cooperate to establish the authority, the division of the costs incurred in the organization must be included in the agreement entered into by the counties or municipalities.

(c) The board shall, from time to time, certify the items of expense to the county auditor, according to the terms of the agreement.

(d) The authority shall fully reimburse each county or municipality out of the first proceeds of any special taxes levied for the purpose of this chapter.

As added by Acts 1981, P.L.309, SEC.76. Amended by P.L.235-1997, SEC.17; P.L.233-2001, SEC.3.

IC 36-9-3-31

Repealed

(Repealed by P.L.182-2009(ss), SEC.469.)

IC 36-9-3-32

Acceptance of federal or other funds

Sec. 32. (a) The board may, on behalf of the authority, accept, receive, and receipt for federal monies and other public or private monies for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of public transportation systems under the jurisdiction of the authority. The board may also comply with federal statutes and rules concerning the expenditure of federal monies for public transportation systems.

(b) The board may apply to state and federal agencies for grants for public transportation development, make or execute representations, assurances, and contracts, enter into covenants and agreements with any state or federal agency relative to public transportation systems, and comply with federal and state statutes and rules concerning the acquisition, development, operation, and administration of public transportation systems.

As added by Acts 1981, P.L.309, SEC.76.

IC 36-9-3-33

Regulation by department of state revenue; administrative appeals and judicial review

Sec. 33. (a) This section does not apply to interurban or interstate public transportation service.

(b) Service provided by the authority within the territory of the authority is exempt from regulation by the department of state revenue under IC 8-2.1. This exemption applies to transportation services provided by the authority directly or by grants or purchase of service agreements.

(c) Service provided by the authority by contract or service agreements outside the territory of the authority is subject to regulation by the department of state revenue under IC 8-2.1.

(d) The department of state revenue shall hear appeals concerning any regulatory action of the authority concerning service and rates, and, after making a finding based on the requirements of IC 8-2.1, issue an appropriate order. Judicial review of the commission decision may be obtained in the manner prescribed by IC 4-21.5-5.

As added by P.L.99-1989, SEC.34.

IC 36-9-4

Chapter 4. Urban Mass Transportation Systems; Public Transportation Corporations

IC 36-9-4-1

Application of chapter

Sec. 1. This chapter applies to all municipalities. However, after December 31, 2009, this chapter does not apply to a municipality if it is located in a county that is a member of the northern Indiana regional transportation district established under IC 8-24 and has a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000).

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.182-2009(ss), SEC.451; P.L.119-2012, SEC.227.

IC 36-9-4-2

"Management" defined

Sec. 2. For purposes of this chapter, the "management" of an urban mass transportation system is:

- (1) the board of directors, for a corporation;
- (2) the majority of the partners, for a partnership in which the partners have equal rights in the management and control of the partnership business;
- (3) the partners having a controlling interest, for other partnerships;
- (4) the proprietor, for an individual proprietorship; or
- (5) the managers, if any, or members of a limited liability company.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.8-1993, SEC.518.

IC 36-9-4-3

Declaration of public purpose

Sec. 3. The establishment of an urban mass transportation system under this chapter is a public use and purpose for which public money may be spent and private property may be acquired.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-4

Existing systems; application for assistance from municipalities

Sec. 4. (a) If the management of an urban mass transportation system in any municipality finds that the system is unable to render adequate service within the municipality or that there is imminent danger that the system will be unable to render that service, the management of the system may apply to the municipal legislative body for assistance under this chapter.

(b) On receipt of an application under subsection (a) the municipal

legislative body may study whether the financial position of the transportation system is such that the system is unable to render adequate service within the municipality or that there is imminent danger that the system will be unable to render that service. The legislative body shall pay for these studies by appropriation from the general fund of the municipality, and the money need not be restored to the general fund.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-5

Financial assistance from municipality; necessary findings; types of assistance

Sec. 5. (a) The municipal legislative body may furnish the urban mass transportation system with the financial assistance necessary to enable the system to provide adequate service within the municipality, if the legislative body finds:

(1) that the system is unable to render that service or that there is imminent danger that the system will be unable to render that service; and

(2) that the system is:

(A) necessary to relieve traffic congestion in the municipality;

(B) necessary for the proper use of the factories, stores, warehouses, offices, schools, recreational facilities, and other places where members of the general public congregate;

(C) necessary to expand the economic and social opportunities available to residents of the municipality, especially those who cannot freely move about without the services of the system;

(D) a substantial factor in maintaining real property values in the municipality; or

(E) a substantial factor in providing public housing, redevelopment of blighted areas, and publicly owned offstreet parking facilities.

(b) The municipal legislative body may furnish assistance under this section by:

(1) making grants to the system;

(2) purchasing buses or real property from the system or from any other source for lease to the system; or

(3) making both grants and purchases.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-6

Grants to systems by municipalities; contracts

Sec. 6. (a) If the municipal legislative body decides to make grants under section 5 of this chapter, it must enter into and confirm by ordinance a contract with the urban mass transportation system. The contract must provide for the payment of money by the municipality to the system in the amounts and at the times determined by the parties, and may include other terms and conditions determined by the parties. However, the contract may not:

(1) require the system to repay the grants to the municipality;

- (2) exceed ten (10) years in duration; or
- (3) require the municipality to make grants to a system that has ceased operations within the municipality.

(b) The municipal legislative body may pay the grants by appropriation from the general fund of the municipality or from a special fund established for that purpose.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-7

Purchase of property from system by municipality; contracts and leases; appraisals

Sec. 7. (a) If the municipal legislative body decides to purchase buses or real property, or both, from the urban mass transportation system under section 5 of this chapter, it must enter into and confirm by ordinance a contract and lease requiring the municipality to:

- (1) purchase all or part of:
 - (A) the buses operated by the system; or
 - (B) the real property owned by the system; as determined by the parties; and
- (2) lease the buses or property purchased to the system for use in providing mass transportation within the municipality.

(b) The municipality must pay the system a sum equal to the fair value of the buses or real property purchased, less the amount outstanding under any mortgage, contract of sale, or other security device that may attach to the buses or real property. The municipality may immediately pay off any such outstanding amount or assume any such mortgage, contract of sale, or other security device.

(c) The fair value of the buses or real property shall be determined by three (3) appraisers experienced in the appraisal of buses or real property. One (1) of the appraisers shall be appointed by the municipality and one (1) by the system. These two (2) appraisers shall then appoint a third appraiser. However, if they are unable to do so, each shall submit the names of three (3) appraisers to the circuit court for the county in which the municipality is located and the court shall appoint the third appraiser from the names submitted.

(d) If the municipal legislative body decides to purchase both buses and real property for lease to an urban mass transportation system, three (3) appraisers shall be appointed to determine the fair value of the buses and an additional three (3) appraisers shall be appointed to determine the fair value of the real property. Each group of three (3) appraisers shall be appointed in the manner prescribed by subsection (c).

(e) Before making their appraisal, the appraisers must appear before the clerk of the legislative body and take an oath to make a just and true appraisal of the buses or real property.

(f) A lease of buses or real property by a municipality to a system under this section must incorporate provisions for rental and other terms and provisions that the municipal legislative body considers necessary under this chapter. The municipality and the system may enter into additional contracts and leases during the term of the lease.

The term of a lease of buses under this section may not exceed twenty-five (25) years.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.1.

IC 36-9-4-8

Purchase of property by municipalities from sources other than systems; contracts and leases

Sec. 8. (a) If, under section 5 of this chapter, the municipal legislative body decides to purchase buses or real property, or both, for the urban mass transportation system from a source other than the system, it must enter into and confirm by ordinance a contract and lease requiring the municipality to:

- (1) purchase the buses or real property; or
- (2) lease the buses or property purchased to the system for use in providing mass transportation within the municipality.

(b) A lease of buses or real property by a municipality to a system under this section must incorporate provisions for rental and other terms and provisions that the municipal legislative body considers necessary under this chapter. The municipality and the system may enter into additional contracts and leases during the term of the lease. The term of a lease of buses under this section may not exceed twenty-five (25) years.

(c) The purchase of buses under this section is governed by the general statutes governing public purchases.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.2.

IC 36-9-4-9

Public acquisition of systems; application to municipality; studies

Sec. 9. (a) If the management of an urban mass transportation system in any municipality finds that public acquisition of the system is necessary to enable the system to render adequate service within the municipality, the management of the system may request the municipal legislative body to determine whether the public should acquire the system. The management may withdraw this request only if:

- (1) at least six (6) months have passed since the date of the request; and
- (2) the municipal legislative body did not adopt an ordinance to acquire the system within six (6) months from the date of the request.

(b) On receipt of the request, the municipal legislative body shall study whether it is in the public interest that the public acquire the system. The legislative body shall pay for these studies by an appropriation from the general fund of the municipality, which need not be restored to the general fund.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-10

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-13

Public transportation corporation; taxing district; boundaries after annexation and disannexation; incorporation of additional territory

Sec. 13. (a) After the creation of a public transportation corporation, territory may be added to the taxing district of the corporation only in accordance with this section.

(b) If the municipality finalizes an annexation or disannexation of territory, the boundaries of the taxing district of the corporation change so as to remain coterminous with the new boundaries of the municipality. Such a change takes effect when the annexation or disannexation takes effect.

(c) Upon written request by a majority of:

- (1) the resident freeholders in a platted subdivision; or
- (2) the owners of any unplatted lands;

in the same county as a public transportation corporation but not within a municipality, the board of directors of the corporation may, by resolution, incorporate all or part of the platted subdivision or unplatted lands into the taxing district. Such a request must be signed and certified as correct by the resident freeholders or landowners making the request, and the original must be preserved in the records of the board. The resolution of the board incorporating an area into the taxing district must be in writing and must include an accurate description of that area. A certified copy of the resolution, signed by the chairman and secretary of the board, together with a map showing the boundaries of the taxing district and the location of the additional areas, shall be delivered to the auditor of the county within which the corporation is located and shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) Upon written request by ten (10) or more resident freeholders of a platted subdivision or unplatted territory in the same county as a public transportation corporation but not within a municipality, the board of directors of the corporation may define the limits of an area that:

- (1) is within the county;
- (2) includes the property of the freeholders; and
- (3) is to be considered for incorporation into the taxing district.

Notice of the defining of the area by the board, and notice of the location and limits of the area, must be given by publication in accordance with IC 5-3-1. The area may then be incorporated into the taxing district upon request, in the manner prescribed by subsection (c).

(e) Property in territory added to the taxing district under subsection (c) or (d) is, as a condition of the special benefits it subsequently receives, liable for its proportion of all taxes subsequently levied by the public transportation corporation. The proportion of taxation shall be determined in the same manner as when territory is annexed by a municipality.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.37; P.L.348-1983, SEC.3.

IC 36-9-4-13.5

Public transportation corporations in certain counties; city in county having second largest population

Sec. 13.5. (a) This section applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

(b) The taxing district of a public transportation corporation under this section includes all the territory inside the corporate boundaries of the two (2) cities in the county having the largest populations and such suburban territory as provided in section 13 of this chapter.

(c) This section applies upon the adoption of substantially identical ordinances approving subsection (b) by both:

- (1) the public transportation corporation incorporating the additional territory; and
- (2) the legislative body of the city being added to the taxing district of the public transportation corporation.

(d) Whenever the city in the county having the second largest population becomes a part of the public transportation corporation, then two (2) additional directors representing that city shall be appointed to the board of directors of the corporation. The directors must be residents of that city and are entitled to all of the rights, privileges, powers, and duties of directors under this chapter. The executive and the legislative body of that city shall each appoint one (1) director. These two (2) directors must not be of the same political party. The director appointed by the legislative body shall serve for a term of one (1) year, and the director appointed by the executive shall serve for a term of two (2) years. Upon the expiration of the respective terms, successors shall be appointed in accordance with section 18 of this chapter.

(e) If the city in the county having the second largest population appropriates money to support the public transportation corporation in a particular year, and if the territory of that city subsequently becomes a part of the taxing district of the public transportation corporation in that year and is subject to a separate property tax levy for transportation services, the maximum permissible levy of that city for the year following the particular year used to compute the property tax levy limit under IC 6-1.1-18.5 is decreased, and the maximum permissible levy of the public transportation corporation for the particular year used to compute the property tax levy limit under IC 6-1.1-18.5 is increased, by an amount equivalent to the current contract amount to be paid by that city to the public transportation corporation for transportation services provided to that city in the particular year.

(f) The public transportation corporation shall establish a single property tax rate applicable to the taxing district of the public transportation corporation, including the territory of the city in the county having the second largest population that is included in the

public transportation corporation under this section. The initial permissible levy to be raised by this rate equals the sum of the amount raised by the levy of the public transportation corporation in the previous taxable year plus an amount equivalent to the current contract amount to be paid in the calendar year 1982 by the city in the county having the second largest population to the public transportation corporation. The permissible levy for the subsequent years shall be computed in accordance with IC 6-1.1-18.5.

(g) If the city in the county having the second largest population is excluded from the public transportation corporation in a subsequent year, and that city is no longer subject to a separate property tax levy for transportation services, the maximum permissible levy of the public transportation corporation for that subsequent year used to compute the property tax levy limit under IC 6-1.1-18.5 is decreased, and the maximum permissible levy of that city for that subsequent year used to compute the property tax levy limit under IC 6-1.1-18.5 is increased, by the amount of the product of the public transportation property tax rate for that subsequent year multiplied by the assessed value in that subsequent year of all taxable property in that city that is excluded from the public transportation corporation.

As added by Acts 1981, P.L.186, SEC.2. Amended by P.L.73-1983, SEC.20; P.L.12-1992, SEC.177; P.L.119-2012, SEC.228.

IC 36-9-4-14

Public transportation corporation; management by board of directors

Sec. 14. (a) A public transportation corporation is under the control of a board of directors, which shall exercise the executive and legislative powers of the corporation.

(b) Directors must be residents of the taxing district of the corporation.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-15

Cities; public transportation corporations; board of directors; membership

Sec. 15. (a) The board of directors of a public transportation corporation in a city consists of either five (5) or seven (7) directors, as determined by the city legislative body.

(b) If the board of directors consists of five (5) directors, they are:

(1) two (2) directors appointed by the city executive, for terms of one (1) and two (2) years, respectively; and

(2) three (3) directors appointed by the city legislative body, for terms of two (2), three (3), and four (4) years, respectively.

(c) If the board of directors consists of seven (7) directors, they are:

(1) three (3) directors appointed by the city executive, for terms of one (1), two (2), and three (3) years, respectively; and

(2) four (4) directors appointed by the city legislative body, for

terms of one (1), two (2), three (3), and four (4) years, respectively.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.3.

IC 36-9-4-16

Towns; public transportation corporations; board of directors; membership

Sec. 16. (a) The board of directors of a public transportation corporation in a town consists of either five (5) or seven (7) directors, as determined by the town legislative body. All the directors shall be appointed by the legislative body.

(b) If the board of directors consists of five (5) directors, they are:

- (1) one (1) director appointed for a term of one (1) year;
- (2) two (2) directors appointed for terms of two (2) years;
- (3) one (1) director appointed for a term of three (3) years; and
- (4) one (1) director appointed for a term of four (4) years.

(c) If the board of directors consists of seven (7) directors, they are:

- (1) two (2) directors appointed for terms of one (1) year;
- (2) two (2) directors appointed for terms of two (2) years;
- (3) two (2) directors appointed for terms of three (3) years; and
- (4) one (1) director appointed for a term of four (4) years.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.4.

IC 36-9-4-17

Directors; membership in political parties

Sec. 17. The appointing authorities shall make appointments to the board of directors under section 15 or 16 of this chapter so that the number of directors belonging to either of the two (2) major political parties does not exceed the number belonging to the other by more than one (1). If the appointing authorities cannot agree on the manner in which this will be done, the municipal executive shall make the appointment that results in one (1) party having more directors than the other.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-18

Board of directors; vacancies

Sec. 18. (a) On the expiration of the term of office of a director of a public transportation corporation, the appointing authority shall appoint a director for a term of four (4) years and until his successor is appointed and qualified.

(b) If a director leaves office before his term has expired, the appointing authority shall appoint a new director to serve the remainder of the term.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-19

Impeachment of directors

Sec. 19. A director of a public transportation corporation may be impeached under IC 5-8-1.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-20

Compensation of directors

Sec. 20. A director of a public transportation corporation is entitled to:

- (1) compensation of not more than one thousand two hundred dollars (\$1,200) annually, as determined in the budget; and
- (2) reimbursement for any expenses incurred in the interest of the board of directors.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-21

Board of directors; officers

Sec. 21. On the first day of the first month after their appointment, and annually after that, the directors of a public transportation corporation shall elect one (1) director as chairman of the board and one (1) director as secretary.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-22

Meetings of board of directors

Sec. 22. (a) The board of directors of a public transportation corporation shall, by rule, provide for regular meetings to be held at designated intervals throughout the year.

(b) The board shall convene in a special meeting whenever such a meeting is called by the chairman or by a majority of the directors. Notice of a special meeting must be given by publication in accordance with IC 5-3-1.

(c) The board shall keep its meetings open to the public.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.38.

IC 36-9-4-23

Board of directors; quorum; approval of actions; records; management of internal affairs

Sec. 23. (a) A majority of the board of directors of a public transportation corporation constitutes a quorum for a meeting.

(b) The board may act officially by affirmative vote of a majority of those present at the meeting at which the action is taken.

(c) The board shall keep a written record of its proceedings available for public inspection in its office. The record must include the aye and nay vote on the passage of each item of business.

(d) The board shall adopt rules of procedure under which its meetings are to be held. The board may suspend these rules by unanimous vote of the members present at any meeting, but it may not suspend them beyond the meeting at which the suspension

occurs.

(e) The board has the same power to supervise its internal affairs as other municipal administrative bodies.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-24

Introduction of proposed ordinances; public notice

Sec. 24. (a) A director of a public transportation corporation may introduce a proposed draft of an ordinance at a meeting of the board of directors. A director who introduces a proposed draft of an ordinance must provide, at the time of introduction, a written copy of the proposed draft. The board must place the date of introduction and a distinguishing number on each proposed draft of an ordinance.

(b) The board must publish a notice that the proposed ordinance is pending final action by the board. The notice must be published in accordance with IC 5-3-1. However, notice of an ordinance establishing a budget must be given in accordance with the statutes governing budgets of the municipality served by the corporation.

(c) The board must include in the notice reference to the subject matter of the proposed ordinance and the time and place a hearing on it will be held, and must indicate that the proposed draft of an ordinance is available for public inspection at the office of the board. The board may include in one (1) notice a reference to the subject matter of each draft of an ordinance that is pending and for which notice has not previously been given. The reference to the subject matter is adequate if it is sufficient to advise the public of the general subject matter of the proposed ordinance.

(d) The board must, not later than the date of notice of the introduction of a proposed ordinance, place five (5) copies of the proposed draft on file in the office of the board for public inspection.
As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.39.

IC 36-9-4-25

Adoption of ordinances; procedure

Sec. 25. (a) At a meeting for which notice has been given under section 24 of this chapter, the board of directors of a public transportation corporation may take final action on the proposed ordinance or may postpone final consideration of it to a designated meeting in the future without giving additional notice. Before adopting an ordinance, the board must give an opportunity to any person present at the meeting to give testimony or evidence for or against the proposed ordinance, under the rules as to the number of persons who may be heard and the time limits adopted by the board.

(b) Whenever the board adopts an ordinance, it shall designate the effective date of the ordinance at the same meeting. If the board fails to designate the effective date of the ordinance in the record of the proceedings of the board, the ordinance takes effect fourteen (14) days after its passage.

(c) Whenever the board adopts an ordinance, it shall cause copies

of the ordinance to be made available to the public.
As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-26

Printing and distribution of ordinances

Sec. 26. The board of directors of a public transportation corporation may provide for the printing of all or part of the ordinances of the corporation in pamphlet form or in bound volumes, and may distribute them without charge or may charge the cost of printing and distribution.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-27

Controller

Sec. 27. (a) The board of directors of a public transportation corporation shall appoint a qualified person to serve as controller. The controller is the chief fiscal officer of the corporation, and he must give bond in the sum and with the conditions prescribed by the board and with surety to the approval of the board.

(b) All money payable to the public transportation corporation shall be paid to the controller, and he shall deposit it under IC 5-13-6. The controller shall deposit this money in the depositories and in the accounts that the board designates by ordinance.

(c) The controller shall keep an accurate account of all appropriations made and all taxes levied by the public transportation corporation, all money owing or due to the corporation, and all money received and disbursed by the corporation, and he shall preserve all vouchers for payments and disbursements.

(d) The controller shall issue all warrants for the payment of money from the funds of the public transportation corporation, but he may not issue a warrant for the payment of a claim until the claim has been allowed in accordance with the procedure prescribed by the rules of the board. All warrants must be countersigned by the chairman of the board.

(e) If the controller is called upon to issue a warrant, he may require evidence that the amount claimed is justly due, and for that purpose he may summon before him any officer, agent, or employee of the public transportation corporation and examine him on oath or affirmation relating to the warrant. The controller may administer the oath or affirmation.

(f) Notwithstanding subsections (d) and (e), the board may authorize the controller to pay a per diem in advance to a public transportation employee or board member who will attend a training session or other special business meeting required as a duty of the public transportation employee or board member.

(g) Each year, and more often if required by the board, the controller shall submit his records of account as controller for audit to the certified public accountant or firm of certified public accountants designated by the board. The certified public accountant or firm of certified public accountants shall submit to the board a

certified report of the records of account, exhibiting the revenues, receipts, and disbursements, the sources from which the revenues and funds are derived, and the manner in which they have been disbursed. *As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.19-1987, SEC.53; P.L.327-1995, SEC.2.*

IC 36-9-4-28

Purchase of property from system by corporation

Sec. 28. (a) The board of directors of the public transportation corporation and the management of the urban mass transportation system shall negotiate for the purchase of all the real and personal property, licenses, rights, and interests of the system by the corporation, unless the system shows that part of its property is not necessary for the proper operation of the system.

(b) If the parties agree upon the terms and conditions of the purchase, the board shall adopt an ordinance incorporating those terms and conditions.

(c) If the parties cannot agree upon the terms and conditions of the purchase, the board may adopt an ordinance directing the acquisition of the property that has been the subject of the negotiations through eminent domain proceedings under section 32 of this chapter.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-29

Public transportation corporation; operation of system; contracts or leases for use of system

Sec. 29. (a) Upon acquisition of the necessary property by a public transportation corporation, the board of directors of the corporation may:

- (1) operate and maintain the system;
- (2) lease the system to any operator; or
- (3) contract for the use of the system by any operator.

(b) The board may also contract with any organization that has executive personnel with experience and skill applicable to the superintendence of the operation and maintenance of an urban mass transportation system. The contract must require the organization to furnish its services and the services of its personnel for the superintendence of the system.

(c) The maximum term of a contract or lease executed under this section is twenty-five (25) years.

(d) A contract or lease executed under this section must be confirmed by ordinance of the board.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.5.

IC 36-9-4-29.4

Expansion of services outside operational boundaries

Sec. 29.4. (a) This section does not apply to a public transportation corporation located in a county having a consolidated city.

(b) A public transportation corporation may provide regularly

scheduled passenger service to specifically designated locations outside the system's operational boundaries as described in IC 36-9-1-9 if all of the following conditions are met:

(1) The legislative body of the municipality approves any expansion of the service outside the municipality's corporate boundaries.

(2) The expanded service is reasonably required to do any of the following:

(A) Enhance employment opportunities in the new service area or the existing service area.

(B) Serve persons who are elderly, persons with a disability, or other persons who are in need of public transportation.

(3) Except as provided in subsection (e), the expanded service does not extend beyond the boundary of the county in which the corporation is located.

(c) Notwithstanding section 39 of this chapter, a public transportation corporation may provide demand responsive service outside of the system's operational boundaries as described in IC 36-9-1-9 if the conditions listed in subsection (b) are met.

(d) The board may contract with a private operator for the operation of an expanded service under this section.

(e) Subsection (b)(3) does not apply to a special purpose bus (as defined in IC 20-27-2-10) or a school bus (as defined in IC 20-27-2-8) that provides expanded service for a purpose permitted under IC 20-27-9.

As added by P.L.229-1991, SEC.1. Amended by P.L.278-2001, SEC.9; P.L.1-2005, SEC.238; P.L.99-2007, SEC.223; P.L.182-2009(ss), SEC.452.

IC 36-9-4-29.5

Repealed

(Repealed by P.L.182-2009(ss), SEC.468.)

IC 36-9-4-29.6

Repealed

(Repealed by P.L.182-2009(ss), SEC.468.)

IC 36-9-4-30

Board of directors; power to acquire, hold, and dispose of property

Sec. 30. The board of directors of a public transportation corporation may:

(1) acquire by grant, purchase, gift, lease, or otherwise; and

(2) hold, use, sell, lease, or dispose of;

real and personal property, licenses, patents, rights, and interests necessary or convenient for the exercise of its powers under this chapter.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-31

Board of directors; seal

Sec. 31. The board of directors of a public transportation corporation may adopt a seal to be impressed upon its instruments and may provide for the impression of that seal by printed or lithographic facsimile. An executed instrument bearing the seal of the board is prima facie evidence of its execution by the board and that its execution was legally authorized by the board.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-32

Eminent domain; procedure

Sec. 32. (a) The board of directors of a public transportation corporation may exercise the power of eminent domain for the condemnation of any interest in real or personal property for use within the taxing district of the corporation.

(b) Proceedings for the condemnation of property by the board are governed by IC 32-24-1 to the extent it is not in conflict with this chapter.

(c) The board may not institute proceedings until it has adopted an ordinance generally describing the property to be acquired, declaring that the public interest and necessity require the acquisition by the corporation of the property involved, and declaring that the acquisition is necessary for the establishment, development, extension, or improvement of the system. The ordinance is conclusive evidence of the public necessity of the proposed acquisition and that the proposed acquisition is planned in a manner most compatible with the greatest public good and the least private injury.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.2-2002, SEC.119.

IC 36-9-4-33

Board of directors; power to contract

Sec. 33. The board of directors of a public transportation corporation may contract with any person upon the terms and conditions the board considers best for the corporation including the following:

(1) Contracting for self-insurance protection of its property or liability under IC 34-13-3.

(2) Engaging in commissions or entering into agreements for the mutual insurance or sharing of risks for liability or property damage.

(3) Agreeing to join with other municipal corporations for the mutual risk sharing of losses due to casualty or acts of God.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.353-1987, SEC.1; P.L.1-1998, SEC.214.

IC 36-9-4-34

Contracts for operation of systems in contiguous territory and transfer of passengers between systems

Sec. 34. The board of directors of a public transportation corporation may enter into agreements with any urban mass

transportation system operating in territory contiguous to the taxing district of the corporation, for:

- (1) the operation and maintenance of that system, including the use, sale, or lease of the real and personal property necessary for operation of the system; or
- (2) the transfer of passengers between that system and the system owned by the corporation, with a special rate to be charged for those passengers.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-35

Repealed

(Repealed by P.L.1-1990, SEC.368.)

IC 36-9-4-35.1

Board of directors; adoption of rules for operation of systems; rates, routings, and standards of service

Sec. 35.1. The board of directors of a public transportation corporation shall, by ordinance, make rules governing the use, operation, and maintenance of the urban mass transportation system. The board may determine all rates, routings, and hours and standards of service and may change them whenever the board considers a change advisable. However, the board's powers under this section are subject to regulation by the department of state revenue as provided by section 58 of this chapter.

As added by P.L.1-1990, SEC.369.

IC 36-9-4-36

Board of directors; power to sue; service of process

Sec. 36. The board of directors of a public transportation corporation may, in the name of the corporation, sue or be sued in court. Service of process shall be made by service upon the secretary of the board, and notice must be served upon the secretary in the manner and form required by IC 34-13-3.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.1-1998, SEC.215.

IC 36-9-4-37

Board of directors; employees; collective bargaining agreements

Sec. 37. (a) The board of directors of a public transportation corporation may appoint or employ a general manager, accountants, attorneys, traffic engineers, drivers, clerks, secretaries, guards, laborers, and other employees, and may prescribe and define their duties, regulate their compensation, discharge them, and appoint or employ their successors. Employees shall be selected without regard to race, religion, or any personal affiliation. The board shall select the general manager on the basis of his fitness for the position, taking into account his executive ability and his knowledge of and experience in the field of mass public transportation.

(b) The board shall bargain collectively and enter into written

contracts with authorized labor organizations representing employees other than executive, administrative, or professional personnel. These contracts may provide for the binding arbitration of disputes, wages, salaries, hours, working conditions, health and welfare, insurance, vacations, holidays, sick leave, seniority, pensions, retirement, and other benefits.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-38

Surveys and studies

Sec. 38. The board of directors of a public transportation corporation may make traffic surveys, population surveys, and any other surveys and studies it considers useful in the operation of urban mass transportation systems.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-39

"Demand-responsive" or "dial-a-ride" system

Sec. 39. The board of directors of a public transportation corporation may establish and operate a "demand-responsive" or "dial-a-ride" transportation system as a part of its urban mass transportation system within the taxing district of the corporation. The rates and charges for the system and all related criteria are at the sole discretion of the board.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-40

Board of directors; power to fulfill purposes of corporation

Sec. 40. The board of directors of a public transportation corporation may carry out the purposes of the corporation.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-41

Acquisition of systems by corporation; protection of employees

Sec. 41. (a) Whenever a public transportation corporation acquires an urban mass transportation system under this chapter, the employees of the system must be protected as follows:

(1) The employees of the system must be retained to the fullest extent consistent with sound management, and those terminated or laid off must be assured priority of reemployment.

(2) The individual employees must be retained in positions the same as, or no worse than, their positions before the acquisition of the system.

(3) The rights, privileges, and benefits of the employees under any collective bargaining agreement are not affected, and the corporation shall assume the duties of the system under the agreement.

(4) The rights, privileges, and benefits of the employees under any pension or retirement plan are not affected, and the corporation shall assume the duties of the system under the plan.

(b) If a public transportation corporation acquires and leases an urban mass transportation system, or enters into a contract for the operation of the system under this chapter, the lease or contract must provide for compliance with subsection (a).

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-42

Funding

Sec. 42. (a) A municipality or a public transportation corporation that expends money for the establishment or maintenance of an urban mass transportation system under this chapter may acquire the money for these expenditures:

- (1) by issuing bonds under section 43 or 44 of this chapter;
 - (2) by borrowing money made available for such purposes by any source;
 - (3) by accepting grants or contributions made available for such purposes by any source;
 - (4) in the case of a municipality, by appropriation from the general fund of the municipality, or from a special fund that the municipal legislative body includes in the municipality's budget;
- or
- (5) in the case of a public transportation corporation, by levying a tax under section 49 of this chapter or by recommending an election to use revenue from the county option income taxes, as provided in subsection (c).

(b) Money may be acquired under this section for the purpose of exercising any of the powers granted by or incidental to this chapter, including:

- (1) studies under section 4, 9, or 11 of this chapter;
- (2) grants in aid;
- (3) the purchase of buses or real property by a municipality for lease to an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the buses or real property;
- (4) the acquisition by a public transportation corporation of property of an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the property;
- (5) the operation of an urban mass transportation system by a public transportation corporation, including the acquisition of additional property for such a system; and
- (6) the retirement of bonds issued and outstanding under this chapter.

(c) This subsection applies only to a public transportation corporation located in a county having a consolidated city. In order to provide revenue to a public transportation corporation during a year, the public transportation corporation board may recommend and the county fiscal body may elect to provide revenue to the corporation from part of the certified distribution, if any, that the

county is to receive during that same year under IC 6-3.5-6-17. To make the election, the county fiscal body must adopt an ordinance before November 1 of the preceding year. The county fiscal body must specify in the ordinance the amount of the certified distribution that is to be used to provide revenue to the corporation. If such an ordinance is adopted, the county fiscal body shall immediately send a copy of the ordinance to the county auditor.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.84-1987, SEC.15; P.L.5-1988, SEC.221; P.L.137-2012, SEC.123.

IC 36-9-4-43

Issuance of bonds by municipality; procedure

Sec. 43. If the legislative body of a municipality decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the legislative body may issue the bonds of the municipality in the same manner as bonds for the general purposes of the municipality. However, the bonds may be sold to the federal government at private sale and without a public offering.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-44

Issuance of bonds by corporation; procedure

Sec. 44. (a) If the board of directors of a public transportation corporation decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the board shall adopt an ordinance directing the issuance of the bonds. The board shall certify a copy of the ordinance to the controller of the corporation, who shall then prepare the bonds.

(b) The bonds must be executed by the chairman of the board and attested by the controller of the corporation.

(c) The controller is responsible for the sale of the bonds.

(d) Except as otherwise provided in this section, the bonds shall be issued in the same manner as bonds for the general purposes of the municipality served by the public transportation corporation. However, the bonds may be sold to the federal government at private sale and without a public offering.

(e) In addition to the general power to issue bonds for the establishment and maintenance of a system, the board may issue bonds specifically:

(1) for the payment of any judgment against the corporation;
and

(2) to establish or maintain a program of self-insurance or mutual insurance.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.317, SEC.6; P.L.353-1987, SEC.2.

IC 36-9-4-45

Bonds; terms; tax exemption; procedure

Sec. 45. (a) Bonds issued under this chapter:

- (1) shall be issued in the denomination;
- (2) are payable over a period not to exceed thirty (30) years from the date of the bonds; and
- (3) mature;

as determined by the ordinance authorizing the bond issue.

(b) All bonds issued under this chapter, the interest on them, and the income from them are exempt from taxation to the extent provided by IC 6-8-5-1.

(c) The provisions of IC 6-1.1-20 relating to:

- (1) filing petitions requesting the issuance of bonds and giving notice of those petitions;
- (2) giving notice of a hearing on the appropriation of the proceeds of the bonds;
- (3) the right of taxpayers to appear and be heard on the proposed appropriation;
- (4) the approval of the appropriation by the department of local government finance; and
- (5) the right of:
 - (A) taxpayers and voters to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or
 - (B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a);

apply to the issuance of bonds under this chapter.

(d) A suit to question the validity of bonds issued under this chapter or to prevent their issue and sale may not be instituted after the date set for the sale of the bonds, and the bonds are incontestable after that date.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.90-2002, SEC.505; P.L.219-2007, SEC.142; P.L.146-2008, SEC.787.

IC 36-9-4-46

Bonds; special tax levy

Sec. 46. (a) The board of directors of a public transportation corporation that issues bonds under this chapter shall levy a special tax each year upon all the property within the taxing district of the corporation. The tax shall be levied in such a manner as to meet and pay the principal of the bonds as they mature, together with all accruing interest.

(b) The county treasurer shall collect the tax in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation.

(c) In determining the amount of the levy, the board of directors shall consider any surplus of accumulated revenue derived from the operation of the urban mass transportation system, above the sum considered necessary to be applied upon or reserved for the payment of the operating and capital expenditures of the system, including expenditures for the replacement of and additions to the property of the system and reserves established for the depreciation of the

property of the system. If the board finds that this surplus is sufficient, it may apply all or part of the surplus to the payment of the principal of the bonds, together with the interest on them.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-47

Tax anticipation warrants

Sec. 47. (a) The board of directors of a public transportation corporation may:

- (1) borrow money in anticipation of receipt of the proceeds of taxes that have been levied by the board and have not yet been collected; and
- (2) evidence this borrowing by issuing warrants of the corporation.

The money that is borrowed may be used by the corporation for payment of principal and interest on its bonds or for payment of current operating expenses.

(b) The warrants:

- (1) bear the date or dates;
- (2) mature at the time or times on or before December 31 following the year in which the taxes in anticipation of which the warrants are issued are due and payable;
- (3) bear interest at the rate or rates and are payable at the time or times;
- (4) may be in the denominations;
- (5) may be in the forms, either registered or payable to bearer;
- (6) are payable at the place or places, either inside or outside Indiana;
- (7) are payable in the medium of payment;
- (8) are subject to redemption upon the terms, including a price not exceeding par and accrued interest; and
- (9) may be executed by the officers of the corporation in the manner;

provided by resolution of the board of directors. The resolution may also authorize the board to pay from the proceeds of the warrants all costs incurred in connection with the issuance of the warrants.

(c) The warrants may be authorized and issued at any time after the board of directors levies the tax or taxes in anticipation of which the warrants are issued.

(d) The warrants may be sold for not less than par value after notice inviting bids has been published in accordance with IC 5-3-1. The board of directors may also publish the notice inviting bids in other newspapers or financial journals.

(e) After the warrants are sold, they may be delivered and paid for at one (1) time or in installments.

(f) The aggregate principal amount of warrants issued in anticipation of and payable from the same tax levy or levies may not exceed eighty percent (80%) of the levy or levies, as the amount of the levy or levies is certified by the department of local government finance, or as is determined by multiplying the rate of tax as finally

approved by the total assessed valuation of taxable property within the taxing district of the public transportation corporation as most recently certified by the county auditor.

(g) For purposes of this section, taxes for any year are considered to be levied when the board of directors adopts the ordinance prescribing the tax levies for the year. However, warrants may not be delivered and paid for before final approval of a tax levy or levies by the county board of tax adjustment (or, if appealed, by the department of local government finance) unless the issuance of the warrants has been approved by the department of local government finance.

(h) The warrants and the interest on them are not subject to sections 43 and 44 of this chapter and are payable solely from the proceeds of the tax levy or levies in anticipation of which the warrants were issued. The authorizing resolution must pledge a sufficient amount of the proceeds of the tax levy or levies to the payment of the warrants and the interest.

(i) All actions of the board of directors under this section may be taken by resolution, which need not be published or posted. The resolution takes effect immediately upon its adoption by a majority of the members of the board of directors.

(j) An action to contest the validity of any tax anticipation warrants may not be brought later than ten (10) days after the sale date.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.187, SEC.2; P.L.90-2002, SEC.506; P.L.224-2007, SEC.133; P.L.146-2008, SEC.788.

IC 36-9-4-48

Cumulative transportation fund; establishment; notice; tax levy

Sec. 48. (a) A cumulative transportation fund to provide money for the acquisition of buses and for the planning, establishment, and maintenance of routes and schedules to assist in implementing this chapter may be established under IC 6-1.1-41 by:

- (1) the legislative body of a municipality that:
 - (A) is making grants to an urban mass transportation system;
 - or
 - (B) has purchased buses for operation under lease by an urban mass transportation system; or
- (2) the board of directors of a public transportation corporation.

(b) In addition to other notices required under IC 6-1.1-41, notices of hearings under IC 6-1.1-41 must be given to the following:

- (1) the municipal executive, for a tax levy by a municipality; and
- (2) the chairman of the board of directors, for a tax levy by a public transportation corporation.

(c) A tax levy to finance the cumulative transportation fund may be levied in compliance with IC 6-1.1-41. The tax levied under this section may not exceed six and sixty-seven hundredths cents (\$0.0667) on each one hundred dollars (\$100) of taxable property within the corporate boundaries of the municipality or the taxing

district of the public transportation corporation, as the case may be. *As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1981, P.L.45, SEC.40; P.L.17-1995, SEC.24; P.L.6-1997, SEC.216.*

IC 36-9-4-49

Insufficient funds; special tax levy

Sec. 49. (a) For each year in which it is anticipated that the total amount available to a public transportation corporation will be insufficient to defray the expenses incurred by the corporation, the board of directors of the corporation shall levy a special tax upon all the property within the taxing district of the corporation at the rate required to defray such expenses. The tax must be based upon the budget formulated and filed by the board under this chapter.

(b) The county treasurer shall collect the tax levied under this section in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-50

Federal or state aid

Sec. 50. A municipality that establishes or acquires an urban mass transportation system under this chapter, or a municipality that has a privately owned urban mass transportation system and has received a request from the management of the system, may apply for aid from any federal or state government agency. A municipality acting under this section may:

(1) perform any act or acts lawfully required; or

(2) execute and perform agreements necessary or convenient; to obtain the aid without limitation by the provisions of this chapter, except that a municipality may not interfere with any right, interest, or part of any other public transportation system without the consent of the other system.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-51

Review of annual budget and tax levies

Sec. 51. (a) The board of directors of a public transportation corporation shall prepare an annual budget for the expenditures of the corporation.

(b) This subsection applies only when a municipality, having operated an urban mass transportation system under a department of municipal government, establishes a public transportation corporation under section 10 of this chapter to maintain that system. The annual operating and maintenance budget for the corporation shall be subject to review and modification by the legislative body of the municipality.

(c) A public transportation corporation may not impose a property tax levy on property that it has not taxed before January 1, 1982, and that lies outside the corporate boundaries of the municipality without

the approval of the fiscal body or county council of the county in which the municipality is located.

(d) The budget and any tax levies prepared by the board shall be prepared and submitted at the same time, in the same manner, and with the same notice as is prescribed by IC 6-1.1-17 for the annual budget of the municipality. The county tax adjustment board and the department of local government finance may review the budget and tax levies in the same manner by which they review budgets and tax levies of the municipality.

As added by Acts 1981, P.L.309, SEC.77. Amended by Acts 1982, P.L.217, SEC.2; P.L.90-2002, SEC.507.

IC 36-9-4-52

Property tax exemption

Sec. 52. Property acquired by a municipality or public transportation corporation under this chapter is exempt from property taxes.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-53

Books, records, and accounts

Sec. 53. The books, accounts, records, and transactions of a public transportation corporation are subject to examination, audit, and supervision by the state board of accounts to the same extent as the books, accounts, records, and transactions of other municipal corporations and their officers and departments. However, in lieu of the system of accounts prescribed by the state board of accounts, a public transportation corporation may maintain its books, accounts, records, and transactions according to the financial accounting and reporting elements system, known as "Project Fare", that is established by the federal Urban Mass Transportation Administration.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-54

Transportation of school pupils; contracts

Sec. 54. An urban mass transportation system operating under this chapter may be used for the transportation of pupils to and from schools under a contract made with any school corporation having jurisdiction within the taxing district of the public transportation corporation. The system is solely responsible for the bus drivers' employment and actions, but the bus drivers must meet the qualifications for drivers of school buses as provided in IC 20-27-8. The buses used for the rendition of service under this section need not meet the requirements of the statutes relating to the construction, equipment, and painting of school buses.

As added by Acts 1981, P.L.309, SEC.77. Amended by P.L.1-2005, SEC.239.

IC 36-9-4-55

Interlocal cooperation agreements; authorization

Sec. 55. Whenever the same urban mass transportation system operates on regularly scheduled routes within two (2) or more municipalities, the legislative bodies of those municipalities may enter into an interlocal cooperation agreement under IC 36-1-7 for the purpose of implementing this chapter upon mutually agreeable terms and conditions. The legislative bodies of the municipalities may adopt a joint ordinance establishing a public transportation corporation encompassing:

- (1) the municipalities; and
- (2) their suburban territory, as defined in IC 36-9-1-9.

As added by Acts 1981, P.L.309, SEC.77.

IC 36-9-4-56

Repealed

(Repealed by P.L.72-1988, SEC.10.)

IC 36-9-4-57

Improvement reserve fund

Sec. 57. (a) The board of directors of a public transportation corporation may, by resolution, establish an improvement reserve fund for the purpose of accumulating money over two (2) or more fiscal years for the following:

- (1) The purchase of specified real property.
- (2) The purchase of specified major equipment, including buses.
- (3) The making of improvements to real property owned by the public transportation corporation.

(b) Transfers that are placed in an improvement reserve fund established under this section must be included in the annual budget of the public transportation corporation.

(c) The board of directors of a public transportation corporation may make an expenditure of money from an improvement reserve fund only after:

- (1) holding a public meeting in accordance with section 22 of this chapter;
- (2) the adoption by the board of a resolution under subsection (d); and
- (3) approval by the department of local government finance.

(d) A resolution for expenditure from an improvement reserve fund established under this section must include the following:

- (1) The specific amount of the expenditure.
- (2) The specific use of the expenditure.
- (3) A finding by the board of directors that the proposed use of funds complies with the restrictions under subsection (a).

(e) The money in the improvement reserve fund may not be considered in determining the corporation's property tax levy under this chapter or IC 6-1.1.

(f) The money in the improvement reserve fund at the end of the fiscal year does not revert to the general fund.

As added by P.L.317-1989, SEC.1. Amended by P.L.90-2002, SEC.508.

IC 36-9-4-58**Regulation of department of state revenue; fares; operating expenses**

Sec. 58. (a) An urban mass transportation system operating under this chapter is considered a common carrier not operating under a franchise or contract granted by a municipality and not regulated by ordinance, and is subject to the authority of the department of state revenue under IC 8-2.1 to the same extent as any other common carrier. However, in determining the reasonableness of the fares and charges of such a system, the department of state revenue shall consider, among other factors, the policy of this chapter to foster and assure the development and maintenance of urban mass transportation systems, and it is not necessary that the operating revenues of the system be sufficient to cover the cost to the system of providing adequate service.

(b) If a public transportation corporation providing public transportation services in Marion County expands its service through a public transportation project authorized and funded under IC 8-25, the public transportation corporation shall establish fares and charges that cover at least twenty-five percent (25%) of the operating expenses of the urban mass transportation system operated by the public transportation corporation. For purposes of this subsection, operating expenses include only those expenses incurred in the operation of fixed route services that are established or expanded as a result of a public transportation project authorized and funded under IC 8-25. The public transportation corporation annually shall report on the corporation's compliance with this subsection not later than sixty (60) days after the close of the corporation's fiscal year. The report must include information on any fare increases necessary to achieve compliance. The public transportation corporation shall submit the report to the department of local government finance and make the report available electronically through the Indiana transparency Internet web site established under IC 5-14-3.8.

(c) If a public transportation corporation fails to prepare and disclose the annual report in the manner required by subsection (b), any person subject to a tax described in IC 8-25 may initiate a cause of action in the circuit court of the eligible county to compel the appropriate officials of the public transportation corporation to prepare and disclose the annual report not later than thirty (30) days after a court order mandating the public transportation corporation to comply with subsection (b) is issued by the circuit court.

As added by P.L.99-1989, SEC.36. Amended by P.L.153-2014, SEC.20.

IC 36-9-5

Chapter 5. Special Fares and Programs for Transportation Systems

IC 36-9-5-1

Application of chapter

Sec. 1. This chapter applies to the following boards:

- (1) The board of directors of a public transportation corporation or regional transportation authority.
- (2) The works board of a municipality that owns, operates, or leases a public transportation system.
- (3) Any other board with comparable authority for public transportation.

As added by Acts 1981, P.L.309, SEC.78.

IC 36-9-5-2

Reduced fares for persons 65 years of age or older

Sec. 2. (a) A board may establish a special schedule of fares applicable to the transportation of persons sixty-five (65) years of age or older. The schedule may provide for fares that approximate in cost not more than one-half (1/2) of the public transportation system's regular one-way fare for transportation on regular routes within the system's service area. The reduced rate may also apply to transfers and other special services but may not apply to charter service or any transportation provided outside the service area.

(b) A board acting under this section may require a method of identification to be presented by a passenger to qualify for a reduced fare.

As added by Acts 1981, P.L.309, SEC.78.

IC 36-9-5-3

Other programs authorized

Sec. 3. A board may also establish programs for classes of persons other than those described in section 2 of this chapter. These programs must be based on the needs of the persons to be served.

As added by Acts 1981, P.L.309, SEC.78.

IC 36-9-5-4

Programs to increase use of public transportation

Sec. 4. A board may establish programs designed to increase the use of the public transportation system.

As added by Acts 1981, P.L.309, SEC.78.

IC 36-9-6

Chapter 6. City Works Board

IC 36-9-6-1

Application of chapter

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.44, SEC.59.

IC 36-9-6-2

Supervision of streets, alleys, and city property

Sec. 2. Unless otherwise provided by statute or ordinance, the works board shall supervise the streets, alleys, sewers, public grounds, and other property of the city, and shall keep them in repair and good condition. The works board shall provide for the cleaning of city streets and alleys.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.43.

IC 36-9-6-3

Custody, maintenance, improvement, and construction of city property

Sec. 3. (a) Unless otherwise provided by statute or ordinance, the works board has custody of and may maintain all real and personal property of the city.

(b) A city works board may design, order, contract for, and execute:

- (1) all work required to improve or repair any real or personal property that belongs to or is used by the city; and
- (2) the erection of all buildings and other structures needed for any public purpose.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.44.

IC 36-9-6-4

Condemnation, rental, and purchase of property

Sec. 4. The works board may condemn, rent, or purchase any real or personal property needed by the city for any public use, unless a different provision for purchase is made by statute or ordinance. However, the city legislative body may by ordinance:

- (1) require that these condemnations, rentals, or purchases be included in a long-range capital expenditure program to be proposed by the works board and updated as required by the legislative body, but at least annually;
- (2) require the works board to estimate, at least annually, expenditures needed for condemnations, rentals, and purchases for each successive fiscal year;
- (3) approve, amend, or reject all or part of the long-range capital expenditure program and the proposed annual expenditures, before or during the adoption of the city budget; and

(4) specify the manner in which the works board must itemize the estimates of capital program expenditures for each fiscal year.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.45.

IC 36-9-6-5

Approval of plats

Sec. 5. The works board may approve plats under IC 36-7-3-3(d).
As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-6

Public ways and sidewalks; laying out, opening, and changing; grades

Sec. 6. (a) The works board may lay out, open, change, and fix or change the grade of any public way, sidewalk, or public place in the city.

(b) The works board may keep a record of the grades of all public ways and sidewalks in the city.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.46, SEC.8.

IC 36-9-6-7

Streets, alleys, wharves, and public places; improvements and repairs

Sec. 7. The works board may design, order, contract for, and execute all work required to improve or repair any street, alley, wharf, or public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-8

Public places; cleaning and sprinkling

Sec. 8. The works board may, by contract or otherwise, clean and sprinkle any public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-9

Streets, alleys, and public places; lighting

Sec. 9. The works board may erect lampposts or other lighting apparatus in the streets, alleys, and public places of the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-10

Drains and sewers; plans; construction

Sec. 10. (a) The works board may prepare a uniform plan for the drainage and sewerage of the city.

(b) The works board may lay out, design, order, contract for, and execute the construction, alteration, and maintenance of all public drains or sewers necessary to carry off the drainage of the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-11**Sewage disposal and treatment works**

Sec. 11. The works board may erect, maintain, and operate works for the collection, treatment, and disposal of sewage.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-12**Culverts, bridges, and aqueducts**

Sec. 12. The works board may design, order, contract for, and cause the erection of any culvert, bridge, or aqueduct within the city, or may enter in a contract for the joint erection and maintenance of such a structure by the city and a company or individual.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-13**Utility and transportation structures; authorization**

Sec. 13. (a) A contract under this section must be submitted to the city legislative body and does not take effect until approved by ordinance of the legislative body.

(b) The works board may authorize a telegraph, telephone, electric light, gas, water, steam, railroad, or interurban company to use and erect necessary structures in any street, alley, or public place in the city. The works board may prescribe the terms and conditions of uses under this section and may fix by contract the price to be charged to the company.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-14**Excavations**

Sec. 14. The works board may license the making of excavations from the surface or underneath the surface of a street, alley, or public place in the city. The works board may require bond to pay for damages caused by excavations and to secure the proper repair of the street, alley, or public place.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-15**Removal of structures from streets, alleys, and public places**

Sec. 15. The works board may order the removal of any structure in a street, alley, or public place of the city. If the person maintaining the structure fails to remove it, the works board may remove it at his expense.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-16**Levees**

Sec. 16. The works board may design, order, contract for, and cause the erection of levees for the city.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-17**Watercourses; improvements**

Sec. 17. The works board may straighten, deepen, or otherwise improve any natural or artificial watercourse.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-18**Private watercourses; bridges**

Sec. 18. The works board may require the owners of canals and watercourses to construct and maintain bridges across them at street and alley intersections.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-19**Removal and disposal of refuse**

Sec. 19. The works board may, by contract or otherwise, remove all dead animals, rubbish, and other refuse from the city. The works board may erect crematories or other plants for the destruction and disposal of this refuse.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-20**Maps and records of pipes and conduits**

Sec. 20. The works board may maintain a map and record of all pipes and conduits in the city for sewers, gas, water, electric wire, heat, and other purposes, showing their size, depth, inclination, location, and date of construction.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-21**Private lots and tracts; drainage and fill; expenses**

Sec. 21. (a) The works board may fill or drain, at the owner's expense, any lot or tract within the city, or within four (4) miles from its corporate boundaries if the water on the lot or tract is or may become injurious to the public health and comfort. However, no more than twenty percent (20%) of the value of the lot or tract, as assessed on the tax duplicate, may be expended in filling or draining the lot or tract in any (1) year.

(b) The expenses of the works board under this section are a lien against the lot or tract. This lien may be collected by foreclosure or by placing it on the tax duplicate.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-22**Restrooms and fountains**

Sec. 22. The works board may construct restrooms and fountains in public places.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-23

Payment of expenses

Sec. 23. All expenses incurred or authorized by the works board under this chapter are payable out of the general fund of the city, from appropriations made for the use of the board and available for the particular purpose, unless a statute specifically directs that the expenses are to be paid by assessments against owners of real property.

As added by Acts 1981, P.L.309, SEC.79.

IC 36-9-6-24**Performance of work by contract or by employees of board**

Sec. 24. (a) If any work ordered or undertaken by the works board is payable out of the general fund of the city, it may cause the work to be done by independent contract or by employees of the board.

(b) If any work ordered or undertaken by the works board is payable, in whole or in part, from assessments made for that purpose upon the real property benefited by the work, the works board shall have the work done by contract, unless otherwise provided by statute.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.317, SEC.7.

IC 36-9-6.1

Chapter 6.1. Thoroughfare Projects

IC 36-9-6.1-0.1

Application of chapter

Sec. 0.1. The addition of this chapter by P.L.220-1986 does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted.

As added by P.L.220-2011, SEC.681.

IC 36-9-6.1-1

Application of chapter

Sec. 1. This chapter applies to each unit that:

- (1) has established an advisory plan commission or a metropolitan plan commission under IC 36-7-4-202; or
- (2) is participating in an area planning department established under IC 36-7-4-202.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-2

Units adopting a thoroughfare plan; tax levy; collection; fund

Sec. 2. (a) The fiscal body of a unit that has adopted a thoroughfare plan under IC 36-7-4 may levy a tax of five cents (\$0.05) on each one hundred dollars (\$100) of taxable property in the unit. The tax may be levied annually, in the same way that other property taxes are levied.

(b) The taxes levied under this section shall be collected in the same manner as other property taxes and deposited in a separate and continuing fund to be known as the thoroughfare fund. The fiscal officer of the unit may make payments or transfers from this fund only on warrants of the works board for work related to the thoroughfare plan.

As added by P.L.220-1986, SEC.30. Amended by P.L.6-1997, SEC.217.

IC 36-9-6.1-3

Works board carrying out thoroughfare plan; powers

Sec. 3. Except as provided in section 5 of this chapter, a works board carrying out a thoroughfare plan under this chapter:

- (1) has the same powers to:
 - (A) appropriate or condemn property;
 - (B) lay out, change, widen, straighten, or vacate public ways or public places;
 - (C) award and pay damages; and
 - (D) assess and collect benefits;
- (2) shall proceed in the same manner; and
- (3) is subject to the same rights of property owners, including

the right to appeal;
as a works board that appropriates property under IC 32-24 and lays out, changes, widens, straightens, or vacates public ways or public places under IC 36-9-6.

As added by P.L.220-1986, SEC.30. Amended by P.L.2-2002, SEC.120.

IC 36-9-6.1-4

Adoption of resolution for proposed project

Sec. 4. A works board that wants to proceed with a project in order to carry out a thoroughfare plan may adopt a resolution:

- (1) describing the proposed project;
- (2) setting out the items necessary for completion of the project;
- (3) including complete plans and specifications for all parts of the project other than the appropriation of property;
- (4) including an estimate by the civil engineer of the unit of the total cost of the project; and
- (5) describing the property benefited by the project, if any, that will be subject to assessment for that benefit.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-5

Plans, specifications, and contracts for proposed project; preparation and adoption

Sec. 5. Plans, specifications, and contracts for a project proposed under section 4 of this chapter must be prepared, adopted, and let in the manner required by IC 36-9-36, except that the provisions of IC 36-9-36 for remonstrance by resident freeholders do not apply. Separate phases of a project may be included in separate plans and specifications, and the work on separate phases may be done by contract or otherwise, as separate improvements.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.12.

IC 36-9-6.1-6

Authorized projects

Sec. 6. Projects proposed under section 4 of this chapter may include:

- (1) the appropriation of property;
- (2) the opening, changing, widening, straightening, or vacating of any public way, public way crossing, railway, right-of-way, or public place in the unit;
- (3) the removal of any pavement, sidewalk, curb, parkway, building, or other structure;
- (4) the grading of any public way or public place; or
- (5) the construction or reconstruction of any pavement, street, sidewalk, curb, or structure.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-7

Notice and hearing on resolution; contents of notice

Sec. 7. After publication of notice in accordance with IC 5-3-1, the works board shall hold a public hearing on the resolution adopted under section 4 of this chapter. The notice must:

- (1) fix the date of the hearing;
- (2) state that the resolution will be considered at the hearing;
- and
- (3) state that persons interested in or affected by the proposed project may speak at the hearing.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-8

Hearing; objections; determinations by works board

Sec. 8. At the hearing under section 7 of this chapter, the works board shall consider objections to the proposed project and, if it decides to proceed with the project, shall:

- (1) determine what part of the cost of the project or any separate phase of the project, including damages increased by a court on appeal, shall be paid by the unit out of the thoroughfare fund as a benefit to the unit at large;
- (2) determine what part, if any, of the cost of the project or any separate phase of the project, including damages awarded by the works board, shall be assessed as benefits on the real property within a special benefit district, and fix the boundaries of that district; and
- (3) take final action, which is conclusive on all persons, confirming, modifying, or rescinding its original resolution.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-9

Approval of project; assessment of cost

Sec. 9. If the works board approves a project and decides to assess a part of the cost of that project against the property specially benefited, the board shall:

- (1) advertise for bids;
- (2) let contracts; and
- (3) assess costs;

for the whole project or separate phases of the project, in the manner prescribed by IC 36-9-36.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.13.

IC 36-9-6.1-10

Rights of affected property owners

Sec. 10. The owners of property affected by an assessment under section 9 of this chapter have the same rights as property owners affected by an assessment under IC 36-9-36.

As added by P.L.220-1986, SEC.30. Amended by P.L.98-1993, SEC.14.

IC 36-9-6.1-11**Costs exceeding balance in thoroughfare fund; bond issue**

Sec. 11. If a unit's costs in acquiring property and paying benefits assessed against the unit under this chapter exceed the balance in the unit's thoroughfare fund, the unit may issue bonds in an amount sufficient to pay all or part of those costs. The bonds must be:

- (1) approved by the executive of the unit;
- (2) authorized by ordinance of the fiscal body of the unit;
- (3) issued and sold in the same form and manner, including the same interest rate and maturities, as bonds for general purposes of the unit.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.1-12**Proceeds of sale of bonds; deposit in fund; payments**

Sec. 12. Proceeds from the sale of bonds under section 11 of this chapter shall be deposited in the thoroughfare fund and used by the unit to pay for:

- (1) property acquired by the unit;
- (2) benefits assessed against the unit at large; and
- (3) damages increased by a court on appeal;

under this chapter.

As added by P.L.220-1986, SEC.30.

IC 36-9-6.5

Chapter 6.5. Metropolitan Thoroughfare District of Marion County

IC 36-9-6.5-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 2 of this chapter by P.L.220-1986 does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted.

As added by P.L.220-2011, SEC.682.

IC 36-9-6.5-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to the board of transportation of the consolidated city, subject to IC 36-3-4-23.

"Department" refers to the department of transportation of the consolidated city, subject to IC 36-3-4-23.

"Operation" includes control and engineering of traffic, traffic safety, road lighting, road access, utility locations, cuts in roads, vehicular parking and stopping, improvements of traffic movement, uses of the rights-of-way for roads, and mass transportation routes.

"Reconstruction" includes resurfacing, widening, and rebuilding.
As added by Acts 1982, P.L.77, SEC.12. Amended by P.L.220-1986, SEC.31.

IC 36-9-6.5-3

Special taxing district

Sec. 3. The metropolitan thoroughfare district created by IC 36-3-1-6 constitutes a special taxing district for the purposes of programming, planning, designing, constructing, reconstructing, and operating thoroughfares within the district.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-4

Adoption of resolution of necessity and purpose

Sec. 4. Whenever the board determines that it is necessary for the general welfare of the persons residing within the district and that it will be of public utility and benefit to the property in the district to undertake and carry out any project of construction, reconstruction, or operation upon thoroughfares within the district, it shall adopt a

resolution of the necessity of the project and the purpose of the department to proceed with it. The board, as a part of the resolution, shall adopt the plans and specifications proposed for the entire project, and shall determine the estimated cost of all work and all acquisitions necessary to carry out the project.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-5

Filing and notice of resolution

Sec. 5. The resolution, plans and estimates, and all other matters included with the resolution shall be filed and opened to inspection by the public at the office of the department. The department shall give notice of:

- (1) the adoption and general purport of the resolution;
- (2) the fact that the resolution, and included material, have been prepared and are on file in the office of the department and can be inspected;
- (3) that the board will on a date named receive and hear objections from any person interested in or who will be affected by the resolution.

The notice shall be published in accordance with IC 5-3-1.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-6

Hearing and approval of project

Sec. 6. At or before the time fixed for the hearing designated in the notice published under section 5 of this chapter, any person interested in or who will be affected by the proposed project may file with the department a written remonstrance against the proposed project, in whole or in part. At the hearing, which may be adjourned from time to time, the board:

- (1) shall hear all persons who are interested in the proceedings;
- (2) shall finally determine whether or not the proposed project, in whole or in any part, is necessary for the general welfare of the persons residing within the district and will be of public utility and benefit to the property in the district; and
- (3) may confirm, modify, or rescind the resolution.

The decision shall be entered in the records of the department.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-7

Department proceeding after final approval of project

Sec. 7. After final approval of the resolution by the board, the department shall proceed with the project, work, and capital improvements, or any parts of them, and shall let all contracts, upon separate plans and specifications, in accordance with IC 36-1-12. The projects authorized may be modified by the board if it considers modification necessary to carry out the purpose of the declaration and resolution, so long as the modifications do not increase the estimate of the total cost of the project as adopted in the original resolution.

All other changes must be processed as new declarations.
As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-8
Thoroughfare tax

Sec. 8. All property located within the district is subject to a special tax for the purpose of providing money to pay the total cost of the project, including all necessary incidental expenses of programming, planning, and designing. The special tax constitutes the amount of benefits resulting to all of that property from the acquisition or work, and shall be levied as provided in this chapter.
As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-9
Bonds issued

Sec. 9. (a) For the purpose of raising money to pay for any land or right-of-way to be acquired for thoroughfares within the district or to pay for any capital improvement necessary for the construction, reconstruction, or operation of thoroughfares within the district, and in anticipation of the special benefit tax, the board may cause bonds to be issued in the name of the consolidated city for the benefit of the district. The bonds shall be issued in accordance with IC 36-3-5-8.

(b) The bonds may be in an amount not to exceed the estimated cost of all land and rights-of-way to be acquired and the estimated cost of all capital improvements, including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the costs of supervision and inspection during the period of construction or reconstruction and all costs of programming, planning, and designing the capital improvements. The expenses to be covered in the amount of the bond issue include all expenses of every kind actually incurred preliminary to the acquisition of the property and the construction of work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses necessary to be incurred in connection with the acquisition of the property, the letting of the contract, and the sale of bonds.

(c) The bonds issued may not exceed the estimates for the project as determined by the board under section 4 of this chapter.

(d) Any surplus of bond proceeds remaining after all costs and expenses have been fully paid shall be paid into the metropolitan thoroughfare district bond fund. The board may appropriate the proceeds of the bonds.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-10
Bonds; limitations; terms

Sec. 10. (a) When the total issue of bonds under section 9 of this chapter for purposes of the district, including bonds already issued or to be issued, exceeds four percent (4%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15,

additional bonds may not be issued. All bonds or obligations issued in violation of this subsection are void.

(b) Bonds issued under section 9 of this chapter are not, in any respect, corporate obligations or indebtedness of the consolidated city but constitute an indebtedness of the metropolitan thoroughfare district, and the bonds and interest on them are payable only out of revenues of the district. The bonds must recite these terms upon their face.

As added by Acts 1982, P.L.77, SEC.12. Amended by P.L.6-1997, SEC.218.

IC 36-9-6.5-11

Deposit of bond proceeds

Sec. 11. All proceeds from the sale of bonds issued under section 9 of this chapter shall be kept as a separate and specific fund to pay for the cost of land, rights-of-way, and other property acquired and of the cost of the work and all costs and expenses incurred in connection with it, and no part may be used for any other purpose. The fund shall be deposited at interest with the depository or depositories of other public funds of the consolidated city, and all interest collected on it belongs to the fund.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-6.5-12

Special tax; metropolitan thoroughfare district bond fund

Sec. 12. (a) For the purpose of raising money to pay all bonds issued under section 9 of this chapter and any interest on them, the legislative body may levy each year a special tax upon all of the property located within the district, in such manner as to meet and pay the principal of the bonds as they severally mature, together with all accruing interest on them. Other revenues and funds may be annually allocated by statute or ordinance to be applied to reduction of the bonds and their interest for the next succeeding year, but to the extent that monies on hand are insufficient for payments required in the next succeeding year, the special tax shall be levied.

(b) The tax so collected, and all other allocated monies, shall be accumulated and kept in a separate fund to be known as the "Metropolitan Thoroughfare District Bond Fund", and shall be applied to the payment of the district bonds and interest as they severally mature, and to no other purposes. All accumulations may be deposited, at interest, with one (1) of the depositories of other funds of the consolidated city, and all interest collected belongs to the fund.

As added by Acts 1982, P.L.77, SEC.12.

IC 36-9-7

Chapter 7. City Department of Traffic Engineering

IC 36-9-7-1

Application of chapter

Sec. 1. This chapter applies to all cities.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-2

Establishment of department

Sec. 2. The city legislative body may, by ordinance, establish a department of traffic engineering.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-3

Department personnel; qualifications of traffic engineer

Sec. 3. (a) The personnel of the department of traffic engineering consists of a city traffic engineer, his assistants, and other employees necessary to perform the duties of the department. The city executive shall appoint the traffic engineer.

(b) The traffic engineer must:

(1) have a thorough knowledge of modern traffic control methods;

(2) be able to supervise and coordinate diversified traffic engineering activities and prepare engineering reports; and

(3) either:

(A) be a registered professional engineer who has practiced traffic engineering for at least one (1) year;

(B) have a certificate of engineer-in-training under IC 25-31 and have practiced traffic engineering for at least two (2) years; or

(C) have practiced traffic engineering for at least ten (10) years.

A person must furnish evidence of his qualifications under this subsection before he may be appointed by the executive.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-4

Authority and responsibility of traffic engineer

Sec. 4. (a) The traffic engineer is responsible only to the city executive or safety board, and he may act only in an advisory capacity to the executive or board.

(b) The traffic engineer has full authority over all his subordinates.

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-7-5

Powers and duties of traffic engineer

Sec. 5. The traffic engineer shall:

(1) conduct all research relating to the engineering aspects of the planning of:

(A) public ways;

(B) lands abutting public ways; and

- (C) traffic operation on public ways;
for the safe, convenient, and economical transportation of
persons and goods;
- (2) advise the city executive in the formulation and execution of
plans and policies resulting from his research under subdivision
(1);
 - (3) study all accident records, to which he has access at all
times, in order to reduce accidents;
 - (4) direct the use of all traffic signs, traffic signals, and paint
markings, except on streets traversed by state highways;
 - (5) recommend all necessary parking regulations;
 - (6) recommend the proper control of traffic movement; and
 - (7) if directed to do so by ordinance, supervise all employees
engaged in activities described by subdivisions (3) through (6).

As added by Acts 1981, P.L.309, SEC.80.

IC 36-9-8

Chapter 8. Attendance at Purdue Road School

IC 36-9-8-1

Application of chapter

Sec. 1. This chapter applies to all counties and municipalities.
As added by Acts 1981, P.L.309, SEC.81.

IC 36-9-8-2

Persons authorized to attend school

Sec. 2. The following persons may attend the annual road school at Purdue University:

(1) The county surveyor or county engineer of each county, and any other person authorized by the county executive.

(2) The civil engineer and traffic engineer of each municipality, and any other person authorized by the municipal executive.

As added by Acts 1981, P.L.309, SEC.81. Amended by Acts 1981, P.L.317, SEC.8.

IC 36-9-8-3

Persons attending school; reimbursement for expenses

Sec. 3. (a) The expenses of a county surveyor, county engineer, or other person in attending the annual road school, including mileage, lodging, and tuition, shall be paid from the county general fund. On presentation of the proper receipts for these expenses, and with the approval of the county executive, the county auditor shall issue his warrant for the expenses.

(b) The municipal legislative body may annually appropriate sums for the necessary expense of mileage, meals, and lodging of a municipal engineer or other person in attending the annual road school.

As added by Acts 1981, P.L.309, SEC.81. Amended by Acts 1981, P.L.317, SEC.9.

IC 36-9-9

Chapter 9. Municipal Street Lights

IC 36-9-9-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-2

"City block" defined

Sec. 2. As used in this chapter, "city block" means both sides of the part of a public street that lies between two (2) intersecting public streets.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-3

Petitions for construction of street lights; declaratory resolutions; notice and hearing

Sec. 3. (a) The owner or owners of real property that fronts or abuts upon a public street or thoroughfare may sign and file with the municipal works board their petition requesting that there be constructed, erected, installed, maintained, and operated:

(1) an electric system of street lights and posts, designating the number of lumens per post and the number of posts along the street curb;

(2) a system of ornamental street lights and posts with underground wiring; or

(3) additional lights where a system has already been installed; in front or on either side of the city block or blocks described in the petition.

(b) When the petition has been filed and signed by the owner or owners of at least sixty percent (60%) of the real property in the city block or blocks described in the petition, the works board shall adopt a declaratory resolution for the making of the improvement as described in the petition and shall then:

(1) prepare and place on file in its office, or with the municipal clerk if it has no office, a complete set of drawings, plans, and specifications for the lighting system and an estimate of the annual cost of the street lighting, which shall be kept open for inspection by the public and all prospective bidders; and

(2) publish in accordance with IC 5-3-1 a notice stating that on a day named after the last publication a public hearing shall be held, that interested persons may file remonstrances against the lighting system at the hearing, and that, at the hearing, the works board may sustain or overrule the remonstrances or may modify its original resolution, plans, or proceedings.

As added by Acts 1981, P.L.309, SEC.82. Amended by Acts 1981, P.L.45, SEC.41.

IC 36-9-9-4

Repealed

(Repealed by Acts 1982, P.L.6, SEC.27.)

IC 36-9-9-4.1

Hearing on remonstrance; rescission or modification of resolution and plans

Sec. 4.1. At the time specified in the notice under section 3 of this chapter, the municipal works board shall conduct a hearing of any remonstrance on file. If, at the hearing, the works board finds that:

- (1) the lighting system will not be of public benefit; or
- (2) the annual benefits from the lighting system that will accrue to the property liable to be assessed will not equal or exceed the estimated annual cost of the improvement, after deducting the amount of the annual cost to be paid by the municipality;

the works board shall rescind the declaratory resolution for the lighting system and dismiss the petition, or modify the resolution, petition, drawings, plans, specifications, and estimated cost so that the lighting system will be of public benefit and the annual benefits that will accrue to the property liable to be assessed for the lighting system will equal or exceed its estimated annual cost, after deducting the amount of the annual cost to be paid by the municipality. However, the number of lumens per post and the number of posts designated in the petition may not be changed without the written consent of the petitioners.

As added by Acts 1982, P.L.6, SEC.26.

IC 36-9-9-5

Construction of street lights; contracts; commission orders

Sec. 5. (a) When the declaratory resolution, as originally adopted or as modified, has been confirmed, the municipal works board shall notify and negotiate with any utility that operates and supplies electrical current within the municipality. The works board shall attempt to enter into a contract with the utility for the lighting described in the plans and specifications, and may cause the municipality to enter into such a contract, in strict accordance with the plans, drawings and specifications on file.

(b) If more than one (1) utility supplies electricity in the municipality and has the right to serve the electric system petitioned for, the municipal works board shall publish a notice in accordance with IC 5-3-1. The notice must state the nature of the work, state that drawings, plans, and specifications are on file in the office of the works board or the municipal clerk, call for sealed bids for the lighting and the maintenance of the system, and state that the bids must be filed not less than ten (10) days after the last publication and must comply with the manner and form in which bids for public improvements are filed in municipalities. If a satisfactory bid is received by the time fixed in the notice, the works board shall attempt to enter into a contract with the utility that is the lowest responsible bidder for the furnishing of that lighting.

(c) If the municipality owns and operates an electric utility and no

other electric utility is authorized to render the service petitioned for, then the electrical lighting system petitioned for may be installed, maintained, and operated by the municipality. An electrical system established under this section shall be maintained, operated, and paid for in the same manner as an electrical system that is established under this chapter by a public utility.

(d) The annual cost of lighting as fixed by the contract may not exceed the estimated cost of lighting on file with the plans and specifications. The contract must require lighting service for a period of not less than five (5) years and not more than fifteen (15) years, and must describe in detail the service to be rendered and the prices to be paid to the utility.

(e) If the municipality is unable to make an agreement with a utility, the municipality may file its petition with the utility regulatory commission. The commission shall conduct a hearing on the petition, in accordance with law and the rules of the commission. The commission may then require a utility supplying electrical current within the municipality to enter into a contract to construct the electric system of lighting in accordance with the plans and specifications on file with the municipality, and to maintain and operate the system at the prices, on the terms, for the period of time, and upon the conditions that the commission requires. Such an order of the commission is binding upon the municipality and utility:

- (1) in the same manner as other orders of the commission; and
- (2) as if a contract had been entered into between the municipality and the utility covering the same subject matter; subject to all rights of appeal from the commission.

(f) After a contract has been entered into between the municipality and utility and has been approved by the utility regulatory commission, or if the construction, maintenance, and operation of the lighting system has been ordered by the commission, the utility which is a party to the contract or order shall, within a reasonable time, construct the system at its own expense. The utility shall maintain and operate the system in strict accordance with the agreement and order, and at the annual rates, tolls, or charges fixed by contract or by the order of the commission. The commission may investigate the rates, tolls, and charges in the same manner and to the same extent that it may investigate and revise the rates, tolls, and charges for electric current supplied by a public utility under IC 8-1-2.

As added by Acts 1981, P.L.309, SEC.82. Amended by Acts 1981, P.L.45, SEC.42; P.L.23-1988, SEC.123.

IC 36-9-9-6

Construction of street lights; uniformity of style; supervisory personnel; completion report

Sec. 6. (a) All street lamps or systems of lighting constructed, erected, or installed must be uniform in style and shall be installed under the supervision of:

- (1) the municipal civil engineer; or

(2) some other competent person;
as determined by the municipal works board. If the person supervising the work is not already under bond, he shall file a bond for the faithful performance of his duties in the sum and the manner directed by the works board.

(b) At the completion of the work, the person supervising the work shall file with the municipality his verified report that the work has been completed and complies in all respects with the drawings, plans, and specifications on file. If the report is found to be correct, the works board shall accept it on behalf of the municipality.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-7

Payments to utility for service

Sec. 7. The municipality shall make to the utility operating the lighting system all payments required to be made to the utility for its service, in strict accordance with the terms of the contract or order under which the utility is operating. The municipality shall make the payments from its general fund or from a fund set aside for street lighting purposes, and shall be reimbursed for payments made in behalf of property owners by the collection of the assessments as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-8

Street lights at intersections

Sec. 8. (a) For purposes of this section, all light posts that are:

- (1) located on the street upon which a lighting system is installed; and
- (2) within fifty (50) feet of the nearest part of another street intersecting that street;

are considered to be at a street intersection.

(b) A municipality shall install, maintain, and operate at each street intersection lighting facilities that are at least equal to those in other parts of the lighting system.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-9

Payment of costs of lighting

Sec. 9. (a) The municipality shall pay from its general fund or from a fund set aside for street lighting purposes:

- (1) the entire annual cost of lighting at street intersections under section 8 of this chapter; and
- (2) not less than thirty-five percent (35%) of the annual cost of lighting of the entire other part of the lighting system, with the exact percentage paid to be fixed by the municipal works board.

The municipal legislative body may, by ordinance, divide the municipality for lighting purposes into business zones, residence zones, or other classes of zones. The percentage of annual cost of the lighting system to be paid by the municipality must be uniform

throughout each class of the zones.

(b) The remaining annual cost of the lighting system shall be assessed against each lot or parcel of real property in the city block or blocks in front of which the lighting system is located, in the manner prescribed by section 10 of this chapter.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-10

Assessments; liens

Sec. 10. (a) After an electrical lighting system has been completed and is ready for operation, the municipal works board shall assess the real property in the city block or blocks affected for the proportionate part of the annual lighting cost and, in the case of a system of ornamental lighting, the installation costs, that the property owners are required to pay annually. The works board shall assess each lot or parcel of the property equally per front foot.

(b) The works board shall prepare and file an assessment roll, setting forth the assessments against each lot and parcel of real property to be assessed, based upon:

(1) the cost of the lighting for the full period of one (1) year and for that part of a year the system may be operated between the time of its completion and the beginning of the next calendar year; and

(2) in the case of a system of ornamental lighting, the costs of installing the system.

The preparation and filing of the assessment roll and all proceedings for its adoption and confirmation, notices to property owners, certifying the roll to the county treasurer, and all other proceedings in connection with the roll must be according to the statutes regarding public improvements in municipalities.

(c) The first assessment made against each lot or parcel of real property is a lien on that lot or parcel, from the time of the final acceptance of the electrical system by the municipality. The lien covers the cost of lighting for the part of the calendar year following acceptance of the system, the cost of lighting for the next full calendar year, and, in the case of a system of ornamental lighting, the cost of installing the system.

(d) After the first assessment is made, a lien attaches upon March 1 of each year without further certification to the county treasurer, for the amount of the lighting cost for the succeeding calendar year and in the same proportions per front foot as fixed by the original assessment roll.

(e) Assessments made under this section shall be paid in the same manner as taxes are paid, at the regular tax paying periods following the adoption of the assessment roll. An assessment not paid at the time fixed by statute is subject to and may be collected according to the statutes regarding delinquent taxes, and all property upon which an assessment is a lien is subject to proceedings for the collection of taxes.

(f) The lien of an assessment under this section has equal priority

with all other assessment liens and is superior to all other liens except liens for taxes.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-9-11

Expiration of contracts; transfers to new utilities

Sec. 11. (a) Six (6) months before the expiration of a contract or order entered into or made under section 5 of this chapter, the municipal works board may:

- (1) negotiate and enter into a new contract;
- (2) extend the current contract;
- (3) procure an order of the commission; or
- (4) advertise for bids.

The works board shall then proceed in the manner provided by the preceding sections of this chapter.

(b) If a contract or order made under this section provides that an electrical system is to be operated by a utility other than the former utility and owner of the system, the new utility shall pay in cash to the former utility the full value at that time of the system, as determined by the utility regulatory commission. After payment, the former utility shall transfer title in the system to the new utility, which is then fully vested with ownership of the system. The new utility shall maintain and serve the system in accordance with this chapter.

As added by Acts 1981, P.L.309, SEC.82. Amended by P.L.23-1988, SEC.124.

IC 36-9-9-12

Additional lighting facilities; petition; construction; assessment of costs

Sec. 12. (a) Whenever a lighting system has been established in accordance with this chapter, and an owner of property within any city block or blocks included in the system wants lighting facilities in front of or near his property that:

- (1) are additional to those described in the plans and specifications on file; and
- (2) consist of either lighting posts or lamps of greater candlepower, or both;

the property owner may file his petition with the municipal works board. The petition must fully describe the additional lighting facilities that are wanted.

(b) The works board shall grant the petition and refer it to the person who supervises the system, who shall prepare and file:

- (1) plans and specifications for the additional lighting; and
- (2) the estimated annual cost of the additional lighting.

(c) When the plans, specifications, and annual cost are approved by the works board and by the property owner, the works board shall notify the utility operating the lighting system. The utility shall immediately proceed to erect, install, construct, and connect the additional lighting at its own expense. The utility shall then operate

and maintain the additional lighting facilities as a part of the original system in return for additional compensation that is:

- (1) agreed upon by all the interested parties and approved by the utility regulatory commission; or
- (2) fixed by the commission.

(d) The property owner who petitioned for the additional lighting facilities shall pay to the municipality the additional annual cost of those facilities. The additional annual cost, which shall be added to the original amount assessable against the petitioner's property, is a lien upon the property and is payable in accordance with this chapter. *As added by Acts 1981, P.L.309, SEC.82. Amended by P.L.23-1988, SEC.125.*

IC 36-9-9-13

Additional hours of lighting; petitions; assessment of costs

Sec. 13. (a) Whenever:

- (1) a lighting service has been established in accordance with this chapter or under another contract or arrangement; and
- (2) at least sixty percent (60%) of the property owners upon one (1) side of the street on a city block or blocks lighted by the service file with the municipal works board their petition requesting that the lighting service be maintained on that side of the street in the block or blocks each night for a designated number of hours in addition to the number of hours of service prescribed by the current contract, arrangement, or plans and specifications;

the works board shall grant the petition. The cost of the additional lighting shall be charged to and assessed against all of the lots or parcels of real property on the side of the street and on the city block or blocks on which additional lighting service is maintained.

(b) All proceedings for the establishment of additional service, the payments to the utility for additional service, and the making and collection of assessments and liens for additional service are governed by this chapter in the same manner as other proceedings, payments, assessments and liens.

As added by Acts 1981, P.L.309, SEC.82.

IC 36-9-10

Chapter 10. County Payment for Municipal Street Lights

IC 36-9-10-1

Application of chapter

Sec. 1. This chapter applies to all municipalities and the counties in which they are located.

As added by Acts 1981, P.L.309, SEC.83.

IC 36-9-10-2

Obligation of county

Sec. 2. If:

- (1) a county owns real property in a municipality;
- (2) the municipality installs a lighting system to light the streets, alleys, and other public places in the municipality;
- (3) as a part of that system, street lights are installed along a street abutting on the county property, on the opposite side of the street from the county property; and
- (4) there are no street lights on the side of the street on which the county property is located;

the county shall pay the cost of installing, maintaining, and operating street lights in front of its property, on the side of the street on which the property is located.

As added by Acts 1981, P.L.309, SEC.83.

IC 36-9-10-3

Installation costs

Sec. 3. (a) If a county is required to pay for the installation of municipal street lights under this chapter, the amount to be paid by the county shall be determined under this section.

(b) If the contract for the installation of the lighting system calls for payment for the system as a whole, the county shall pay the amount that bears the same ratio to the total contract price as the number of lights to be paid for by the county bears to the total number of lights contracted for. The municipal legislative body shall determine the amount to be paid under this subsection.

(c) If the contract for installation of the lighting system calls for payment at a fixed price per light, the county shall pay the amount determined by multiplying that price by the number of lights to be paid for by the county.

As added by Acts 1981, P.L.309, SEC.83.

IC 36-9-10-4

Maintenance costs

Sec. 4. (a) If a county is required to pay for the maintenance and operation of municipal street lights under this chapter, the amount to be paid by the county shall be determined under this section.

(b) If the contract for the maintenance and operation of the lighting system calls for payment for the system as a whole, the county shall pay the amount that bears the same ratio to the total

contract price as the number of lights to be paid for by the county bears to the total number of lights contracted for.

(c) If subsection (b) does not apply, the county shall pay the amount determined by multiplying the price paid by the municipality for the maintenance and operation of each light by the number of lights required to be paid for by the county.

As added by Acts 1981, P.L.309, SEC.83.

IC 36-9-10-5

Approval of payments; appropriations

Sec. 5. (a) If a county is required to pay for the installation, maintenance, or operation of municipal street lights under this chapter, the municipal clerk shall verify the amount to be paid by the county. The municipal legislative body must approve this amount by resolution, and shall file a certified copy of the resolution with the county auditor in the same manner that other claims against the county are filed.

(b) Within sixty (60) days after the copy of the resolution is filed, the county auditor shall call the county fiscal body into special session for the purpose of making an appropriation to pay the amount claimed in the resolution. The fiscal body shall make an appropriation to pay this amount within sixty (60) days after the copy of the resolution is filed.

(c) The county shall pay the cost of maintaining and operating the lights every three (3) months, upon the filing of a claim under this section.

As added by Acts 1981, P.L.309, SEC.83.

IC 36-9-11

Chapter 11. Municipal Parking Facilities

IC 36-9-11-1

Application of chapter

Sec. 1. This chapter applies to all municipalities except consolidated cities.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.317, SEC.10.

IC 36-9-11-2

Declaration of public purpose

Sec. 2. The construction, operation, and acquisition of land for parking facilities by a municipality are public uses and purposes for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-3

Powers of municipality

Sec. 3. A municipality may acquire, establish, construct, maintain, operate, lease to others for operation, and regulate parking facilities for vehicles under this chapter. In exercising these powers, the municipality may:

- (1) clear, grade, surface, and pave land;
- (2) erect and equip structures; and
- (3) remodel, extend, repair, and improve structures.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-4

Surveys and studies; submission of recommendations to safety board and legislative body

Sec. 4. (a) From time to time the municipality shall make or cause to be made surveys and studies necessary to determine the need for and proper location of parking facilities, giving due consideration to:

- (1) the free and safe movement of traffic;
- (2) the terminal points and concentration of traffic; and
- (3) the adequacy of privately owned parking lots or structures.

(b) This subsection applies only to cities. On the basis of the surveys and studies, recommendations shall be made to the safety board and the legislative body concerning the general location, size, and character of, and probable cost of acquiring and developing, needed parking facilities. The safety board shall consider the recommendations and, if it rejects them, shall state its objections in writing and refer the recommendations back to the persons making them. If the safety board approves the recommendations, it shall adopt a resolution to that effect and submit the recommendations to the legislative body for acceptance or rejection. If the legislative body rejects the recommendations, it shall adopt a resolution stating its objections and refer the recommendations back to the persons making

them. If the legislative body approves the recommendations, it shall adopt a resolution to that effect. Upon approval of the recommendations by the legislative body, the city works board may proceed as provided by this chapter, and shall proceed in accordance with the legislative body's direction.

(c) This subsection applies only to towns. If, on the basis of the surveys and studies, the legislative body finds that there is a need for parking facilities of any kind, it shall adopt a resolution to that effect. *As added by Acts 1981, P.L.309, SEC.84.*

IC 36-9-11-5

Preparation and approval of plans; notice and hearing; appeals

Sec. 5. (a) Before the municipal works board proceeds with the acquisition and construction of any parking facilities approved under section 4 of this chapter, it must cause to be prepared:

- (1) plats and descriptions of the land proposed to be acquired or used;
- (2) general plans or drawings for the proposed project; and
- (3) a general estimate of the cost of acquisition, construction, and installation of the project.

(b) The works board shall then adopt a resolution:

- (1) approving the plats, descriptions, plans or drawings, and estimate;
- (2) declaring that upon investigation it has been found necessary for the proper protection of the public safety and welfare, and will be of public utility and benefit to the municipality and its citizens, to:
 - (A) construct and maintain the parking facilities described in the resolution; and
 - (B) acquire for that purpose the property described in the resolution, by purchase or by appropriation; and
- (3) setting out the probable cost and the proposed method of financing the project.

The resolution, plats, descriptions, plans or drawings, and estimate shall be kept open to inspection by all persons interested in or affected by the acquisition of the property proposed to be acquired or the construction or operation of the project.

(c) Notice of the adoption of the resolution and its purport, and of the fact that the plats, descriptions, plans or drawings, and estimate have been prepared and can be inspected, shall be published in accordance with IC 5-3-1. The notice must name a date on which the board will hear all persons interested in or affected by the proceedings, consider any remonstrances or objections filed, and finally determine the public utility and benefit of the project to the municipality and its citizens. All persons affected in any manner by the proceedings are considered to be notified of the pendency of the proceedings and of subsequent acts, hearings, adjournments, and orders of the board by the publication of the notice.

(d) At the hearing, which may be adjourned from time to time, the works board shall:

- (1) hear all persons interested in or affected by the proceedings;
- (2) consider all remonstrances and objections filed; and
- (3) take final action:
 - (A) determining the public utility and benefit of the proposed project to the municipality and its citizens; and
 - (B) confirming, modifying and confirming, or rescinding the declaratory resolution.

(e) Appeals from the determination of the works board may be taken only by persons who have filed written remonstrances or objections before the hearing date fixed in the notice.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.43.

IC 36-9-11-6

Powers of works board; payment of expenses; contracts

Sec. 6. (a) The municipal works board may take all steps and enter into all contracts or agreements necessary or incidental to the performance of its duties and the exercise of its powers under this chapter.

(b) The works board may employ engineers, architects, financial consultants, attorneys, inspectors, superintendents, managers, accountants, and other employees that it considers necessary for the execution of its powers and duties, fix their compensation, and establish their duties. However, the powers of a city works board under this subsection are subject to the statutes relating to the executive departments of cities.

(c) All compensation for services and expenses incurred under this chapter shall be paid solely from money provided under this chapter. The works board may not bind itself or the municipality beyond the extent to which money has been or may be made available to the board under this chapter.

(d) All contracts or agreements with any contractor or contractors for labor, supplies, or equipment shall be let and entered into in accordance with IC 5-22 and IC 36-1-12.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.57, SEC.41; P.L.49-1997, SEC.83.

IC 36-9-11-7

Rates and charges; adoption of operating rules; employees' bonds

Sec. 7. (a) In connection with the operation of any parking facility, the municipal works board may fix the rates and charges to be collected for the parking of vehicles, or for any other use of the facility, and adopt rules governing the use and operation of the facility so as to promote the maximum use of the facility by the public in a safe, orderly, and efficient manner. In a city, however, these rates, charges, and rules do not become effective until they are approved by ordinance or resolution of the legislative body.

(b) All rates and charges for parking and other services must be reasonable and designed to bring in revenues sufficient to cover the cost of providing and operating necessary parking facilities.

(c) A person handling monies of one (1) or more parking facilities must be properly bonded to insure a faithful accounting for the money coming into his hands.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-8

Acquisition and use of property

Sec. 8. (a) A municipality may acquire the property required for parking facilities by gift, lease, purchase, the exercise of the power of eminent domain, or any combination of these methods. A municipality may also acquire air rights above real property, for facilities above that property, without also acquiring that property.

(b) The municipal works board may, at any time, obtain an option for the purchase of the land required for parking facilities, or may enter into a contract for the purchase of that land upon the terms and conditions it considers best. However, the options or contracts are subject to the final action of the works board under section 5 of this chapter, and to the condition that the land may be paid for only out of money made available to the board for that purpose under this chapter.

(c) In acquiring property for parking facilities by the exercise of the power of eminent domain, a municipality shall proceed under the statutes governing the exercise of the power of eminent domain by the works board of a municipality of its class, or under any applicable general statute. However, property may not be acquired by a city under this subsection until it is approved as a suitable location for a parking facility by the legislative body.

(d) The works board may use for parking facilities any land that was previously acquired by the municipality and is not needed for other purposes. In a city, however, such an action must be approved by the legislative body.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-9

Insurance

Sec. 9. (a) A municipality that operates one (1) or more parking facilities financed in whole or in part by the issuance of revenue bonds shall maintain insurance of the kinds and in the amounts ordinarily carried by persons operating similar facilities.

(b) All insurance proceeds received due to damage to a parking facility must be:

- (1) used in replacing the property damaged; or
- (2) deposited in the fund or account for the payment of the principal of and interest on the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-10

Tax liability and exemptions

Sec. 10. (a) The property acquired by a municipality under this chapter, and the revenues derived from that property, are exempt

from taxation for all purposes.

(b) A leasehold improvement made by a lessee under this chapter for private or commercial purposes, or both, is subject to taxation.
As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-11

Mortgage, pledge, or disposal of property while revenue bonds are outstanding; deposit of sale proceeds

Sec. 11. (a) As long as any of the revenue bonds issued under section 16 of this chapter are outstanding, the municipality may not mortgage, pledge, otherwise encumber, sell, or dispose of any part of the property of a parking facility, except that it may sell or dispose of:

- (1) equipment that is worn out and is to be replaced; or
- (2) property that is no longer useful or profitable in the operation of the facility.

(b) The proceeds of a sale under subsection (a) shall be deposited in the fund or account for the payment of the principal of and interest on the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-12

Leases; authorization

Sec. 12. A municipality may lease all or part of the property of a parking facility to others on any terms and conditions that do not adversely affect the rights of bondholders. However, a lease of real property under this section must be made in the manner prescribed by section 13 of this chapter.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-13

Leases; procedure; approval by legislative body

Sec. 13. (a) A rental or lease contract under this section is effective only if it is approved by ordinance or resolution of the municipal legislative body.

(b) The municipal works board may lease or rent to others for operation any parking facility or property acquired for parking purposes, after first adopting a resolution setting out its intention to do so. The resolution must specify the term of the lease, permissible parking charges, manner of operation, and other requirements having a bearing on the value of the proposed lease.

(c) A lease under this section may also require the lessee to:

- (1) clear, grade, and pave land;
- (2) erect and equip structures; and
- (3) remodel, extend, repair, and improve structures;

for parking purposes. Work to be performed by the lessee under this section must be described in the resolution under subsection (b).

(d) Notice of the resolution must be given by publication in accordance with IC 5-3-1. The notice must set forth:

- (1) the time and place at which offers will be received and considered;

- (2) the location, size, and capacity of the real property;
- (3) a description of any work to be performed by the lessee under subsection (c);
- (4) the specifications adopted governing the leasing; and
- (5) the other information required to secure free and open competition in the offers.

(e) The lease shall be awarded to the bidder offering the most advantageous terms in the judgment of the works board, giving due consideration to the experience and financial responsibility of the bidder. The works board may reject any offers.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.44.

IC 36-9-11-14

Lease of space and air rights; deposit of rentals

Sec. 14. (a) Space and air rights over a parking facility may be leased to others for a period not to exceed ninety-nine (99) years, subject to the following conditions:

- (1) The lease must be authorized by an ordinance of the municipal legislative body, but the municipal works board may negotiate with interested parties concerning the terms and conditions of the lease before introduction of the ordinance. After introduction of the ordinance and before final adoption, a notice of public hearing must be published in accordance with IC 5-3-1. The notice must specify a date when a public hearing will be held on the question of whether the lease is in the best public interest.
- (2) The lease must specify the initial purpose for which the leased space may be used. If the purpose is to erect in the space a structure attached to the real property constituting the site of the parking facility, the lease must:
 - (A) require approval by the works board of the plans and specifications for any structure to be erected and of the manner in which it shall be imposed upon or around the real property;
 - (B) provide for use by the lessee of the areas of the surface of the site that are essential for the support of the structure to be erected, as well as for the connection of essential public or private utilities to the structure and for ingress and egress for the structure; and
 - (C) provide that if the construction of the initial structure is not completed within five (5) years after the date of execution of the lease, the lease is cancellable at the option of the municipality.
- (3) A structure erected in the space leased must be financed, operated, maintained, and repaired by the lessee separate from the parking facility financed, operated, maintained, and repaired by the municipality, and the municipality has no obligation or liability to the lessee or creditors of the lessee other than to provide the air space leased and to permit the use of the site for

the necessary supports for the structure erected in the leased space, ingress and egress for the structure, and the construction of essential utilities.

(4) The lease must require the lessee to carry sufficient public liability and property damage insurance to indemnify the municipality and protect it from all loss and damage from the hazards and perils normally insured against by such insurance that arise out of the existence and operation of a structure in the leased space.

(5) A structure erected above the parking facility is subject to all property taxes levied on private property unless the structure is acquired by the municipality and wholly used for governmental purposes.

(b) The lease rental received by the municipality is considered revenue of the parking facility and shall be deposited, handled, and disbursed in the same manner as other revenues of the parking facility. However, if the treatment of lease rental as revenues would cause the revenue bonds to be industrial development bonds under the Internal Revenue Code as it existed on January 1, 1986, and applicable regulations under that Code, then the lease rental shall be deposited in the general fund of the municipality and disbursed in the same manner as other money in that fund.

As added by Acts 1981, P.L.309, SEC.84. Amended by Acts 1981, P.L.45, SEC.45; P.L.2-1987, SEC.51.

IC 36-9-11-15

Funding

Sec. 15. Money to pay the cost of construction and operation of parking facilities may be:

- (1) accepted as a donation;
- (2) appropriated from the general fund or from any fund derived from parking revenues;
- (3) provided by the issuance and sale of general obligation bonds of the municipality;
- (4) provided by the issuance and sale of bonds payable solely from revenues derived from parking facilities, parking meters, or parking mechanisms, as provided by section 16 of this chapter; or
- (5) provided by any combination of these methods.

The issuance of general obligation bonds and the appropriation of funds raised by taxation must comply with the applicable general statutes.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-16

Revenue bonds

Sec. 16. (a) If a municipality wants to obtain all or part of the money necessary to pay the cost of parking facilities by the issuance of revenue bonds, the bonds must be authorized by ordinance of the municipal legislative body.

(b) The ordinance authorizing the revenue bonds:

- (1) must set out the amount, date, denominations, terms, conditions, and form of the bonds and their interest coupons;
- (2) must set out any covenants relative to safeguarding the interest of the bondholders;
- (3) must specify in detail the revenues pledged to the payment of the interest on and the principal of the bonds; and
- (4) may contain provisions for the issuance of additional bonds of equal priority, or of junior and subordinate priority, from time to time after issuance of the original bonds, under the restrictions set forth in the ordinance.

(c) The revenue bonds may:

- (1) bear interest, payable semiannually, at any rate;
- (2) be payable in the amounts, at times not exceeding fifty (50) years from the date of issuance, and at the place or places, either within or outside of Indiana; and
- (3) be redeemable before maturity on the terms and conditions; specified by the municipal legislative body in the authorizing ordinance.

(d) The bonds shall be executed in the name of the municipality as other bonds of the municipality are executed. If any of the officers whose signatures or countersignatures appear on the bonds or the coupons cease to be officers before the delivery of the bonds to the purchaser, his signature or countersignature remains valid and sufficient for all purposes as if he had remained in office until the delivery of the bonds.

(e) Upon the sale and delivery of the bonds authorized, the ordinance constitutes a contract between the municipality and the bondholders, and may not subsequently be amended or modified so as to adversely affect the rights of the bondholders.

(f) The bonds of a city and the interest on them are payable only out of the special fund or account created by the ordinance authorizing the issuance of the bonds and the revenues pledged to the fund or account. The bonds of a town and the interest on them are payable only out of the parking sinking fund established by section 19 of this chapter and the revenues pledged to that fund.

(g) The bonds are not an indebtedness of the municipality for purposes of any constitutional provision or limitation. A statement to that effect must appear on the face of each bond.

(h) The bonds are payable to bearer, and the interest on them shall be evidenced by coupons attached to them.

(i) The bonds may be registrable as to the principal only in the holder's name on the books of the municipality, with the registration to be noted on the bond by the municipal clerk or other designated officer. After registration, the transfer of a bond is valid only if made on the books of the municipality by the registered holder and similarly noted on the bond. Registered bonds may be discharged from registration by being transferred to bearer, after which they are transferable by delivery but may again be registered as to principal. The registration of the bonds as to principal does not affect the

negotiability of the interest coupons by delivery only.

(j) Bonds issued under this section are negotiable instruments. The bonds and the interest on them are exempt from taxation for all purposes.

(k) The proceeds of each issue of bonds shall be used solely for the payment of the cost of the parking facilities for which the bonds were issued, and shall be disbursed in the manner and under the restrictions, if any, that the legislative body specifies in the ordinance authorizing the issuance of the bonds.

(l) If the proceeds of any issue of bonds are less than the cost of the parking facilities, additional bonds may be issued in a similar manner to provide the amount of the deficit. Unless otherwise provided in the ordinance authorizing their issuance, the additional bonds are considered to be of the same issue and are entitled to payment from the same fund without preference or priority of the bonds first issued.

(m) If the proceeds of any issue of bonds exceed the cost of the parking facilities for which the bonds were issued, the surplus shall be deposited in the fund or account from which the bonds are payable.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-17

Actions by bondholders; appointment of receivers

Sec. 17. (a) A holder of revenue bonds or interest coupons issued under section 16 of this chapter may, by civil action:

- (1) protect and enforce all rights granted by statute or by the ordinance authorizing the issuance of the bonds; and
- (2) enforce and compel performance of all the duties required by this chapter or the ordinance, including the fixing and collecting of parking charges or charges for other service rendered by the parking facilities.

(b) Upon a failure to pay the interest on or the principal of the revenue bonds in accordance with their terms, a court may appoint a receiver to administer the parking facilities on behalf of the municipality and the bondholders. The receiver may:

- (1) fix and collect parking charges and other charges sufficient to provide for the payment of:
 - (A) the expenses of operation, repair, and maintenance; and
 - (B) the interest on and principal of the bonds; and
- (2) apply the revenues in the manner prescribed by this chapter and the ordinance authorizing the issuance of the revenue bonds.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-18

Parking facilities; records and accounts when revenue bonds are issued

Sec. 18. If revenue bonds are issued to finance the cost of parking facilities, the municipality shall keep proper books of records and accounts for the parking facilities, separate from all of its other

records and accounts. These records and accounts must contain complete and correct entries showing:

- (1) the application of the proceeds of the bonds;
- (2) the source and disposition of:
 - (A) all revenues collected from or on account of the facilities;
 - or
 - (B) all money supplied by the municipality on account of the facilities; and
- (3) all transactions relating to the facilities.

Within ninety (90) days after the close of each calendar year, the municipal fiscal officer shall prepare an operating and income statement of the facilities. The fiscal officer shall keep the statement on file in his office, and make it available for examination by any holder of the revenue bonds. A copy of the statement shall be furnished to the original purchaser of the bonds upon request.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-19

Deposit of revenues from parking facilities

Sec. 19. (a) This subsection applies only to cities. The gross revenues of parking facilities shall be kept in a fund or funds separate from all other funds of the city, and shall be deposited in the fund or funds daily, as received. As long as any revenue bonds are outstanding, revenues deposited in the fund or funds may be used only to:

- (1) pay the cost of operation, maintenance, and repair of the parking facilities of the city;
- (2) pay the principal of and interest on revenue bonds issued or to be issued for the facilities;
- (3) provide a reserve for the revenue bonds as a margin of safety and protection against default and retirement before maturity;
- (4) pay the cost of repairs, replacements, and additions to, or remodeling of, the parking facilities; or
- (5) finance the construction of additional parking facilities;

in the manner and with the priorities and restrictions as to application of the revenues provided in the ordinance or ordinances authorizing the issuance of the revenue bonds.

(b) This subsection and subsection (c) apply only to towns. The gross revenues of each:

- (1) parking facility financed by the issuance of revenue bonds; and
- (2) extension, addition, or improvement to, or replacement of, such a facility;

shall be deposited in a special fund designated as "parking fund—project _____". The revenues derived from the facility shall be deposited in the special fund daily, as received.

(c) The revenues deposited under subsection (b) shall be used in the following manner:

- (1) The cost of operation, maintenance, and repair of the parking facility shall be paid first, and a sufficient amount to pay that

cost in the next month shall then be reserved.

(2) The money remaining in the parking fund after compliance with subdivision (1) comprises the net revenues of the facility. On the first day of each month, the net revenues shall be transferred into a special fund designated as "parking sinking fund—project _____" until this fund contains an amount sufficient to pay the interest on and principal of the outstanding revenue bonds payable from the fund for the next twelve (12) months. The money in the parking sinking fund may be used only for the interest on and principal of the revenue bonds payable from the fund.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-20

Pledge of revenues; authorization

Sec. 20. (a) This subsection applies only to cities. All or part of the gross revenues, or of the net revenues remaining after the payment of the cost of operation, maintenance, and repair, may be pledged to the payment of the principal of and interest on the revenue bonds and the accumulation and maintenance of the reserve for the bonds, in the manner and to the extent provided in the ordinance or ordinances authorizing the issuance of the revenue bonds. The ordinance or ordinances authorizing the issuance of revenue bonds also may provide for a pledge of all or a designated part of the gross or net revenues derived from:

- (1) other parking facilities;
- (2) onstreet parking meters;
- (3) parking mechanisms;
- (4) parking and traffic violation fines and fees;
- (5) lease rentals in connection with any parking facilities, private pledges, and contributions; and
- (6) any federal and state grants and distributions not dedicated or restricted by law to other purposes;

to the payment of principal of and interest on revenue bonds issued or to be issued under this chapter, and to the accumulation and maintenance of the reserve for the bonds. The extent and the manner of making the pledge may be provided in the ordinance or ordinances authorizing the issuance of bonds.

(b) This subsection applies only to towns. An ordinance authorizing the issuance of revenue bonds for parking facilities may provide for a pledge of all or a designated part of the unobligated net revenues derived from other parking facilities, parking meters, or parking mechanisms, to the extent required to maintain the parking sinking fund established under section 19 of this chapter at the minimum level.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-21

Pledge of revenues; deposits; irrevocability

Sec. 21. If a pledge of revenues is made under section 20 of this

chapter, then the revenues pledged shall be deposited monthly in the fund or account for the payment of the bonds. The pledge is irrevocable as long as any of the bonds for which the pledge is made are outstanding, but the municipality may not make any covenant relative to the number or location of the parking meters to be maintained by it in and along its streets.

As added by Acts 1981, P.L.309, SEC.84.

IC 36-9-11-22

Bond revenues and revenues pledged to pay bonds considered trust funds

Sec. 22. The money provided by the issuance of revenue bonds under this chapter, the revenues of parking facilities, and all other revenues pledged to the payment of the interest on and principal of the revenue bonds are considered trust funds, and shall be held and applied only as provided in this chapter or in the ordinance authorizing the issuance of revenue bonds. This money shall be deposited in depositories selected by the municipality in the manner provided by IC 5-13-6, but may be invested in the manner provided by IC 5-13-9.

As added by Acts 1981, P.L.309, SEC.84. Amended by P.L.19-1987, SEC.54.

IC 36-9-11.1

Chapter 11.1. Parking Facilities in Marion County

IC 36-9-11.1-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-2

Public uses and purposes; eminent domain

Sec. 2. The construction, operation, and acquisition of property for parking facilities are public uses and purposes for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-3

Definitions

Sec. 3. As used in this chapter:

"Board" refers to the board of transportation of the consolidated city, subject to IC 36-3-4-23.

"Department" refers to the department of transportation of the consolidated city, subject to IC 36-3-4-23.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-4

Pecuniary interest; board or employee

Sec. 4. A member of the board or employee of the department may not have, either directly or indirectly, any pecuniary interest in any contract, purchase, or sale, or in any remuneration paid to or received by any other person, under this chapter, and any transaction made in which any such member or employee has a pecuniary interest is void. However, any property required for the purposes of the department in which a member of the board, or relative of a member, has a pecuniary interest may be acquired but only by gift, bequest, or devise.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-5

Powers and duties of board

Sec. 5. (a) The board shall do the following:

- (1) Investigate, study, and survey the off-street parking needs of the county.
- (2) Promote and encourage the development of parking facilities by private interests.
- (3) Cooperate with and secure the cooperation of the various departments and agencies of the consolidated city and other governmental bodies in such manner as will best promote the carrying out of the purposes of this chapter.

(4) Make findings and reports from time to time regarding such matters, which reports are public records open to inspection by the public at the offices of the department.

(5) Select the sites of parking facilities to be acquired and improved under this chapter.

(6) Acquire these sites and cause them to be improved, operated, or disposed of so as best to carry out the purposes of this chapter.

(7) Exercise general discretionary powers for the government, management, regulation, and control of all parking facilities acquired under this chapter, and over all funds and property relating or belonging to them.

(8) Practice rigid economy in all its operations and expenditures under this chapter, including all compensation paid to any persons, in order to secure the rights and protection of all bondholders and the public.

(b) In carrying out its duties under this chapter, the board may do the following:

(1) Acquire by purchase, gift, grant, devise, bequest, or condemnation, in the name of the consolidated city, and with the approval of the city executive, any interest in real property, including air rights, or personal property, that the board finds to be needed for the reasonable development of parking facilities under this chapter.

(2) Hold, use, manage, operate, sell, lease, rent, or otherwise dispose of, in the name of the city, any property interest acquired, constructed, or improved for use under this chapter, on such terms and conditions as the board considers to be for the best interests of its bondholders, the department, the city, and its inhabitants, but subject to the approval of the executive as required by law.

(3) Operate and manage any parking facility under the jurisdiction of the board directly by its own employees, but only for such periods as no acceptable lessee is available.

(4) Clear, or contract for the clearance of, real property acquired for parking purposes, and adapt and improve it for that use.

(5) Improve for any commercial or business use any parts of parking facilities as are at any time either required or approved by the metropolitan development commission, or are for the best interests of the bondholders and public; and make improvements in the form of walks and elevated walkways to connect any parking facilities to other buildings or land since these connections will enhance the value and use of the facilities by making them more readily accessible.

(6) Enter upon any lots or lands at all reasonable times for the purpose of surveying or examination, to determine whether they are suitable for acquisition and improvement for off-street parking purposes.

(7) Appear before any department or agency of the city or any other governmental agency, with respect to any matter affecting

the property or interests acquired or being acquired for off-street parking purposes, or with respect to any matter affecting any parking facility under the jurisdiction of the board.

(8) Institute, or defend, in the name of the city, any actions growing out of any acts, omissions, or operations of the board under this chapter; use any legal or equitable remedy necessary or proper to protect the property or to enforce the powers and perform the duties of the department under this chapter; but any judgments against the city or the board in any such actions are payable solely out of the funds of the department available for them and of any parking facility chargeable with them.

(9) Cut curbs and issue all permits necessary to the conduct of a parking facility on any property acquired or used for the purposes of this chapter, after obtaining the approval of the agencies having jurisdiction of these matters in the city.

(10) Appoint or employ appraisers of air rights and real and personal property, engineers, architects, surveyors, attorneys, financial consultants, inspectors, superintendents, managers, accountants, clerks, and other employees, consultants and agents as the board may consider expedient and necessary, all of whom shall serve at the will of the board; prescribe and define their duties and fix the fair and reasonable compensation to be paid to those persons, and discharge such appointees or employees and appoint and employ their successors.

(11) Carry and pay for all insurance necessary to protect the board's property and funds; and purchase, lease, or rent any equipment and supplies that are reasonably necessary to enable the board to perform its duties.

(12) Expend for and on behalf of the department and the city all money donated to the department, advanced by the city, raised by the issuance of the obligations authorized by this chapter, or resulting from revenues derived from the operation of parking facilities, subject to the limitations imposed by this chapter; but until funds have been provided by the issuance of obligations or from revenues of the department, the board may not incur any obligation in excess of any amount prescribed by this chapter to be actually advanced by the city.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-6

Preparation of plat and data; resolution of board

Sec. 6. (a) Whenever it is found by the board that any area of the city is in need of an additional parking facility and that there is no reasonable prospect of it being supplied by private enterprise, the board may select a suitable site for it, and cause to be prepared a plat of the block in which the proposed site is located showing:

- (1) the size of the proposed site and the size of the various parcels of property in the block;
- (2) the location and width of surrounding and intersecting streets and alleys;

(3) the character and use of the buildings located on the block;
and

(4) the need for additional parking facilities at the location proposed.

(b) Upon the preparation of the plat and data, the board shall adopt a resolution declaring that it will be of public utility and benefit to acquire and improve the proposed site for off-street parking purposes under this chapter. The resolution must set out the location and size of the proposed site and a general description of the improvement proposed or the structure or structures proposed to be erected on it.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-7

Approval of resolution and plans; acquisition of site

Sec. 7. (a) Upon the adoption of the declaratory resolution by the board, the resolution, together with the supporting data, shall be submitted to the metropolitan development commission. The commission may determine whether the declaratory resolution and the proposed parking facility improvement plan conform to all zoning ordinances of the consolidated city, and approve as adopted, modify, or disapprove the resolution and proposed parking facility. The declaratory resolution and the proposed plan of improvement may be amended or modified in order to conform them to the requirements of the commission.

(b) The administrator of buildings of the city must then examine and approve the plans and specifications of any structures so proposed to be erected. The board shall then submit the proceedings to the city executive for his approval and may not proceed with the acquisition of the proposed site until the approving orders of the executive, the commission, and the building administrator are issued. In determining the location and character of any proposed parking facility, the board and commission shall consider traffic conditions, the effect of the proposed parking facility on surrounding property, and any unusual hardship to those interested in the property.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-8

Purchase of property without entire air rights; attached buildings or structures; costs of common facilities

Sec. 8. (a) Real property constituting the site of parking facilities may be purchased by the board without purchasing the entire air rights over the site. In this event, a building, buildings, or other structures may be attached to the site of the parking facility if the board approves the plans and specifications and the manner in which it shall be imposed upon or around the real property.

(b) In such a case the board may enter into an agreement to provide for use by the building, buildings, or structures of such areas of the surface of the site as may be essential for the support of the building or other structures to be erected, as well as for the connection of essential public or private utilities to the building,

buildings, or structures and ingress and egress for the building, buildings, or structures. The costs of common facilities, utilities, ingress, egress, and supports may be apportioned between the parking facilities and the buildings or structures.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-9

Options or contracts for land; previously acquired property

Sec. 9. (a) The board may obtain at any time from the owner or owners of the land required for the project or projects an option for its purchase, or may enter into a contract for its purchase upon such terms and conditions as the board considers best. However, the options or contracts are subject to the final action of the board on the declaratory resolution, and subject to the condition that the property shall be paid for only out of funds made available to the board for that purpose.

(b) Subject to approval of the executive of the consolidated city, the board may use and improve for parking facilities any property previously acquired by the city and not needed for other purposes.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-10

Eminent domain; powers and duties of department and board

Sec. 10. (a) In exercising the power of eminent domain, the board shall proceed under IC 32-24.

(b) The title to all real property acquired by the department shall be conveyed to "City of _____".

(c) The board may make and enter into contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. All contracts shall be entered into under the general provisions of this title.

(d) The board may lease or rent to others any parking facility or any property acquired for off-street parking purposes, including air rights above the facilities or property, in accordance with IC 36-1-11.

(e) The board may sell any property, including air rights, acquired or developed for off-street parking purposes, if it first adopts a resolution specifically describing the property to be sold and declaring either:

(1) that the property is no longer needed for the use of the department; or

(2) that a sale of the property subject to any restriction, limitation, or condition set out in the resolution will effect the purposes of this chapter.

The property shall then be sold in accordance with IC 36-1-11. Property that has been pledged, or the revenues of which have been pledged, to secure the payment of any outstanding obligations on it, may not be sold unless all the obligations are redeemed and cancelled coincidentally with the conveyance of the property.

(f) All conveyances of real property shall be executed in the name of "City of _____", and must be approved by the executive

of the consolidated city. Such an instrument is not required to have a seal in order to be executed.

(g) In the letting of construction contracts the board shall proceed under IC 36-1-12, subject to the approval of the executive.

As added by Acts 1982, P.L.77, SEC.13. Amended by P.L.2-2002, SEC.121.

IC 36-9-11.1-11

Tax exemption of property, funds, and receipts; leases or sales for private use

Sec. 11. (a) All property of every kind, including air rights, acquired for off-street parking purposes, and all its funds and receipts, are exempt from taxation for all purposes. When any real property is acquired by the consolidated city, the county auditor shall, upon certification of that fact by the board, cancel all taxes then a lien. The certificate of the board must specifically describe the real property, including air rights, and the purpose for which acquired.

(b) A lessee of the city may not be assessed any tax upon any land, air rights, or improvements leased from the city, but the separate leasehold interest has the same status as leases on taxable real property, notwithstanding any other law. Whenever the city sells any such property to anyone for private use, the property becomes liable for all taxes after that, as other property is so liable and is assessed, and the board shall report all such sales to the township assessor, or the county assessor if there is no township assessor for the township, who shall cause the property to be upon the proper tax records.

(c) If the duties of the township assessor have been transferred to the county assessor as described in IC 6-1.1-1-24, a reference to the township assessor in this section is considered to be a reference to the county assessor.

As added by Acts 1982, P.L.77, SEC.13. Amended by P.L.219-2007, SEC.143; P.L.146-2008, SEC.789.

IC 36-9-11.1-12

Encumbrance, lease, or sale of facilities or equipment while revenue bonds are outstanding

Sec. 12. So long as any of the revenue bonds are outstanding, the consolidated city may not mortgage, pledge, or otherwise encumber any part of the property of the parking facility or facilities, or dispose of any part of them. However, equipment that is worn out and replaced or property that is no longer useful or profitable in the operation of the facility or facilities, and the proceeds from any such sale, shall be deposited in the fund or account for the payment of the principal and interest on the revenue bonds. In addition, the city may lease the property or any part of it to others for public, private, or commercial purposes on such terms and conditions and for such time so as not to adversely affect the rights of bondholders.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-13

Sale or lease of space and air rights; treatment of proceeds

Sec. 13. (a) Space and air rights over a parking facility may be sold or leased to others for a lease period, including options and renewals, not to exceed ninety-nine (99) years, subject to the following:

(1) Any sale or lease must comply with IC 36-1-11.

(2) The deed or lease must specify the initial purpose for which the leased space may be used. If the purpose is to erect in the space a building or other structure attached to the land constituting the site of the parking facility, the deed or lease must require approval by the board of the plans and specifications for any building or structure to be erected and of the manner in which it shall be imposed upon or around the land. In such a case, the deed or lease must provide for use by the purchaser or the lessee of those areas of the surface of the site that are essential for the support of the building or other structure to be erected, as well as for the connection of essential public or private utilities to the building or structure and ingress and egress to and from the building or structure. The costs of common facilities, utilities, ingress, egress, and supports may be apportioned between the parking facilities and the buildings or structures. The deed or lease must provide that if the construction of the initial building or structure is not completed within five (5) years after the date of execution of the deed or lease, the lease is cancellable at the option of the consolidated city, or in the case of sale, the property reverts at the option of the city.

(3) Any building or structure erected in the space sold or leased shall be financed, operated, maintained, and repaired by the lessee or purchaser or assignees or successors in interest separate from the parking facility financed, operated, maintained and repaired by the city, and the city may not have any obligation or liability to the purchaser, assignees, successors in interest, or lessees or creditors of those parties other than to provide the air space so leased or purchased and to permit the use of the site for the necessary supports for the building or structure erected in the leased space, ingress and egress for the building or structure, and the construction of essential public or private utilities.

(4) The deed or lease must require the lessee to carry sufficient public liability and property damage insurance to indemnify the city and protect it from all loss and damage from the hazards and perils normally insured against by insurance arising out of the existence and operation of any building or other structure in the leased or sold space.

(5) Any building or other structure erected above the parking facility is subject to taxes levied on private property unless the building or structure is acquired by the city and wholly used for governmental purposes.

(b) The lease rental or sale price received by the city shall be

considered to be revenues of the parking facility or facilities and shall be deposited, handled, and disbursed in the same manner as other revenues of the parking facility or facilities. However, if considering the lease rental or sale price as revenue would result in the revenue bonds constituting industrial development bonds under the Internal Revenue Code as it existed on January 1, 1986, and any applicable regulations under that Code, then the lease rental shall be deposited in the general fund of the city and disbursed in the same manner as other money in the general fund.

As added by Acts 1982, P.L.77, SEC.13. Amended by P.L.2-1987, SEC.52.

IC 36-9-11.1-14

Funds for expenses of department before issuance of bonds or receipt of revenues

Sec. 14. (a) All expenses to be incurred by the department, necessary to be paid before the issuance of bonds or the receipt of revenues by the department, shall be met and paid in the following manner:

(1) The board shall from time to time certify an estimate of the maximum amount of the items of expense to the fiscal officer of the consolidated city, who shall report whether any funds for payment are available.

(2) If so available, and when set aside for that purpose, the board may authorize expenses within the maximum amounts, and shall direct the fiscal officer to pay the amounts, as incurred.

(3) The fiscal officer shall then draw warrants for payment, which shall be paid out of any available general funds of the city not already appropriated, without special appropriation being made by and without the approval of any other body.

(4) In case there are no unappropriated and available general funds of the city, the fiscal officer may recommend to the legislative body a temporary transfer, from any other funds of the city that may be available, of a sufficient amount to meet the items of expense, or the making of a temporary loan for that purpose, and the legislative body shall make the transfer of funds or authorize a temporary loan, in the same manner as other transfers or temporary loans are made by the city.

(b) The amount advanced by the city under subsection (a)(4) and outstanding at any time may not exceed one hundred fifty thousand dollars (\$150,000), and the fund or funds of the city from which an advancement is made shall be fully reimbursed and repaid by the board out of the first proceeds of bonds issued under this chapter, or out of revenues of the department when revenues are sufficient for that purpose. Any funds so repaid shall be considered appropriated and shall be credited to whatever fund, or funds, they were withdrawn from for the advances. No part of the funds advanced by the city at any time may be used for the acquisition of any property or its improvement or for the payment of any bonds.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-15

Revenue bonds; issuance; proceeds

Sec. 15. (a) If the consolidated city desires to obtain all or a part of the money necessary to pay the cost of any parking facility or facilities by the issuance of revenue bonds, then bonds to carry out the purposes of this chapter may be authorized by ordinance of the legislative body. The ordinance must set out the amount, date, denominations, terms, conditions, and form of the bonds and the interest coupons, and any covenants relative to safeguarding the interest of the bondholders. The ordinance must specify in detail the revenues pledged to the payment of the interest on and the principal of the bonds and may contain provisions for the issuance of additional bonds of equal priority or junior and subordinate from time to time under restrictions set forth in the ordinance.

(b) Upon the sale and delivery of the bonds authorized, the ordinance constitutes a contract between the city and the bondholders, and may not be amended so as to affect adversely the rights of the holders of the bonds.

(c) In case different parcels of land, buildings, or air rights are to be acquired or more than one (1) parking facility is to be constructed or more than one (1) contract for work is let by the board at approximately the same time, whether under one (1) or more declaratory resolutions, the ordinance may provide for the total cost of them by bonds of the same series. If the cost of construction of more than one (1) parking facility is financed from the same issue or series of bonds, all of the parking facilities shall be considered as a single parking facility for the purposes of this chapter with regard to the custody, application, and accounting of funds and remedies upon default.

(d) The revenue bonds may bear interest at a rate not exceeding the maximum rate fixed by the ordinance, payable semiannually, may be payable in such amounts and at such times, not exceeding fifty (50) years from the date of issuance, at such place or places, either within or without Indiana, and may be redeemable before maturity on such terms and conditions, all as determined by the board and provided in the authorizing resolution.

(e) In case any of the officers whose signatures or countersignatures appear on the bonds or the coupons cease to be officers before the delivery of the bonds to the purchaser, the signatures or countersignatures are nevertheless valid and sufficient for all purposes as if the officers had remained in office until the delivery of the bonds.

(f) The authorizing ordinance may provide for the redemption of the bonds on call, before maturity, on terms as set out in the ordinance and the bonds, and may include such provisions and covenants relative to the operation, protection, and insuring of the parking facility and the safeguarding of funds and rights of the bondholders as the board considers expedient.

(g) The bonds of the same series may be in one (1) or more issues of the same or different priorities, as stated in the authorizing

ordinance and on the face of the bonds, and are payable from the net revenues derived from the operation of the parking facility or facilities on account of which the bonds of that series are issued, from net revenues derived from other parking facilities, of the on-street parking meters or parking mechanisms pledged as authorized in this chapter, or from the proceeds derived from the disposition of the parking facility or facilities. The bonds constitute a charge on these revenues, or a lien on the property acquired from the proceeds of the bonds, or both, to the extent and with such priority as may be provided in the authorizing resolution and expressly stated in the bonds.

(h) All bonds issued under this chapter, in the hands of bona fide holders, have all of the qualities of negotiable instruments under negotiable instruments law. The bonds and the interest on them are exempt from taxation as provided by IC 6-8-5.

(i) Unless registered, the bonds are payable to bearer, and the interest payable shall be evidenced by attached coupons. The bonds may be registerable as to principal only in the holder's name on the records of the city kept by the city fiscal officer. This registration shall be noted on the bond by the fiscal officer or other designated officer, after which no transfer is valid unless made on the books of the city by the registered holder and similarly noted on the bond. Any bond so registered as to principal may be discharged from registration by being transferred to bearer, after which it is transferable by delivery, but may again be registered as to principal as before. The registration of bonds as to principal does restrict the negotiability of the interest coupons by delivery only.

(j) Notwithstanding any other law, the authorizing resolution or ordinance may provide for a pledge of all or a certain designated part of the gross or net revenues derived from:

- (1) other parking facilities, on-street parking meters, and parking mechanisms;
- (2) parking and traffic violation fines and fees;
- (3) lease rentals in connection with any parking facilities;
- (4) private pledges and contributions; and
- (5) any federal and state grants and distributions not dedicated or restricted by law to other purposes, to the payment of principal of and interest on revenue bonds issued or to be issued under this chapter and the accumulation and maintenance of the reserve for them, to the extent and in the manner provided in the resolution or ordinance authorizing the issuance of the bonds.

If such a pledge is made, it is irrevocable so long as any of the bonds on account of which the pledge is made are outstanding, and the pledge takes precedence over any budget provision or appropriation payable out of unobligated revenues so pledged where the provision or appropriation is made after the authorization of the pledge by the legislative body.

(k) So long as the net revenues derived from other parking facilities, on-street parking meters, or parking mechanisms are not needed for the payment of any pledge made under this section, the

city may use and expend those revenues as otherwise authorized by law. The city may not make any covenant relative to the number or location of the parking meters to be maintained by it in and along its public ways.

(l) Any bonds may be sold at public or private sale for such price or prices, in such manner, and at such time or times as may be determined by the board. The bonds must be executed in the name of the city, as other bonds of the city are executed. Each bond must state on its face that it does not constitute an obligation of the city in any respect, or within the meaning and limitations of the constitution of Indiana, but is payable solely from the revenue funds or property pledged to it. Each bond must contain a reference to the authorizing resolution or ordinance and the date of its adoption.

(m) An action to question the validity of any bonds issued under this chapter, or to prevent their issuance, sale, or delivery, must be brought within thirty (30) days following the adoption of the ordinance approving the bonds. All such bonds after that time are incontestable, except for fraud, forgery, or violation of constitutional provisions.

(n) Bonds may be issued under this chapter for the purpose of providing money to pay the cost of completing, improving, or enlarging any parking facility or facilities acquired under this chapter and also for the purpose of funding judgments or refunding bonds previously issued under this chapter.

(o) Preliminary expenses advanced by any person or governmental agency may be reimbursed from the proceeds of the bonds. The proceeds of the bonds of each issue after reimbursement shall be used solely for the payment of the cost of the parking facility or facilities on account of which the bonds were issued, including incidental expenses and interest, and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution or the legislative body may provide in the ordinance authorizing the issuance of the bonds.

(p) If the proceeds of the bonds of any issue, by error of estimates or otherwise, are less than the cost, additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds, the additional bonds shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost of the parking facility or facilities on account of which they have been issued, the surplus shall be deposited in the fund or account from which the bonds are payable.
As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-16

Rights of bondholders; lien; enforcement proceedings; default

Sec. 16. (a) There is created a statutory lien upon the property acquired or improved from the proceeds of the bonds, to and in favor of the holders of the bonds, and each of them, and to and in favor of

the holders of the coupons evidencing the interest on the bonds, to the extent and with such priority as is stated in the resolution or ordinance authorizing the bonds and set out on the face of the bonds. The property so purchased or acquired remains subject to the statutory lien until payment in full of the principal and interest of the bonds issued on that account.

(b) Any holder of the bonds or of any of the coupons attached to them may, by civil action, protect and enforce all rights granted by the ordinance authorizing the issuance of the bonds or other law, and may so enforce and compel performance of all duties required by this chapter or the ordinance to be performed by the consolidated city, or of any city officer or body such as:

- (1) the making and collecting of reasonable and sufficient rates for services rendered by the parking facilities;
- (2) the segregation of the operating expenses, income and revenues of each of the parking facilities, and the practice of reasonable economies in them; and
- (3) the proper application of the respective funds created under this chapter.

(c) If there is any default in the payment of the interest on or the principal of the bonds in accordance with their terms, any court having jurisdiction of the action may appoint a receiver to administer and operate, on behalf of the city and the bondholders, the particular parking facility with respect to which the default occurs. The receiver may charge and collect rates and charges sufficient to provide for the payment of the operating expenses, repair, and maintenance, and for bond service, and may regulate and apply the income and revenues in conformity with this chapter and the authorizing ordinance. The court may also declare the whole amount of the bonds due and payable and order the sale of the parking facility with respect to which the bonds were issued and sold and the default occurs, and then may apply the proceeds to the payment of the bonds, to the extent available and required for that purpose.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-17

Deposits of department funds; separate account books and special accounts

Sec. 17. (a) All gifts, donations, bequests, devises, and proceeds derived from the sale of bonds, from the disposition of property, or any payments received or paid to the department for off-street parking purposes shall be delivered to the fiscal officer of the consolidated city. He shall deposit them to the credit of the department, for the account for the parking facility entitled to them, or to its general fund, if not so allocated. All money remaining in each separate parking facility fund and in the general fund at the end of each calendar year continues to belong to those respective funds for use as provided in this chapter. All deposits of the department shall be kept in duly designated depositories for funds of the city.

(b) Separate books of account shall be kept for each parking

facility so long as there remain outstanding any bonds issued on account of the acquisition or improvement of the facility. All net revenues derived from any parking facility that are pledged to the payment of the interest on and principal of certain bonds shall be deposited in a separate special account appropriately set up and designated. The money in these accounts shall be used solely for the payment of the interest on and principal of the respective bonds as they fall due, and for no other purposes, until the account contains an amount sufficient to pay the interest on and principal of all bonds payable during the then current calendar year and the interest on and principal of the bonds that will become due during the next succeeding calendar year. Any amount in excess of the amount required for that purpose may be used in the purchase of bonds of that issue, if they can be purchased at less than the then current redemption price, or if not, then for the redemption of outstanding bonds of that issue in accordance with their provisions, all as directed by the board.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-18

Payments to and from general fund of department

Sec. 18. (a) Whenever all bonds and other obligations of any particular parking facility have been fully paid and discharged, any surplus in any fund allocated for that purpose reverts to the general fund of the department. The fund may be used to make up and pay any deficiency that may occur in any other fund for the payment of the bonds and interest issued for any other parking facility under the control of the department. This use of the general fund may continue until all outstanding bonds on all parking facilities have been fully paid.

(b) The board may also pay to the consolidated city in any year, from any available balance in the general fund of the department, such sum as it considers reasonable and that may be available to compensate the city for its loss of revenue in the annual taxes assessable on property of the estimated current and equivalent value of that acquired for all parking facilities, so long as they remain free of taxes.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-11.1-19

Annual operating and income statement of facility

Sec. 19. Within ninety (90) days after the close of each calendar year, an operating and income statement of the parking facility or facilities shall be prepared by the fiscal officer of the consolidated city, and kept on file in his office open to examination by any holder of the revenue bonds. A copy of the statement shall be furnished to the original purchaser of the bonds upon request.

As added by Acts 1982, P.L.77, SEC.13.

IC 36-9-12

Chapter 12. Parking Meters and Parking Fees

IC 36-9-12-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-2

Use of parking meters authorized

Sec. 2. A municipality may:

- (1) regulate the parking or standing of vehicles upon or off any public way in the municipality; and
- (2) provide for the collection of license fees from a person parking or standing a vehicle upon or off any public way in the municipality;

by the use of parking meters. Regulations and fees under this section must be established by ordinance.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-3

Purchase or lease of parking meters

Sec. 3. A municipality may provide, by ordinance, for the purchase or lease of parking meters. However, the ordinance must provide for the payment of the purchase price or rental fees only from the license fees collected from the parking meters.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-4

Deposit and disbursement of money collected from parking meters

Sec. 4. (a) A municipality must provide, by ordinance, that:

- (1) all license fees collected from parking meters shall be deposited with the municipal fiscal officer;
- (2) the fees shall be deposited to the credit of the municipality in a special fund; and
- (3) disbursements from the special fund may be made only on orders of the municipal works board, or board of transportation, and only for the purposes listed in subsection (b).

(b) Disbursements from the special fund may be made only to pay:

- (1) the purchase price, rental fees, and cost of installation of the parking meters;
- (2) the cost of maintenance, operation, and repair of the parking meters;
- (3) incidental costs and expenses in the operation of the parking meters, including the cost of clerks and bookkeeping;
- (4) the cost of traffic signal devices used in the municipality;
- (5) the cost of repairing and maintaining any of the public ways, curbs, and sidewalks where the parking meters are in use, and all public ways connected with them in the municipality;
- (6) the cost of acquiring, by lease or purchase, suitable land for

offstreet parking facilities to be operated or leased by the municipality;

(7) the principal and interest on bonds issued to acquire parking facilities and devices;

(8) the cost of improving and maintaining land for parking purposes and purchasing, installing, and maintaining parking meters on that land; and

(9) the cost of providing approved school crossing protective facilities, including the costs of purchase, maintenance, operation, and repair, and all other incidental costs.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-5

Appropriations; budget estimates

Sec. 5. (a) Money deposited in the special fund under section 4 of this chapter may be expended only upon a specific appropriation made for that purpose by the municipal legislative body in the same manner that it appropriates other public money.

(b) The municipal works board or board of transportation shall prepare an itemized estimate of the money necessary for the operation of parking meters for the ensuing year at the regular time of making and filing budget estimates for other departments of the municipality. These estimates shall be made and presented to the municipal legislative body in the same manner as other department estimates.

(c) An appropriation under this section is not subject to review by the county tax adjustment board or the department of local government finance, and the general statutes regarding appropriation of funds do not affect this chapter.

As added by Acts 1981, P.L.309, SEC.85. Amended by Acts 1981, P.L.317, SEC.11; P.L.90-2002, SEC.509.

IC 36-9-12-6

Warrants for expenditures

Sec. 6. Warrants for expenditures under this chapter shall be prepared and processed in the manner provided by statute.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-7

Disposition of surplus funds

Sec. 7. At the end of a calendar year, money remaining in the municipal treasury to the credit of the special fund established under section 4 of this chapter remains in the fund and does not revert to the general fund of the municipality, but the municipal legislative body may, by ordinance, transfer any balance in the special fund to the general fund.

As added by Acts 1981, P.L.309, SEC.85.

IC 36-9-12-8

Contracts; procedure for awarding

Sec. 8. Contracts for public improvements under this chapter must be awarded in the manner prescribed by IC 36-1-12.
As added by Acts 1981, P.L.309, SEC.85. Amended by Acts 1982, P.L.33, SEC.46.

IC 36-9-13

Chapter 13. County Building Authority

IC 36-9-13-1

Application of chapter; "eligible entities" defined

Sec. 1. This chapter applies to all counties and to the following municipal corporations in each county:

- (1) Municipalities.
- (2) Townships.
- (3) School Corporations.
- (4) Health and hospital corporations.

The municipal corporations to which this chapter applies are referred to as "eligible entities" in this chapter.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-2

Governing bodies

Sec. 2. For purposes of this chapter, the following are considered the governing bodies of their respective eligible entities:

- (1) Board of commissioners, for a county not subject to IC 36-2-2.5, IC 36-2-3.5, or IC 36-3-1.
- (2) County council, for a county subject to IC 36-2-2.5 or IC 36-2-3.5.
- (3) City-county council, for a consolidated city or county having a consolidated city.
- (4) Common council, for a city other than a consolidated city.
- (5) Town council, for a town.
- (6) Trustee and township board, for a civil or school township.
- (7) Board of school trustees, board of school commissioners, or school board, for a school corporation.
- (8) Board of trustees, for a health and hospital corporation.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1982, P.L.33, SEC.47; P.L.8-1987, SEC.84; P.L.8-1989, SEC.99; P.L.77-2014, SEC.22.

IC 36-9-13-3

"Government building" defined

Sec. 3. (a) As used in this chapter, "government building" means all or part of any structure used for:

- (1) governmental and public activities;
- (2) the detention of prisoners;
- (3) hospitals; or
- (4) city markets.

(b) For purposes of this chapter, "government building" includes:

- (1) the land used in conjunction with such a structure; and
- (2) the equipment, facilities, appurtenances, materials, and supplies that the board of directors of the building authority considers necessary or convenient to make such a structure and land suitable for use under this chapter, including:

- (A) heating and air conditioning facilities;

- (B) sewage disposal facilities;
- (C) landscaping;
- (D) walks;
- (E) drives; and
- (F) parking facilities.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.28.

IC 36-9-13-3.5

"System" defined

Sec. 3.5. As used in this chapter, "system" means any of the following:

- (1) A computer (as defined in IC 36-8-15-4).
- (2) A communications system (as defined in IC 36-8-15-3(1)).
- (3) Mobile or remote equipment that is coordinated by or linked with a computer or communication system.
- (4) Upon the request of:
 - (A) the fiscal body of an eligible entity having a fiscal body;
or
 - (B) the governing body of an eligible entity not having a fiscal body;security services provided by human or nonhuman means.

As added by P.L.37-1988, SEC.29. Amended by P.L.270-1993, SEC.1.

IC 36-9-13-4

Building authorities; authorization; purposes

Sec. 4. A county may establish a separate municipal corporation to be known as the "_____ building authority" (including the name of the county seat and county) for the purpose of:

- (1) acquiring land; and
- (2) financing, acquiring, improving, constructing, reconstructing, renovating, equipping, and operating government buildings and systems;

and leasing them to eligible entities.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.188, SEC.5; P.L.37-1988, SEC.30.

IC 36-9-13-5

Procedure for establishment of authority; notice and hearing

Sec. 5. (a) Whenever the county auditor receives a notice that:

- (1) is signed by the presiding officers of the county executive, the county fiscal body, and the municipal fiscal body of the county seat;
- (2) states that those bodies have agreed to hold a public hearing on and consider the creation of a county building authority; and
- (3) fixes a time and place for that hearing;

he shall give notice by publication of the hearing. The notice shall be published in accordance with IC 5-3-1, and must set out the time, place, and purpose of the hearing.

(b) The members of the executive of the county and the fiscal bodies of the county and county seat shall meet at the time and place fixed in the notice. The presiding officers of each of the three (3) bodies shall elect one (1) of their number to preside as chairman at the hearing, another as vice chairman, and another as secretary.

(c) All interested citizens and taxpayers of the county may appear and are entitled to be heard at the hearing.

(d) The authority shall be established if, within sixty (60) days after the hearing, a concurrent resolution declaring a need for the authority is agreed upon and separately adopted by the county executive and county and municipal fiscal bodies.

(e) A copy of the concurrent resolution that is certified by affidavits of the county auditor and municipal clerk showing the date of adoption of the resolution by the three (3) bodies must be filed in the office of the recorder of the county for recording in the miscellaneous records. The certified and recorded copy of the resolution is admissible in evidence in any action or proceeding as proof of the establishment of the authority.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.45, SEC.46.

IC 36-9-13-6

Trustees; appointment; terms of office; oaths

Sec. 6. (a) Within sixty (60) days after the adoption of the concurrent resolution under section 5 of this chapter, a board of building authority trustees shall be appointed. The board consists of five (5) trustees who are appointed in the following manner and for the following initial terms:

(1) One (1) appointed by the municipal fiscal body of the county seat, for a term of one (1) year.

(2) One (1) appointed by the county fiscal body, for a term of two (2) years.

(3) One (1) appointed by the county executive, for a term of three (3) years.

(4) One (1) appointed by the municipal executive of the county seat, for a term of four (4) years.

(5) One (1) appointed by the county executive, for a term of four (4) years.

(b) A person may be appointed as a trustee only if he:

(1) is at least thirty (30) years of age;

(2) has been a resident of the county for five (5) years immediately preceding his appointment; and

(3) is not an officer or employee of an eligible entity.

(c) The names of all persons appointed under subsection (a) shall be transmitted in writing to the circuit court for the county at least ten (10) days before the end of the sixty (60) day period. The court shall mail a notice of appointment to each trustee immediately after the sixty (60) day period.

(d) Before entering upon his duties, each trustee shall take and subscribe an oath of office (in the usual form), which shall be

endorsed upon his certificate of appointment. The certificate shall be promptly filed with the county clerk.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.7-1983, SEC.39.

IC 36-9-13-7

Trustees; appointment of successors

Sec. 7. (a) As the term of a trustee expires, his successor shall be appointed by the same appointing authority, for a term of four (4) years.

(b) A trustee holds over after the expiration of his term until his successor is appointed and qualified.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-8

Trustees; failure to qualify; vacancies

Sec. 8. If a person appointed as a trustee:

(1) fails to qualify within ten (10) days after notice of his appointment is mailed to him; or

(2) qualifies but then dies, resigns, vacates his office because he is no longer a resident of the county, or is removed from office under section 18 of this chapter;

a new trustee shall be appointed by the same appointing authority for the remainder of the vacated term.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-9

Trustees; meetings to elect officers and appoint board of directors

Sec. 9. (a) The first trustees of the building authority shall, within thirty (30) days after their appointment, meet at a time and place designated by the circuit court for the county for the purpose of electing officers. The trustees shall elect from among themselves a president, a vice president, and a secretary. Each of these officers shall serve from the day of his election until the first Monday in January after his election, and holds over until his successor is elected and qualified.

(b) At the meeting under this section, the trustees shall also appoint the first board of directors of the building authority, in the manner prescribed by section 11 of this chapter.

(c) After appointing the first board of directors of the building authority, the trustees shall meet on the first Monday in January of each year for the purpose of:

(1) electing officers;

(2) appointing the directors of the building authority; and

(3) performing any other duties under this chapter.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-10

Trustees; adoption of rules; records; additional meetings

Sec. 10. (a) The trustees may adopt rules and bylaws governing

their procedure.

(b) The proceedings of the trustees shall be recorded in a book provided for that purpose.

(c) In addition to their meetings under section 9 of this chapter, the trustees may hold regular and special meetings as often as is necessary to perform their duties under this chapter.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-11

Board of directors; appointment; terms of office; qualifications; oaths

Sec. 11. (a) A county building authority is under the control of a board of directors. This board consists of five (5) directors, who shall be appointed by a majority vote of the building authority trustees. Each of the original directors shall serve from the date of his appointment until the first day of February in the second year after his appointment, and until his successor is appointed and has qualified.

(b) A person may be appointed as a director only if he:

- (1) is at least thirty (30) years of age;
- (2) has been a resident of the county five (5) years immediately preceding his appointment; and
- (3) is not an officer or employee of an eligible entity.

(c) Before entering upon his duties, each director shall take and subscribe an oath of office (in the usual form), which shall be endorsed upon his certificate of appointment. The certificate shall be promptly filed with the county clerk.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-12

Directors; appointment of successors

Sec. 12. As the term of a director expires, his successor shall be appointed by a majority vote of the trustees. The new director shall serve for one (1) year from the first day of February after his appointment, and until his successor is appointed and qualified.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-13

Directors; vacancies

Sec. 13. If a vacancy occurs on the board of directors, the trustees shall, by a majority vote, appoint a new director to serve the remainder of the term.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-14

Directors; meetings to elect officers

Sec. 14. (a) The first directors of a building authority shall, within thirty (30) days after their appointment, meet for the purpose of electing officers. They shall elect from among themselves a president, a vice president, a secretary, and a treasurer. Each of these officers

shall perform the duties usually pertaining to his office, and shall serve from the date of his election until his successor is elected and qualified.

(b) After the meeting under subsection (a), the directors shall meet on the first Monday in February of each year for the purpose of electing officers.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-15

Directors; additional meetings

Sec. 15. In addition to their meetings under section 14 of this chapter, the directors may hold the regular and special meetings they consider necessary. The directors may fix the times of these meetings and the notices required for meetings by resolution or under their rules and bylaws.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-16

Directors; adoption of rules; quorum; approval of actions

Sec. 16. (a) The directors may adopt the rules and bylaws they consider necessary for the proper conduct of their proceedings, the performance of their duties, and the safeguarding of the funds and property of the building authority.

(b) A majority of the directors constitutes a quorum, and the concurrence of a majority of the directors is necessary to authorize any action by the directors.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-17

Trustees and directors; actions resulting in vacation of office

Sec. 17. A trustee or director who:

- (1) ceases to be a resident of the county; or
- (2) becomes an officer or employee of an eligible entity;

vacates his office.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-18

Removal of trustees

Sec. 18. (a) A person seeking the removal of a trustee for:

- (1) neglect of duty;
- (2) incompetence;
- (3) inability to perform his duties; or
- (4) any other good cause;

may file a complaint in the circuit or superior court for the county in which the building authority is located. The complaint must set forth the charges preferred. The action shall be placed on the court's advanced calendar, and the court shall try the action in the same manner as other civil cases, without a jury. If the charges are sustained, the court shall declare the trustee's office vacant.

(b) The trustees may summarily remove a director from office at

any time.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-19

Compensation of trustees and directors

Sec. 19. A trustee or director is not entitled to a salary but is entitled to reimbursement for expenses necessarily incurred in the performance of his duties.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-20

Trustees and directors; conflicts of interest

Sec. 20. A trustee or director may not have any pecuniary interest in any contract, employment, purchase, or sale made under this chapter. Any such transaction in which a trustee or director has a pecuniary interest is void.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-21

Preliminary expenses

Sec. 21. All necessary preliminary expenses that must be paid by the board of directors of a building authority before the issuance and delivery of bonds or the negotiation of a loan under this chapter, including expenses incurred in:

- (1) making surveys;
- (2) estimating costs and receipts;
- (3) employing engineers, architects, or consultants;
- (4) giving notices; and
- (5) taking options;

may be paid out of money provided by the county and county seat, or either of them, from money on hand or derived from taxes levied for that purpose. The fund or funds from which the payments are made shall be fully reimbursed by the board out of the first proceeds of the sale of bonds or the loan negotiated by the authority before any other disbursements are made from those proceeds. The amount advanced to pay preliminary expenses under this section is a first charge against the proceeds resulting from the sale of the bonds or the negotiation of the loan until that amount has been repaid.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.31.

IC 36-9-13-22

Powers and duties of board of directors

Sec. 22. (a) Except as provided in subsection (b), the board of directors of a building authority, acting in the name of the authority, may:

- (1) finance, improve, construct, reconstruct, renovate, purchase, lease, acquire, equip, operate, maintain, and manage land, government buildings, or systems for the joint or separate use of one (1) or more eligible entities;

- (2) lease all or part of land, government buildings, or systems to eligible entities;
- (3) govern, manage, regulate, operate, improve, reconstruct, renovate, repair, and maintain any land, government building, or system acquired or financed under this chapter;
- (4) sue, be sued, plead, and be impleaded, but all actions against the authority must be brought in the circuit court for the county in which the authority is located;
- (5) condemn, appropriate, lease, rent, purchase, and hold any real or personal property needed or considered useful in connection with government buildings or systems regardless of whether that property is then held for a governmental or public use;
- (6) acquire real or personal property by gift, devise, or bequest and hold, use, or dispose of that property for the purposes authorized by this chapter;
- (7) enter upon any lots or lands for the purpose of surveying or examining them to determine the location of a government building;
- (8) design, order, contract for, and construct, reconstruct, renovate, and maintain land, government buildings, or systems and perform any work that is necessary or desirable to improve the grounds, premises, and systems under its control;
- (9) determine, allocate, and adjust space in government buildings to be used by any eligible entity;
- (10) construct, reconstruct, renovate, maintain, and operate auditoriums, public meeting places, and parking facilities in conjunction with or as a part of government buildings;
- (11) collect all money that is due on account of the operation, maintenance, or management of, or otherwise related to, land, government buildings, or systems, and expend that money for proper purposes;
- (12) let concessions for the operation of restaurants, cafeterias, public telephones, news and cigar stands, and vending machines;
- (13) employ the managers, superintendents, architects, engineers, consultants, attorneys, auditors, clerks, foremen, custodians, and other employees or independent contractors necessary for the proper operation of land, government buildings, or systems and fix the compensation of those employees or independent contractors, but a contract of employment may not be made for a period of more than four (4) years although it may be extended or renewed from time to time;
- (14) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter;
- (15) provide coverage for its employees under IC 22-3 and IC 22-4; and
- (16) accept grants and contributions for any purpose specified

in this subsection.

(b) The building authority in a county having a consolidated city may not purchase, construct, acquire, finance, or lease any land, government building, or system for use by an eligible entity other than the consolidated city or county, unless that action is first approved by:

- (1) the city-county legislative body; and
- (2) the governing body of the eligible entity involved.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.188, SEC.6; P.L.37-1988, SEC.32.

IC 36-9-13-22.5

Management contract; terms; annual budget; tax levy

Sec. 22.5. The authority may operate, maintain, and manage all or any part of a government building or system for the benefit of an eligible entity under a management contract entered into for a period of not more than forty (40) years. The management contract may contain any terms agreed to by the authority and the eligible entity, including a covenant of the eligible entity to pay the authority a monthly fee for costs of operation and maintenance of the government building or system pursuant to the annual budget submitted to the governing body by the authority in accordance with the management contract. The annual budget may contain funds for a working balance and funds for a reserve account for nonrecurring general maintenance, improvement, or replacement costs as provided in the management contract. The eligible entity may enter into the contract through adoption of an ordinance, an order, or a resolution of the entity's governing body or, in the case of a city, a resolution of the board that is responsible for the government building or system. No other approvals of the management contract are required. To the extent provision for payment from other available revenues has not been made and subject to the provisions of the management contract for cancellation or termination, the governing body of the eligible entity that executes a management contract shall annually levy a tax sufficient to produce each year the necessary money with which to pay the management fee required by the budget submitted by the authority. These levies may be reviewed by other bodies vested by law with that power to determine that the annual levies are sufficient to raise the amount required to meet the management fee under the contract.

As added by P.L.35-1990, SEC.64.

IC 36-9-13-23

Lease of land, government buildings, or systems to eligible entity by authority; authorization

Sec. 23. (a) An eligible entity may lease land or any part of a government building or system from a building authority, and the authority may lease land or any part of a government building or system to an eligible entity. An eligible entity that enters into such a lease may sublease part of the leased premises to other eligible

entities. Such a lease or sublease may not be entered into for a period of more than forty (40) years.

(b) An eligible entity may, in anticipation of:

- (1) the construction or purchase of government buildings, including the necessary equipment and appurtenances; or
- (2) the purchase of land;

enter into a lease with a building authority before the construction or purchase. Such a lease must require the payment of lease rental by the lessee or lessees to begin when the building or land has been acquired or completed and is ready for occupancy, but not before that time.

(c) Whenever property is to be acquired and reconstructed or renovated under this chapter, an eligible entity may, in anticipation of the acquisition, enter into a lease with a building authority, upon such terms and conditions as may be agreed upon, including:

- (1) provisions for the lessee to continue to operate the property until completion of the reconstruction or renovation; and
- (2) provisions for the payment of a lease rental by the lessee for the use of the property while it is being reconstructed or renovated.

(d) An eligible entity may, in anticipation of the acquisition of a system, enter into a lease with the building authority before the completion of the acquisition. Such a lease must require the payment of lease rental by the lessee or lessees to begin when acquisition of the system, or a discrete, functional part of the system, has been completed and is ready for use, but not before that time. An opinion or report of an independent expert that the system, or a discrete, functional part of the system, is complete and ready for use is conclusive and binding on all parties and on all taxpayers of an eligible entity.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.188, SEC.7; P.L.37-1988, SEC.33.

IC 36-9-13-24

Leases; options to renew

Sec. 24. A lease under section 23 of this chapter may provide the eligible entity that is the lessee with an option to renew the lease for the same term or a shorter term, on the conditions provided in the lease.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-25

Leases; options to purchase; authorization of bond issue to pay purchase price

Sec. 25. (a) A lease under section 23 of this chapter may give one (1) or more of the lessees acting jointly or severally an option to purchase before the expiration of the term of the lease:

- (1) on the date or dates in each year that are fixed by the lease; and
- (2) at a price to be computed by a method set forth in the lease.

However, such a lease may not provide, or be construed to provide,

that an eligible entity is under an obligation to purchase the leased government building or system or is under an obligation respecting any creditors or bondholders of the authority.

(b) An eligible entity that exercises an option to purchase may issue general obligation bonds for the purpose of obtaining enough money to pay the purchase price or its proportionate share of the purchase price. The bonds shall be authorized, issued, and sold in the manner prescribed by law for the authorization, issuance, and sale of bonds of the eligible entity for other purposes.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.34.

IC 36-9-13-26

Construction or purchase of building or acquisition of system to be leased; submission of plans and specifications

Sec. 26. (a) A building authority proposing to build or purchase and remodel a government building for lease to an eligible entity must submit the plans, specifications, and estimates for the building or remodeling to the lessee or lessees before the execution of the lease. The plans and specifications must also be submitted to the state department of health, state fire marshal, and any other state agencies designated by law to pass on plans and specifications for public buildings.

(b) A building authority proposing to acquire a system may enter into a lease without submitting plans, designs, or specifications to any eligible entity, government body, or agency. However, before the execution of the lease, the building authority must submit to the lessee or lessees an estimate of the cost and a detailed description of the system.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.35; P.L.2-1992, SEC.893.

IC 36-9-13-27

Leases; notice and hearing; execution

Sec. 27. (a) When a building authority and an eligible entity have agreed upon the terms and conditions of a proposed lease under section 23 of this chapter, a notice of a public hearing to be held in the county by the governing body of the eligible entity shall be given by publication to all interested persons. The notice of the hearing shall be published in accordance with IC 5-3-1. The notice must name the day, place, and hour of the hearing, and set forth a brief summary of the principal terms of the lease agreed upon, including the character of the property to be leased, the location of the property to be leased if the property is a government building, the estimated lease rental to be paid, and the number of years the lease is to be in effect.

(b) The proposed lease, a detailed description of the government building or system, and any drawings, plans, specifications, and estimates that are available for the government building or system shall be kept open for inspection by the public after the notice is

published and at the hearing.

(c) At the hearing, all interested persons are entitled to be heard upon the necessity for the execution of the lease and whether the basis for the determination of the lease rental is fair and reasonable. The hearing may be adjourned to a later date or dates, with the place and date of the continued hearing to be fixed before adjournment.

(d) Following the hearing, the governing body may approve the proposed lease in substantially final form and authorize the execution of the lease within parameters established by the authority at the time the proposed lease is approved, as originally agreed upon or with any modifications that the authority agrees to. The governing body may rely on the testimony of independent experts as to the fairness and reasonableness of the lease. Such an authorization must be by resolution or ordinance entered in the official records of the governing body. The lease must be executed on behalf of the eligible entity by the officer or officers authorized by law to execute contracts on behalf of that entity, and on behalf of the authority by the president or vice president and the secretary of its board of directors. *As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.45, SEC.47; P.L.37-1988, SEC.36; P.L.35-1990, SEC.65.*

IC 36-9-13-28

Leases; notice of approval; objections by taxpayers; petitions; notice and hearing; limitations on actions and appeals

Sec. 28. (a) If the terms and conditions of a proposed lease are approved under section 27 of this chapter, notice of the approval of the lease shall be given on behalf of the eligible entity by publication in accordance with IC 5-3-1. Ten (10) or more taxpayers in the eligible entity:

- (1) whose tax rate will be affected by the proposed lease; and
- (2) who are of the opinion that there is no necessity for the lease, or that the method of determining the lease rental is not fair and reasonable;

may file a petition in the office of the county auditor within thirty (30) days after publication of notice of the approval of the lease. The petition must set forth their objections to the lease and facts showing that the lease is unnecessary or unwise, or that the method of determining the lease rental is not fair and reasonable.

(b) Upon the filing of a petition under subsection (a), the county auditor shall immediately certify a copy of it, together with any other data necessary to present the questions involved, to the department of local government finance. Not less than five (5) nor more than fifteen (15) days after receipt of the certified petition and data, the department of local government finance shall fix a time and place in the county for the hearing of the matter. The department of local government finance shall give notice of the hearing to the eligible entity and to the first ten (10) petitioners on the petition by registered mail, at least five (5) days before the date of the hearing.

(c) The decision of the department of local government finance on a petition under this section is final.

(d) An action to contest the validity of the lease or to enjoin the performance of any of its terms and conditions must be instituted within thirty (30) days after publication of notice of the approval of the lease, or if an appeal has been taken to the department of local government finance, within thirty (30) days after the decision of the department.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.45, SEC.48; P.L.35-1990, SEC.66; P.L.90-2002, SEC.510.

IC 36-9-13-29

Sale or lease of land or government building by eligible entity to authority; authorization; procedure

Sec. 29. (a) An eligible entity that wants to have all or part of a government building constructed, reconstructed, or renovated on land owned or to be acquired by it may:

- (1) sell that land or building to a building authority; or
- (2) lease the land or building to the authority for the same period of years that the eligible entity proposes to lease all or part of the building, and may grant an option to the authority to purchase the land or building within six (6) months after the expiration of the lease on the building if the eligible entity does not exercise an option to purchase the land or building within the terms of the lease.

If the option price of the land or building is not fixed in the lease, then the price to be paid for the land or building under the option shall be determined by an appraisal by one (1) disinterested freeholder residing in the county and two (2) disinterested appraisers licensed under IC 25-34.1, who must be residents of Indiana, and who shall be appointed by the circuit court for the county. One (1) of the appraisers appointed under this subsection must reside not more than fifty (50) miles from the land.

(b) A sale or lease of land or a building under this section must be authorized by resolution or ordinance of the governing body of the eligible entity, which shall be entered in the official records of the governing body. This authorization must be given concurrently with the authorization by the eligible entity of a lease of the building, or part of it, to be constructed, reconstructed, or renovated wholly or in part on the land.

(c) The deed, in the case of a sale of the land, or the lease, must be executed on behalf of the eligible entity by the officer or officers authorized by law to execute contracts on behalf of the entity, and on behalf of the authority by the president or vice president and secretary of its board of directors.

(d) Before the sale of any land or building under this section, a petition must be filed with the circuit court of the county requesting the appointment of:

- (1) one (1) appraiser who must be a resident of the eligible entity selling the land or building and a disinterested freeholder; and
- (2) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana. One (1) of the appraisers described under subdivision (2) must reside not more than fifty (50) miles from the land or building. The appraisers shall fix the fair market value of the land or building and report their decision within three (3) weeks after their appointment. The eligible entity may then sell the land or building to the authority for an amount not less than the fair market value fixed by the appraisers, which amount may be paid from proceeds of bonds of the authority.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.188, SEC.8; P.L.113-2006, SEC.21.

IC 36-9-13-30

Revenue bonds

Sec. 30. (a) For the purpose of obtaining money to pay the cost of:

- (1) acquiring or constructing government buildings;
- (2) acquiring land;
- (3) acquiring systems;
- (4) improving, reconstructing, or renovating government buildings, systems, or land;
- (5) repaying any advances for preliminary expenses made to the building authority by an eligible entity;
- (6) purchasing plans, designs, programs, and devices for governmental buildings or systems; or
- (7) refinancing any loan made under section 31 of this chapter;

the board of directors of a building authority may issue revenue bonds of the authority.

(b) The bonds are payable solely from the income and revenues of the particular government buildings, systems, or land for which the bonds were issued.

(c) The bonds must be authorized by resolution of the board. The bonds:

- (1) bear interest payable semiannually; and
- (2) mature serially, either annually or semiannually, at times determined by the resolution authorizing the bonds.

However, the maturities of the bonds may not extend over a period longer than the period of the lease of the government buildings, systems, or land for which the bonds are issued.

(d) The bonds may, and all bonds maturing after five (5) years from date of issuance shall, be made redeemable before maturity at the option of the board of directors of the building authority. Such a redemption must be at the par value of the bonds, together with the premiums, and under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the bonds must:

- (1) determine the form of the bonds, including the interest coupons (if any) to be attached to them;
- (2) fix the denomination or denominations of the bonds; and
- (3) fix the place or places of payment of the principal and

interest of the bonds, which must be at a state or national bank or trust company within Indiana and may also be at one (1) or more state or national banks or trust companies outside Indiana.

(g) The bonds are negotiable instruments under IC 26-1.

(h) The resolution authorizing the issuance of the bonds may provide for the registration of any of the bonds in the name of the owner as to principal alone.

(i) The bonds shall be executed by the president of the board of directors, the corporate seal of the authority shall be affixed to the bonds and attested by the secretary of the board, and the interest coupons (if any) attached to the bonds shall be executed by placing the facsimile signature of the treasurer of the board on them.

(j) The bonds may be sold at a private sale, a negotiated sale, or a public sale.

(k) If the bonds are sold at a public sale, notice of the sale of the bonds shall be published in accordance with IC 5-3-1.

(l) The board of directors shall sell the bonds at public sale, for not less than their par value. The board shall award the bonds to the highest bidder, as determined by computing the total interest on the bonds from the date of sale to the dates of maturity and deducting from that amount the premium bid, if any. Any premium received from the sale of the bonds shall be used solely for the payment of principal and interest on the bonds. If the bonds are not sold on the date fixed for the sale, then the sale may be continued from day to day until a satisfactory bid has been received.

(m) The board of directors may issue temporary bonds, with or without coupons. These bonds, which must be issued in the manner prescribed by this section, may be exchanged for the bonds that are subsequently issued.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.45, SEC.49; Acts 1981, P.L.188, SEC.9; P.L.37-1988, SEC.37; P.L.173-2003, SEC.39.

IC 36-9-13-31

Loans

Sec. 31. (a) In lieu of authorizing and selling bonds under section 30 of this chapter, the board of directors of a building authority may adopt a resolution authorizing the negotiation of a loan or loans for the purpose of obtaining the required money.

(b) The resolution authorizing the loan must set out:

- (1) the total amount of the loan desired;
- (2) the approximate dates on which money will be required, and the amounts of the money that will be required on those dates; and
- (3) any terms, conditions, and restrictions concerning the proposed loan or the submission of proposals that the board considers advisable.

(c) Before the consideration of proposals for such a loan, a notice shall be published in accordance with IC 5-3-1. The notice must set out:

- (1) the amount and purpose of the proposed loan;
- (2) a brief summary of other provisions of the resolution; and
- (3) the time and place where proposals will be considered.

(d) The board of directors may accept the proposal it considers most advantageous to the authority.

As added by Acts 1981, P.L.309, SEC.86. Amended by Acts 1981, P.L.45, SEC.50.

IC 36-9-13-32

Trust indentures securing bonds or loans

Sec. 32. (a) The board of directors of a building authority may secure bonds issued under section 30 of this chapter or loans made under section 31 of this chapter by a trust indenture between the authority and a corporate trustee, which may be any trust company or national or state bank within Indiana that has trust powers.

(b) The trust indenture may:

- (1) mortgage or grant a security interest in all or part of the land, systems, or government buildings for which the bonds are issued or loan is made;
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders or lenders, including covenants setting forth the duties of the authority and board concerning:
 - (A) the construction, operation, extension, remodeling, repair, maintenance, and insurance of the government buildings or systems; and
 - (B) the custody, safeguarding, and application of all money received or to be received by the authority on account of the government buildings or systems financed by the bonds or loan;
- (3) set forth the rights and remedies of the bondholders or lenders and trustee; and
- (4) restrict the individual right of action of bondholders or lenders.

(c) Except as otherwise provided by this chapter, the board of directors may, by resolution or in the trust indenture, specify:

- (1) the officer, board, or depository to which the proceeds of the bonds or loan shall be paid; and
- (2) the method of disbursing those proceeds.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.38.

IC 36-9-13-33

Proceeds; application; liens

Sec. 33. (a) The proceeds of any bonds issued under section 30 of this chapter or of any loans made under section 31 of this chapter shall first be applied to the reimbursement of all amounts advanced for preliminary expenses under section 21 of this chapter. The proceeds shall then be applied solely to the payment of the costs for which the bonds are issued or the loan is negotiated, including

incidental expenses and interest during construction or acquisition.

(b) The bondholders under section 30 of this chapter, lenders under section 31 of this chapter, or trustees under section 32 of this chapter have a lien upon the proceeds of the bonds or the loan until those proceeds are applied in the manner prescribed by this section. *As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.39.*

IC 36-9-13-34

Tax levy to pay lease rentals

Sec. 34. (a) Except as provided by subsection (d), an eligible entity that executes a lease under this chapter shall annually levy a tax sufficient to produce each year the necessary money with which to pay the lease rental required by the lease. These levies may be reviewed by other bodies vested by law with that authority, in order to determine that the levies are sufficient to raise the amount required to meet the rental under the lease.

(b) The first tax levy shall be made at the first annual tax levy period following the date of the execution of the lease. However, if the lease was entered into in anticipation of the purchase of land, construction or purchase of a government building, or acquisition of a system, the first tax levy shall be made at the first annual tax levy period immediately before the date fixed in the lease for the beginning of the lease rental. The first annual levy shall be made in an amount sufficient to pay the estimated amount of the first annual lease rental to be made under the lease.

(c) The annual lease rental shall be paid to the authority semiannually, following settlements for tax collections.

(d) If a consolidated city executes a lease agreement for all or part of any land, government building, or system, and its use and benefit is for a certain special service district within the consolidated city, the authority may determine that the annual tax required under subsection (a) shall be levied by the special service district benefited by the lease agreement.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.40.

IC 36-9-13-35

Review of annual budget

Sec. 35. The annual operating budget of a building authority is subject to review by the county board of tax adjustment and then by the department of local government finance as in the case of other political subdivisions.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.90-2002, SEC.511; P.L.224-2007, SEC.134; P.L.146-2008, SEC.790.

IC 36-9-13-36

Property and revenues; tax exemption

Sec. 36. All the property and revenues of a building authority are exempt from taxation for all purposes.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-37

Bonds and other securities; tax exemption

Sec. 37. All the bonds and other securities issued by a building authority, including the interest on them, are exempt from taxation for all purposes.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-38

Handling of funds; employees' bonds

Sec. 38. (a) Except as otherwise provided in this chapter, all money coming into possession of the building authority shall be deposited, held, and secured in accordance with the general statutes concerning the handling of public funds. The handling and expenditure of money coming into possession of the authority is subject to audit and supervision by the state board of accounts.

(b) Any employee of the building authority authorized to receive, disburse, or in any other way handle money or negotiable securities of the authority shall execute a bond payable to the state, with surety to consist of a surety or guaranty corporation qualified to do business in Indiana. The bond must be in an amount determined by the board of directors of the authority and must be conditioned upon the faithful performance of the employee's duties and the accounting for all money and property that may come into his hands or under his control. The cost of the bond shall be paid by the authority.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-39

Procedure for awarding contracts

Sec. 39. (a) All contracts let by a building authority for the construction and equipment of a government building must be let in accordance with the general statutes concerning public contracts.

(b) All contracts let by a building authority for the acquisition of a system may be entered into in accordance with the general statutes concerning similar contracts.

As added by Acts 1981, P.L.309, SEC.86. Amended by P.L.37-1988, SEC.41.

IC 36-9-13-40

Public records

Sec. 40. The records of a building authority are public records.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13-41

Dissolution of authority

Sec. 41. (a) This section does not apply to a county having a consolidated city.

(b) The county fiscal body and the municipal fiscal body of the county seat may by concurrent resolution dissolve a building

authority. They may consider dissolving the building authority at any time, but they shall consider dissolving the building authority when they are presented with a petition signed by twenty percent (20%) of the registered voters residing in the county or thirty-five percent (35%) of the registered voters residing in the county seat.

(c) The concurrent resolution must provide a plan for paying any obligations, including bonds, of the building authority and for the disposition of the funds and property of the building authority.

As added by Acts 1981, P.L.309, SEC.86.

IC 36-9-13.1

Repealed

(Repealed by P.L.99-1995, SEC.14.)

IC 36-9-14

Chapter 14. Cumulative Building Fund for County Courthouse

IC 36-9-14-1

Application of chapter

Sec. 1. This chapter applies to all counties.
As added by Acts 1981, P.L.309, SEC.87.

IC 36-9-14-2

Authorization and approval of fund; "courthouse" defined

Sec. 2. (a) A cumulative building fund to provide money for the construction, remodeling, and repair of courthouses may be established by the county legislative body under IC 6-1.1-41.

(b) As used in this section, "courthouse" includes a historical complex consisting of a former county courthouse, jail, and sheriff's residence which is open to the general public for educational or community purposes in a county having a population of more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000).

As added by Acts 1981, P.L.309, SEC.87. Amended by P.L.213-1986, SEC.5; P.L.199-1988, SEC.1; P.L.12-1992, SEC.178; P.L.17-1995, SEC.25; P.L.170-2002, SEC.167; P.L.192-2002(ss), SEC.188; P.L.119-2012, SEC.229.

IC 36-9-14-3

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14-4

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14-5

Tax levy

Sec. 5. The county fiscal body may provide money for the cumulative building fund by levying a tax in compliance with IC 6-1.1-41 of not more than sixteen and sixty-seven hundredths cents (\$0.1667) on each one hundred dollars (\$100) of taxable property in the county.

As added by Acts 1981, P.L.309, SEC.87. Amended by P.L.17-1995, SEC.26; P.L.6-1997, SEC.219.

IC 36-9-14-6

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14-7

Courthouse fund; transfer of funds to nonprofit corporation maintaining or renovating courthouse

Sec. 7. (a) The tax money collected under this chapter shall be held in a special fund to be known as the courthouse fund.

(b) For purposes of this chapter and IC 36-9-14.5, the portion of the property tax levy designated for a courthouse described in section 2(b) of this chapter may be transferred to a nonprofit corporation that has a lease with the county requiring the corporation to maintain or renovate the courthouse. Before appropriated funds may be transferred to a qualified nonprofit corporation, the corporation must submit a plan for the use of the funds to the county fiscal body for its approval. An officer or employee of a corporation who receives funds under this section and knowingly uses the funds for a purpose other than a purpose approved by the fiscal body commits a Level 6 felony. *As added by Acts 1981, P.L.309, SEC.87. Amended by P.L.199-1988, SEC.2; P.L.1-1995, SEC.85; P.L.17-1995, SEC.27; P.L.158-2013, SEC.680.*

IC 36-9-14.5

Chapter 14.5. County Cumulative Capital Development Fund

IC 36-9-14.5-1

Application of chapter

Sec. 1. This chapter applies to all counties.

As added by P.L.44-1984, SEC.16.

IC 36-9-14.5-2

Authorization of fund; purpose

Sec. 2. The county legislative body may establish a cumulative capital development fund under IC 6-1.1-41 to provide money for any purpose for which property taxes may be imposed within the county under the authority of:

IC 3-11-6-9;
IC 8-16-3;
IC 8-16-3.1;
IC 8-22-3-25;
IC 14-27-6-48;
IC 14-33-14;
IC 16-22-8-41;
IC 16-22-5-2 through IC 16-22-5-15;
IC 36-9-14;
IC 36-9-15;
IC 36-9-16-2;
IC 36-9-16-3;
IC 36-9-27-100; or
IC 36-10-3-21.

As added by P.L.44-1984, SEC.16. Amended by P.L.5-1986, SEC.60; P.L.213-1986, SEC.7; P.L.199-1988, SEC.3; P.L.2-1993, SEC.206; P.L.1-1995, SEC.86; P.L.17-1995, SEC.28.

IC 36-9-14.5-3

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14.5-4

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14.5-5

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14.5-6

Tax levy; rate of tax

Sec. 6. (a) Except as provided in subsection (c), the county fiscal body may provide money for the cumulative capital development fund by levying a tax in compliance with IC 6-1.1-41 on the taxable property in the county.

(b) 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, depends upon the number of years the county has previously imposed a tax under this chapter and is determined under the following table:

NUMBER OF YEARS	TAX RATE PER \$100 OF ASSESSED VALUATION
0	\$0.0167
1 or more	\$0.0333

(c) 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 neither the county option income tax nor the county adjusted gross income tax is in effect on January 1 of that year, depends upon the number of years the county has previously imposed a tax under this chapter and is determined under the following table:

NUMBER OF YEARS	TAX RATE PER \$100 OF ASSESSED VALUATION
0	\$0.0133
1 or more	\$0.0233

As added by P.L.44-1984, SEC.16. Amended by P.L.17-1995, SEC.29; P.L.146-2008, SEC.791.

IC 36-9-14.5-7

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-14.5-8

Cumulative capital development fund; transfer between funds; expenditures

Sec. 8. (a) The tax money collected under this chapter shall be held in a special fund to be known as the cumulative capital development fund.

(b) In a county having a consolidated city, money may be transferred from the fund to the fund of a department of the consolidated city responsible for carrying out a purpose for which the cumulative capital development fund was created. The department may not expend any money so transferred until an appropriation is made and the department may not expend any money so transferred for operating costs of the department.

(c) Money held in the cumulative capital development fund may be spent for purposes other than the purposes stated in section 2 of this chapter, if the purpose is to protect the public health, welfare, or safety in an emergency situation that demands immediate action or to contribute to an authority established under IC 36-7-23. Money may be spent under the authority of this subsection only after the county executive:

- (1) issues a declaration that the public health, welfare, or safety

is in immediate danger that requires the expenditure of money in the fund; or

(2) certifies in the minutes of the county executive that the money is contributed to the authority for capital development purposes.

As added by P.L.44-1984, SEC.16. Amended by P.L.82-1985, SEC.4; P.L.346-1989(ss), SEC.8; P.L.17-1995, SEC.30.

IC 36-9-15

Chapter 15. Cumulative Building Fund, Sinking Fund, and Debt Service Fund for Certain Law Enforcement Purposes

IC 36-9-15-1

Application of chapter

Sec. 1. This chapter applies to all counties.

As added by Acts 1981, P.L.309, SEC.88.

IC 36-9-15-2

Authorization of funds and tax levies

Sec. 2. (a) A county fiscal body may establish cumulative building funds under IC 6-1.1-41 or sinking funds in the same manner as cumulative funds are established under IC 6-1.1-41 for the:

(1) construction, repair, remodeling, enlarging, and equipment of:

(A) a county jail; or

(B) a juvenile detention center to be operated under IC 31-31-9;

(2) purchase, lease, or payment of all or part of the purchase price of motor vehicles for the use of a community corrections program; or

(3) in a county having a consolidated city, purchase, lease, or payment of all or part of the purchase price of motor vehicles for the use of the sheriff's department.

(b) The county fiscal body may levy taxes to provide money for:

(1) cumulative building funds established under this chapter in compliance with IC 6-1.1-41; or

(2) sinking funds established under this chapter in the same manner a tax is levied for a cumulative fund under IC 6-1.1-41.

(c) IC 6-1.1-41 applies to a sinking fund under this chapter to the same extent as if the sinking fund was a cumulative fund.

As added by Acts 1981, P.L.309, SEC.88. Amended by P.L.82-1985, SEC.5; P.L.17-1995, SEC.31; P.L.1-1997, SEC.156; P.L.67-2012, SEC.6.

IC 36-9-15-3

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-4

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-5

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-6

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-7

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-8

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-9

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15-10

Debt service fund; creation; purposes; tax levy

Sec. 10. (a) The county fiscal body may establish a debt service fund for the payment of:

- (1) a debt or other obligation arising out of money borrowed or advanced for a jail that it purchases from the proceeds of a bond issue for capital construction under IC 36-2-6-18; or
- (2) a lease to provide capital construction under IC 36-1-10.

(b) The county fiscal body shall levy a tax each year in an amount sufficient to pay all debt service obligations for jails for that year. IC 6-1.1-18.5-8 applies to such a tax levy.

As added by Acts 1981, P.L.309, SEC.88. Amended by P.L.73-1983, SEC.21.

IC 36-9-15.5

Chapter 15.5. Municipal Cumulative Capital Development Fund

IC 36-9-15.5-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.44-1984, SEC.17.

IC 36-9-15.5-2

Authorization of fund; purpose

Sec. 2. The legislative body of a municipality may establish a cumulative capital development fund under IC 6-1.1-41 to provide money for any purpose for which property taxes may be imposed within the municipality under the authority of:

IC 8-16-3;
IC 8-22-3-25;
IC 14-27-6-48;
IC 14-33-14;
IC 16-23-1-40;
IC 36-8-14;
IC 36-9-4-48;
IC 36-9-16-2;
IC 36-9-16-3;
IC 36-9-16.5;
IC 36-9-17;
IC 36-9-26;
IC 36-9-27-100;
IC 36-10-3-21; or
IC 36-10-4-36.

As added by P.L.44-1984, SEC.17. Amended by P.L.2-1993, SEC.208; P.L.1-1995, SEC.87; P.L.17-1995, SEC.32.

IC 36-9-15.5-3

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15.5-4

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15.5-5

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15.5-6

Tax levy; rate of tax

Sec. 6. (a) Except as provided in subsection (c), the municipal fiscal body may provide money for the cumulative capital development fund by levying a tax in compliance with IC 6-1.1-41

on the taxable property in the municipality.

(b) The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in a municipality that is either wholly or partially located 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 depends upon the number of years the municipality has previously imposed a tax under this chapter and is determined under the following table:

NUMBER OF YEARS	TAX RATE PER \$100 OF ASSESSED VALUATION
0	\$0.0167
1	\$0.0333
2 or more	\$0.05

(c) The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in a municipality that is wholly located in a county in which neither the county option income tax nor the county adjusted gross income tax is in effect on January 1 of that year depends upon the number of years the municipality has previously imposed a tax under this chapter and is determined under the following table:

NUMBER OF YEARS	TAX RATE PER \$100 OF ASSESSED VALUATION
0	\$0.0133
1	\$0.0267
2 or more	\$0.04

As added by P.L.44-1984, SEC.17. Amended by P.L.17-1995, SEC.33; P.L.146-2008, SEC.792.

IC 36-9-15.5-7

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-15.5-8

Cumulative capital development fund; transfer between funds; expenditures

Sec. 8. (a) The tax money collected under this chapter shall be held in a special fund to be known as the cumulative capital development fund.

(b) In a consolidated city, money may be transferred from the fund to the fund of a department of the consolidated city responsible for carrying out a purpose for which the cumulative capital development fund was created. The department may not expend any money so transferred until an appropriation is made and the department may not expend any money so transferred for operating costs of the department.

(c) Money held in the cumulative capital development fund may be spent for purposes other than the purposes stated in section 2 of this chapter, if the purpose is to protect the public health, welfare, or

safety in an emergency situation that demands immediate action or to make a contribution to an authority established under IC 36-7-23. Money may be spent under the authority of this subsection only after the executive of the municipality:

- (1) issues a declaration that the public health, welfare, or safety is in immediate danger that requires the expenditure of money in the fund; or
- (2) certifies in the minutes of the municipal legislative body that the contribution is made to the authority for capital development purposes.

As added by P.L. 44-1984, SEC. 17. Amended by P.L. 82-1985, SEC. 6; P.L. 346-1989(ss), SEC. 9; P.L. 17-1995, SEC. 34.

IC 36-9-16

Chapter 16. Municipal Cumulative Building or Sinking Fund and Cumulative Capital Improvement Fund

IC 36-9-16-1

Application of chapter

Sec. 1. This chapter applies to all units except townships.

As added by Acts 1981, P.L.309, SEC.89. Amended by P.L.199-1988, SEC.4.

IC 36-9-16-2

Authorization of funds; purposes

Sec. 2. (a) A unit may establish a cumulative building or sinking fund or cumulative capital improvement funds to provide money for one (1) or more of the following purposes:

- (1) To purchase, construct, equip, and maintain buildings for public purposes.
- (2) To acquire the land, and any improvements on it, that are necessary for the construction of public buildings.
- (3) To demolish any improvements on land acquired under this section, and to level, grade, and prepare the land for the construction of a public building.
- (4) To acquire land or rights-of-way to be used as a public way or other means of ingress or egress to land acquired for the construction of a public building.
- (5) To improve or construct any public way or other means of ingress or egress to land acquired for the construction of a public building.

(b) In addition to the purposes described in subsection (a), a cumulative capital improvement fund may be used to purchase body armor (as defined in IC 35-47-5-13(a)) for active members of a police department under:

- (1) IC 36-5-7-7;
- (2) IC 36-8-4-4.5;
- (3) IC 36-8-9-9; and
- (4) IC 36-8-10-4.5.

(c) A municipality may establish a cumulative capital improvement fund for a purpose described in IC 6-7-1-31.1.

As added by Acts 1981, P.L.309, SEC.89. Amended by P.L.199-1988, SEC.5; P.L.8-2009, SEC.3; P.L.113-2010, SEC.152; P.L.34-2010, SEC.9; P.L.42-2011, SEC.85.

IC 36-9-16-3

Cumulative capital improvement fund; additional purposes

Sec. 3. A unit may establish cumulative capital improvement funds to provide money for one (1) or more of the following purposes:

- (1) To acquire land or rights-of-way to be used for public ways or sidewalks.
- (2) To construct and maintain public ways or sidewalks.

- (3) To acquire land or rights-of-way for the construction of sanitary or storm sewers, or both.
- (4) To construct and maintain sanitary or storm sewers, or both.
- (5) To acquire, by purchase or lease, or to pay all or part of the purchase price of a utility.
- (6) To purchase or lease land, buildings, or rights-of-way for the use of any utility that is acquired or operated by the unit.
- (7) To purchase or acquire land, with or without buildings, for park or recreation purposes.
- (8) To purchase, lease, or pay all or part of the purchase price of motor vehicles for the use of any combination of the police, a community corrections program, or the fire department, including ambulances and firefighting vehicles with the necessary equipment, ladders, and hoses.
- (9) To retire in whole or in part any general obligation bonds of the unit that were issued for the purpose of acquiring or constructing improvements or properties that would qualify for the use of cumulative capital improvement funds.
- (10) To purchase or lease equipment and other nonconsumable personal property needed by the unit for any public transportation use.
- (11) In a county or a consolidated city, to purchase or lease equipment to be used to illuminate a public way or sidewalk.
- (12) The fund may be used for any of the following purposes:
 - (A) To purchase, lease, upgrade, maintain, or repair one (1) or more of the following:
 - (i) Computer hardware.
 - (ii) Computer software.
 - (iii) Wiring and computer networks.
 - (iv) Communication access systems used to connect with computer networks or electronic gateways.
 - (B) To pay for the services of full-time or part-time computer maintenance employees.
 - (C) To conduct nonrecurring inservice technology training of unit employees.
- (13) To purchase body armor (as defined in IC 35-47-5-13(a)) for active members of a police department under:
 - (A) IC 36-5-7-7;
 - (B) IC 36-8-4-4.5;
 - (C) IC 36-8-9-9; and
 - (D) IC 36-8-10-4.5.

As added by Acts 1981, P.L.309, SEC.89. Amended by P.L.82-1985, SEC.7; P.L.199-1988, SEC.6; P.L.41-2001, SEC.1; P.L.8-2009, SEC.4; P.L.34-2010, SEC.10; P.L.67-2012, SEC.7.

IC 36-9-16-4

Establishment of fund and approval of levy; department of local government finance hearing and action; appeal

Sec. 4. (a) A cumulative building fund or cumulative capital improvement fund may be established by a resolution that is:

(1) adopted by the unit's legislative body; and

(2) approved by the department of local government finance.

(b) Notice of the proposed levy to provide money for the cumulative building fund or cumulative capital improvement fund shall be given to all taxpayers in the unit before the proposed action is presented to the department of local government finance for approval. Notice shall be given by publication of the proposal in accordance with IC 5-3-1.

(c) If, after the public hearing, the proposed action is submitted for approval to the department of local government finance, the department shall require notice of that submission to be given to the taxing district involved in the manner prescribed by subsection (b).

(d) Fifty (50) or more taxpayers in the taxing district who will be affected by the tax rate may, not later than ten (10) days after the publication of the notice, file with the county auditor a petition setting forth their objections to the proposed levy. The county auditor shall immediately certify the petition to the department of local government finance, which, within a reasonable time, shall fix a date for a hearing on the petition. The hearing shall be held in the county in which the unit is located. Notice of the hearing shall be given to the executive of the unit and to the first ten (10) taxpayers whose names appear upon the petition, by a letter signed by the commissioner or deputy commissioner of the department of local government finance and sent by mail to the executive and the taxpayers at their usual place of residence at least five (5) days before the date fixed for the hearing.

(e) After a hearing upon the proposal, the department of local government finance shall certify its approval, disapproval, or modification of the proposed tax levy to the auditor of the county in which the unit is located.

(f) A:

(1) taxpayer who signed a petition filed under subsection (d); or

(2) unit against which a petition under subsection (d) is filed;

may petition for judicial review of the final determination of the department of local government finance under subsection (a). The petition must be filed in the tax court not more than forty-five (45) days after the department certifies its action under subsection (e).

As added by Acts 1981, P.L.309, SEC.89. Amended by Acts 1981, P.L.317, SEC.14; P.L.199-1988, SEC.7; P.L.90-2002, SEC.512; P.L.256-2003, SEC.40.

IC 36-9-16-5

Cumulative building fund; tax levy; appropriations

Sec. 5. (a) The unit's fiscal body may levy a tax not to exceed thirty-three cents (\$0.33) on each one hundred dollars (\$100) of taxable property within the taxing district to provide for a cumulative building fund. The tax may be levied annually for any period not to exceed ten (10) years.

(b) Appropriations may be made from the cumulative building fund for the purposes authorized by this chapter.

As added by Acts 1981, P.L.309, SEC.89. Amended by P.L.199-1988, SEC.8; P.L.6-1997, SEC.220.

IC 36-9-16-6

Cumulative capital improvement fund; tax levy; additions to fund; appropriations

Sec. 6. (a) The unit's fiscal body may levy a tax not to exceed thirty-three cents (\$0.33) on each one hundred dollars (\$100) of taxable property within the taxing district to provide for a cumulative capital improvement fund. The tax may be levied annually for any period not to exceed ten (10) years and may be decreased or increased from year to year, except that the tax may not be increased above the levy approved by the department of local government finance.

(b) Surplus money in other accounts of the unit, or other sources, and money acquired from other activities of the unit, or other sources, may, by resolution of the legislative body and with the approval of the department of local government finance, be added to the cumulative capital improvement fund.

(c) Appropriations may be made:

- (1) as provided by law from the cumulative capital improvement fund for purposes of this chapter; or
- (2) for a contribution to an authority established under IC 36-7-23.

As added by Acts 1981, P.L.309, SEC.89. Amended by P.L.199-1988, SEC.9; P.L.346-1989(ss), SEC.10; P.L.6-1997, SEC.221; P.L.90-2002, SEC.513.

IC 36-9-16.5

Chapter 16.5. Municipal Cumulative Street Fund

IC 36-9-16.5-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.307, SEC.2.

IC 36-9-16.5-2

Establishment by municipality; purposes

Sec. 2. (a) A municipality may establish a cumulative street fund to provide money for:

- (1) the acquisition of rights-of-way for public ways or sidewalks; or
- (2) the construction or reconstruction of public ways or sidewalks.

(b) A cumulative street fund may be established by a municipal legislative body through the adoption of a resolution.

As added by Acts 1981, P.L.307, SEC.2.

IC 36-9-16.5-3

Source of revenues

Sec. 3. (a) Revenues which may be deposited to the cumulative street fund include:

- (1) all or part of the revenues from any property tax levy dedicated for road and street purposes;
- (2) all or part of the municipality's federal revenue sharing funds; or
- (3) other sources by resolution of the municipal legislative body.

(b) Appropriations may be made from the cumulative street fund for the purpose authorized under section 2.

(c) Monies in the cumulative street fund do not revert to the general fund at the end of any fiscal year.

As added by Acts 1981, P.L.307, SEC.2.

IC 36-9-17

Chapter 17. Municipal General Improvement Fund

IC 36-9-17-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.90.

IC 36-9-17-2

Preliminary financing resolution

Sec. 2. Whenever the works board of a municipality wants to improve a public way or public place, or to construct, repair, or reconstruct a sidewalk, curb, gutter, sewer, or drain in the municipality, it shall adopt a preliminary resolution designating whether the proposed improvement is to be financed and paid for in the manner prescribed by this chapter.

As added by Acts 1981, P.L.309, SEC.90.

IC 36-9-17-3

Authorization and composition of fund

Sec. 3. A municipality may, by ordinance and in compliance with the procedures for the establishment of a cumulative fund under IC 6-1.1-41, establish a general improvement fund, which shall be used to construct, repair, or improve streets, alleys, sidewalks, curbs, gutters, and sewers. This fund consists of:

- (1) the special assessments collected under this chapter for benefits to property from constructing, repairing, or improving streets, alleys, sidewalks, curbs, gutters, and sewers; and
- (2) any appropriation made from the general fund of the municipality or from taxes levied by the municipal legislative body for these purposes.

However, special assessments collected by a municipality under any statute other than this chapter may not be deposited in the fund.

As added by Acts 1981, P.L.309, SEC.90. Amended by P.L.17-1995, SEC.35.

IC 36-9-17-4

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-17-5

Appropriations; tax levies

Sec. 5. (a) Subject to tax limitations and to the review of appropriations and tax levies, the legislative body of a municipality that establishes a general improvement fund may appropriate money from the general fund of the municipality and transfer that money to the general improvement fund, levy a tax for the benefit and use of the general improvement fund in compliance with the procedures for a levy for a cumulative fund under IC 6-1.1-41, or both.

(b) During the year in which a municipality establishes a general

improvement fund, the municipal legislative body may make an emergency appropriation from the general fund of the municipality and transfer that appropriation to the general improvement fund in the manner prescribed by statute for the making of emergency appropriations.

(c) Any sum may be appropriated or levied under this section in any one (1) year, but the aggregate sum that may be appropriated and levied under this section, including emergency appropriations under subsection (b), may not exceed the equivalent of sixteen and sixty-seven hundredths cents (\$0.1667) on each one hundred dollars (\$100) net taxable valuation of property in the municipality.

As added by Acts 1981, P.L.309, SEC.90. Amended by P.L.17-1995, SEC.36; P.L.6-1997, SEC.222.

IC 36-9-17-6

Limitations on disbursements

Sec. 6. Disbursements may be made from the general improvement fund for any purpose only if benefits are to be:

- (1) assessed against the properties benefited in the manner provided by the street and sewer improvement statutes; and
- (2) collected in the manner provided by law for the collection of Barrett Law assessments, with all interest and penalties paid into the general fund of the municipality.

As added by Acts 1981, P.L.309, SEC.90.

IC 36-9-17-7

Procedure for awarding contracts; assessments

Sec. 7. (a) Contracts for public improvements authorized by this chapter shall be let according to the statutes authorizing municipalities to make and finance public improvements.

(b) As soon as any contract for the construction of a public improvement has been let, the municipal works board shall:

- (1) carefully compute the entire cost of the project, including payments made and to be made to the contractor and all incidental costs, expenses, and damages paid and incurred according to law; and
- (2) prepare and make out an assessment roll listing the assessments against the properties benefited.

In determining and fixing the amount of assessments, the giving of notice of assessments, the holding of public hearings, and the making of final determinations, subject to the right of appeal from those determinations, the municipal works board is governed by the street and sewer improvement statutes.

(c) Assessments made under this chapter are liens on the properties benefited from the time of the letting of the contract and shall be collected in the manner provided by law for the collection of Barrett Law assessments. However, the municipal works board shall fix a period of not more than five (5) years within which the assessments shall be paid. Any property owner liable for an assessment may elect to pay it in annual installments over the period

of time fixed by the municipal works board by executing a waiver in the manner provided by the street and sewer improvement statutes.

(d) All payments of assessments and all payments made by the municipality for public improvements under this chapter shall be made into the general improvement fund.

As added by Acts 1981, P.L.309, SEC.90.

IC 36-9-17.5

Chapter 17.5. Cumulative Township Vehicle and Building Fund

IC 36-9-17.5-1

Applicability of chapter

Sec. 1. This chapter applies to all townships.

As added by P.L.129-1999, SEC.2.

IC 36-9-17.5-2

Establishment and purpose

Sec. 2. A township may establish a cumulative township vehicle and building fund under IC 6-1.1-41 to provide money to:

- (1) acquire township vehicles;
- (2) purchase, construct, equip, and maintain buildings for public purposes;
- (3) acquire the land and any improvements on the land that are necessary for the construction of public buildings;
- (4) demolish any improvements on land acquired under this section and level, grade, and prepare the land for the construction of a public building;
- (5) acquire land or rights-of-way to be used as a public way or other means of ingress or egress to land acquired for the construction of a public building; and
- (6) improve or construct any public way or other means of ingress or egress to land acquired for the construction of a public building.

As added by P.L.129-1999, SEC.2.

IC 36-9-17.5-3

Deposit of revenues

Sec. 3. (a) The following revenues may be deposited in the cumulative township vehicle and building fund:

- (1) All or part of the revenues from a property tax levy dedicated for township vehicle and building purposes.
- (2) Other sources of revenue specified by resolution of the township legislative body.

(b) Appropriations may be made from the cumulative township vehicle and building fund only for the purposes specified in section 2 of this chapter.

(c) Money in the cumulative township vehicle and building fund does not revert to the township general fund at the end of a township fiscal year.

As added by P.L.129-1999, SEC.2.

IC 36-9-17.5-4

Tax levied to provide for fund

Sec. 4. (a) To provide for the cumulative township vehicle and building fund authorized under this chapter, the legislative body of a township may levy a tax on all taxable property within the township

in compliance with IC 6-1.1-41. The tax rate may not exceed five cents (\$0.05) on each one hundred dollars (\$100) of assessed valuation of property in the township for property taxes first due and payable before January 1, 2002, or one and sixty-seven hundredths cents (\$0.0167) on each one hundred dollars (\$100) of assessed valuation of property in the township for property taxes first due and payable after December 31, 2001.

(b) As the tax is collected, it shall be deposited in a qualified public depository or depositories and held in a special fund known as the cumulative township vehicle and building fund.

As added by P.L.129-1999, SEC.2.

IC 36-9-17.5-5

Property tax levy limits

Sec. 5. Notwithstanding any other law, the property tax levy limits imposed under IC 6-1.1-18.5-3 apply to property taxes imposed by a township under this chapter. For purposes of computing the property tax levy limit imposed on the township under IC 6-1.1-18.5-3, the township's property tax levy for a particular calendar year includes the levy imposed under this chapter.

As added by P.L.129-1999, SEC.2.

IC 36-9-18

Repealed

(Repealed by P.L.98-1993, SEC.16.)

IC 36-9-19

Repealed

(Repealed by P.L.98-1993, SEC.16.)

IC 36-9-20

Repealed

(Repealed by P.L.98-1993, SEC.16.)

IC 36-9-21

Repealed

(Repealed by P.L.98-1993, SEC.16.)

IC 36-9-22

Chapter 22. Contracts With Property Owners for Sewer Construction by Municipalities

IC 36-9-22-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.95.

IC 36-9-22-2

Terms of contract; power to fix; duration; share of cost; parties bound; waiver of rights

Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period of not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

- (1) did not contribute to the original cost of the sewage works; and
- (2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to the contract unless the contract or (after June 30, 2013) a signed memorandum of the contract has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive the person's rights to remonstrate against the annexation of the area served by the sewage works.

(d) This subsection does not affect any rights or liabilities accrued, or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, the release of the right to remonstrate is binding on a successor in title to a party to the contract only if the successor in title:

- (1) has actual notice of the release; or
- (2) has constructive notice of the release because the contract, or a signed memorandum of the contract stating the release, has been recorded in the chain of title of the property.

(e) Subsection (c) does not apply to a landowner if all of the following conditions apply:

- (1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.
- (2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

(f) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.

As added by Acts 1981, P.L.309, SEC.95. Amended by P.L.172-1995, SEC.5; P.L.251-2013, SEC.4; P.L.243-2013, SEC.3.

IC 36-9-22-3

Sewage works; approval of plans and specifications before construction; ownership by municipality; maintenance and operation

Sec. 3. (a) Plans and specifications for the sewage works contracted for must be approved by the municipal works board before construction is begun.

(b) Upon their completion, final inspection, and approval the sewage works become the property of the municipality, and the works board may:

- (1) approve the construction of the sewage works;
- (2) accept sewage from the sewers and pumping stations subject to the sewage rates that the municipality establishes;
- (3) operate and maintain the disposal plants subject to the sewage rates that the municipality establishes; and
- (4) accept storm water from sewers or approve the location of discharge of storm water.

(c) After the sewage works are approved and accepted by the works board, all further maintenance and operation of them are the responsibility of the municipality.

(d) Subsections (b) and (c) do not apply to lateral sewers or other extensions that, upon completion, become the property and responsibility of the landowners whose property they benefit.

As added by Acts 1981, P.L.309, SEC.95. Amended by Acts 1982, P.L.77, SEC.21.

IC 36-9-22-4

Taps into sewage works; prerequisites; amounts received under contracts; pay out without appropriation; unauthorized taps; removal and disposal without liability

Sec. 4. (a) A person may not be granted a permit or be authorized to tap into, use, or deposit sewage into any sewage works contracted for under this chapter, or any extension of them, during the period prescribed in the contract without first:

- (1) obtaining the approval of the municipal works board; and
- (2) paying to the municipality:
 - (A) charges made or assessed for the tap, use, or deposit, or for the sewers constructed in connection with the tap, use, or deposit; and
 - (B) the amount required by the contract.

All amounts received by the municipality under the contract shall be paid out, without appropriation, under the terms of the contract within sixty (60) days after they are received.

(b) Whenever any tap or connection is made in violation of subsection (a), the works board shall:

- (1) remove or cause to be removed the unauthorized tap or connection and all connecting tile located in the right-of-way for the sewage works; and
- (2) dispose of the unauthorized materials that are removed, without any liability on the part of the municipality.

As added by Acts 1981, P.L.309, SEC.95.

IC 36-9-22-5

Sewer connected to existing works; certain cases; amounts to be included in cost estimate and assessments; payment of assessments in installments; amount of bonds; cash payments

Sec. 5. (a) This section applies when:

- (1) any part of the cost of a sewer, whether local or general, storm, sanitary, combination, or otherwise, is to be assessed against the owners of real property;
- (2) the proposed sewer is to be connected into sewage works constructed under this chapter; and
- (3) the owners did not contribute to the cost of those sewage works.

(b) There shall be included in:

- (1) the engineer's estimate submitted to the municipal works board before the hearing on the proposed sewer; and
- (2) the assessments;

a sum equal to the amount provided in or computed from the contract as the fair pro rata share due from the owners upon and for the contracted sewage works, including any interest owed. The sum included in the engineer's estimate must be separately itemized.

(c) If an owner elects to pay his assessment by installments in

anticipation of which bonds and coupons are issued, the amount of the bonds and coupons must include the fair pro rata share of the cost of the contracted sewage works. However, an owner may elect to pay the fair pro rata share in cash within sixty (60) days after the assessment is final and to pay the remainder of the assessment in installments.

As added by Acts 1981, P.L.309, SEC.95.

IC 36-9-23

Chapter 23. Municipal Sewage Works

IC 36-9-23-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 28 of this chapter (and to IC 32-9-1-2.5, before its repeal) by P.L.236-1993 apply to deposits held by a municipal sewage works under section 28 of this chapter, as amended by this act, after June 30, 1993.

As added by P.L.220-2011, SEC.683.

IC 36-9-23-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-2

Municipal powers

Sec. 2. A municipality may:

- (1) acquire, construct, improve, operate, and maintain sewage works under this chapter;
- (2) acquire, by gift, grant, purchase, condemnation, or otherwise, all lands, rights-of-way, and other property that are necessary for the sewage works;
- (3) issue revenue bonds to pay the cost of acquiring, constructing, and improving the sewage works and property; and
- (4) lease sewage works from a person, an entity, a corporation, a public utility, or a unit for a term not to exceed fifty (50) years.

A sewage works leased under this section is subject to IC 5-16-7.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.35-1990, SEC.68.

IC 36-9-23-3

Supervision and control

Sec. 3. The construction, acquisition, improvement, operation, and maintenance of sewage works under this chapter shall be supervised and controlled by the municipal works board. However, the municipal legislative body may, by ordinance, transfer the powers and duties of the works board under this chapter to:

- (1) a sanitary board established under section 4 of this chapter; or
- (2) the utility service board, if the municipality has such a board operating one (1) or more municipally owned utilities.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-4

Sanitary board

Sec. 4. (a) A sanitary board established under this chapter consists

of:

- (1) the municipal executive; and
- (2) two (2) persons appointed by the municipal legislative body, one (1) of whom must be a registered professional engineer.

The legislative body may not appoint any paid or unpaid municipal officer or employee to the board.

(b) One (1) of the original appointees to the sanitary board serves for a term of two (2) years, and the other serves for a term of three (3) years.

(c) When the term of a member of the sanitary board expires, a successor shall be appointed for a term of three (3) years in the manner prescribed by subsection (a).

(d) Vacancies on the sanitary board shall be filled for the unexpired term in the manner prescribed by subsection (a).

(e) The municipal executive is the chairman of the sanitary board.

(f) The sanitary board shall select a vice chairman from its members, and shall select a secretary and a treasurer, who need not be members of the board. However, the board may combine the offices of secretary and treasurer into a single office of secretary-treasurer. The officers selected under this subsection serve at the pleasure of the board.

(g) Each member of the sanitary board is entitled to the compensation, if any, that is fixed by:

- (1) the executive, with the approval of the legislative body, in a city; or
- (2) the legislative body, in a town;

as a salary or as payment for meetings attended. Each member is also entitled to payment for reasonable expenses incurred in the performance of his duties.

(h) The compensation of the secretary and treasurer of the sanitary board shall be fixed by:

- (1) the executive, with the approval of the legislative body, in a city; or
- (2) the legislative body, in a town.

(i) The municipal legislative body shall fix the bond required of each member of the sanitary board and of the treasurer of the board. These bonds shall be filed with the county recorder under IC 5-4-1-5.1.

(j) The sanitary board may establish rules and bylaws for its own government.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-5

Board defined

Sec. 5. As used in sections 6 through 37 of this chapter, "board" means:

- (1) the municipal works board; or
- (2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:
 - (A) sanitary board; or

(B) utility service board;
to which those powers have been transferred.
As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.1-2007, SEC.247; P.L.114-2008, SEC.28.

IC 36-9-23-6

Contracts

Sec. 6. (a) The board may enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. However, the board may not obligate itself or the municipality beyond the extent to which money has been or may be provided under this chapter.

(b) A contract relating to the financing of the acquisition or construction of any sewage works, or to any trust indenture authorized by this chapter, is not effective until it is approved by the municipal legislative body.

(c) A contract or an agreement with any contractor or contractors for labor, equipment, or materials shall be let and entered into under the statutes governing the letting of contracts by agencies of municipalities.

(d) The board or any public utility (as defined in IC 8-1-6-3) contracting with the board for the treatment, purification, or disposal in a sanitary manner of liquid and solid waste, sewage, night soil, or industrial waste may contract with a water utility furnishing water service to users or property served in the municipality or by the public utility to do the following:

- (1) Ascertain the amount of water consumed.
- (2) Compute the amount of the charge to be billed for sewer services to each user or property served.
- (3) Bill and collect the amounts due for sewer services.
- (4) Discontinue water service to delinquent sewer users.

A contract under this subsection is enforceable without the approval of the Indiana utility regulatory commission.

(e) The procedures in IC 36-9-25-11.5(a) through IC 36-9-25-11.5(e) apply to the discontinuance of water service to a delinquent sewer user under a contract between the board and a water utility described in subsection (d).

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.27-1995, SEC.7; P.L.34-1999, SEC.6.

IC 36-9-23-7

Board; operation of works

Sec. 7. After the completion or acquisition of the sewage works, the board shall operate, manage, and control the works and may order and complete any extensions or improvements it considers necessary. The board shall adopt rules for the use and operation of the sewage works and of other sewers and drains connected to the works, to the extent that they may affect the operation of the works.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-8**Board; restoration of works**

Sec. 8. If requested to do so by the proper authority, the board shall, to the extent possible from money provided under this chapter, restore to their original condition any public ways or public works damaged by the board in the performance of its duties.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-9**Board; authority relating to employees; payment of expenses**

Sec. 9. The board may employ, fix the compensation of, and prescribe the duties of engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and any other employees it considers necessary. The expenses incurred under this section shall be paid solely from money provided under this chapter.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-10**Ordinance prior to construction or acquisition of works; contents; notice**

Sec. 10. (a) Before the construction, acquisition, or lease of any sewage works under this chapter, the municipal legislative body shall adopt an ordinance or ordinances:

- (1) setting forth a brief general description of the works and, if the works are to be constructed, a reference to the plans and specifications prepared and filed by an engineer chosen by the board;
- (2) setting forth the cost of the works, as estimated by the engineer;
- (3) ordering the construction, acquisition, or lease of the works;
- (4) setting forth an estimate of the fees for the several classes of users or property to be served;
- (5) ordering the issuance of revenue bonds of the municipality under this chapter, in the amount necessary to pay the cost of the works; and
- (6) containing any other necessary provisions.

(b) Unless all or part of the works is being constructed in compliance with an order of the department of environmental management to abate water pollution, notice of the adoption and the purport of the ordinance or ordinances shall immediately be given by publication in accordance with IC 5-3-1.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.197; P.L.35-1990, SEC.69.

IC 36-9-23-11**Cost estimate**

Sec. 11. The engineer's estimate of costs under section 10(a)(2) of this chapter must include:

- (1) the cost of acquiring or constructing the sewage works;
- (2) the cost of all property, easements, franchises, and other

- rights considered necessary or convenient for the works;
- (3) interest on bonds before and during the construction or acquisition, and for a period not exceeding twenty-four (24) months after completion of the construction or acquisition;
- (4) engineering expenses, including expenses for plans, specifications, and surveys;
- (5) legal expenses;
- (6) expenses for estimates of cost and of revenues;
- (7) administrative expenses; and
- (8) other expenses necessary or incidental to:
 - (A) determining the feasibility of the works;
 - (B) financing the works;
 - (C) constructing or acquiring the works; and
 - (D) placing the works in operation.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-12

Petition objecting to construction or acquisition of works; court hearing; notice; bond; further proceedings on project prohibited if petition sustained

Sec. 12. (a) This section does not apply to undertakings in compliance with orders of the department of environmental management for which no objections are authorized.

(b) Forty (40) or more owners of property connected or to be connected to and served by sewage works authorized by an ordinance under section 10(a) of this chapter may file a written petition objecting to the construction or acquisition of the works. The petition must be filed with the municipal legislative body, must contain the names and addresses of the petitioners, and must set forth the following objections:

- (1) The works are not required by the public needs.
- (2) The cost of the proposed works would be excessive considering the value of the service to be rendered to the affected community.
- (3) Any other ground of objection.

The petition shall be filed within twenty (20) days after the publication of notice under section 10(b) of this chapter.

(c) Unless the proposed works are abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first ten (10) signers of the petition at the addresses shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the works until the matters presented by the petition have been heard and determined by the court.

(d) The petitioners shall file with their petition a bond in the sum

and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(e) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(f) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body may not institute any further proceedings for the construction of the sewage works described in the ordinance or ordinances for a period of one (1) year after the date of the order, unless the construction is required by a subsequent order of the state department of environmental management to abate water pollution.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.198.

IC 36-9-23-12.5

User moving to new residence; forwarding final bill

Sec. 12.5. Whenever a sewer user moves to a different residence from the one being supplied sewer service, but within the same municipality, the sewer utility shall forward the user's final sewer bill to the new address.

As added by P.L.349-1985, SEC.4.

IC 36-9-23-13

Preliminary expenses; payment from general fund; repayment from bond proceeds

Sec. 13. (a) All necessary preliminary expenses actually incurred by the board before the issuance and delivery of revenue bonds, including expenses incurred in:

- (1) making surveys;
- (2) estimating costs and revenues;
- (3) employing engineers or other employees;
- (4) giving notices; and
- (5) taking options;

may be paid in the manner prescribed by this section.

(b) The board shall, from time to time, certify the items of expense to the municipal fiscal officer, directing him to pay the amounts certified. The fiscal officer shall draw a warrant or warrants in the correct amounts on the general fund, without appropriation. If there is no money in the general fund, the fiscal officer shall request the municipal legislative body to transfer from other funds of the

municipality an amount sufficient to meet the items of expense, or to make a temporary loan for this purpose. The legislative body shall comply with the request promptly.

(c) Money transferred under subsection (b) shall be repaid by the board to the fund from which it was taken, out of the first proceeds of the sale of revenue bonds and before any other disbursements are made from those proceeds. The amount advanced to pay the preliminary expenses constitutes a first charge against the proceeds resulting from the sale of the revenue bonds until repaid.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-14

Condemnation; authority; security for damages to owner from failure to accept and pay for property; purchase or condemnation of existing works; option or contract; repair estimate

Sec. 14. (a) A municipality may, in the manner prescribed by IC 32-24, condemn:

- (1) sewage works; and
- (2) any land, easements, franchises, and other property it considers necessary for the construction of sewage works or for improvements to sewage works.

However, the municipality may pay for any property condemned or purchased only from money provided under this chapter.

(b) In any proceedings to condemn, orders that are just to the municipality and to the owners of the property to be condemned may be made. An undertaking or other security securing the property owners against any loss or damage resulting from the failure of the municipality to accept and pay for the property may be required, but the undertaking or security imposes liability upon the municipality only in the amount that may be paid from money provided under this chapter.

(c) If the board wants to purchase sewage works, it may obtain and exercise an option for the purchase of the works, or may enter into a contract for the purchase in the manner and under the terms and conditions that it considers proper.

(d) If the board wants to purchase or condemn sewage works already constructed, it must, at or before the time of adoption of the ordinance authorizing the acquisition, determine what repairs, replacements, additions, and other actions are required to make the works effective for their purpose. An estimate of the cost of these actions shall be included in the estimate of cost made under section 11 of this chapter. These actions shall be taken upon the acquisition of the works, as a part of the cost of the acquisition.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.2-2002, SEC.122.

IC 36-9-23-15

Acquisition of property subject to lien or other encumbrance

Sec. 15. Property upon which any lien or other encumbrance exists may not be acquired under this chapter unless, at the time the

property is acquired, a sufficient sum of money is deposited in trust to pay and redeem the lien or encumbrance in full.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-16

Sewage treatment plant prerequisite; contracts and revenues; construction of connecting sewers; payment of cost; effect on maturity date of bonds

Sec. 16. (a) A municipality that does not have a sewage treatment plant, and wants to acquire, construct, improve, operate, and maintain sewage works other than a sewage treatment plant, may proceed under this chapter only if it first contracts for the required treatment of the sewage emanating from its works.

(b) A municipality owning and operating facilities for sewage treatment may contract to treat all or part of the sewage of:

- (1) any other municipality;
- (2) any facility of the department of correction; or
- (3) if a contract described in subdivision (2) is in effect, any person or entity, a municipal corporation, a private corporation, or a federal government facility that is located within five (5) miles of the sewer line connecting the municipality to the facility of the department of correction under the contract.

The contracts must be authorized by ordinance and are subject to approval by the department of environmental management according to rules adopted by the environmental rules board as to the sufficiency of the provision for sewage treatment.

(c) Unless otherwise provided in the authorizing ordinance or governing indenture, the revenues received by the owner under the contract are considered a part of the revenues of the owner's sewage treatment facilities, and shall be applied in accordance with the applicable statutes.

(d) The necessary intercepting and connecting sewers and appurtenances to connect the sewage treatment facilities and sewage works of the contracting parties may be constructed in part or in whole by either of the contracting parties, as provided in the contract. For a municipality, the money to pay for this construction may be provided by the issuance of bonds under the applicable statutes, as part of the cost of the facilities or works of the respective parties.

(e) All bonds issued under this section are payable before the expiration date of the contract. The parties may contract for the terms of the bonds, and for any term or terms beyond the last maturity of the bonds.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.199; P.L.318-1989, SEC.1; P.L.113-2014, SEC.124.

IC 36-9-23-17

Sources of funds

Sec. 17. (a) This chapter does not authorize a municipality to make any contract or to incur any obligation that is not payable solely from money provided under this chapter.

(b) Money for the costs of the sewage works or any improvement of the works may be provided only:

- (1) by the issuance of revenue bonds of the municipality;
- (2) from a cumulative fund established by the municipality for that purpose; or
- (3) by grant or loan from the federal government or any of its agencies.

(c) A municipality obtaining a loan from the federal government or a federal agency may issue its obligations under this chapter to the federal government or federal agency to evidence its indebtedness. The obligations are not a corporate indebtedness of the municipality, are payable solely from the revenues of the sewage works, and may be made of equal priority or subordinate to any other revenue bonds issued or to be issued under this chapter.

(d) Notwithstanding subsection (b), money to finance the construction of any of the self-liquidating works authorized by this chapter may be obtained from any state or federal agency.

(e) Notwithstanding subsection (b), any industrial cost recovery received by the municipality and required to be paid by industrial users under the terms of a federal grant are not considered revenues under this chapter. The municipal legislative body may use industrial cost recovery grants as provided by the terms of federal grants.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-18

Bonds; liability of municipality; interest; redemption; form; registration; sale; temporary bonds; additional bonds; exemption from taxation

Sec. 18. (a) Revenue bonds issued under this chapter are payable solely from the revenues of the sewage works for which they are issued, and are not a corporate indebtedness of the municipality.

(b) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the municipal legislative body, payable annually or at shorter intervals, and mature at the time or times determined by ordinance.

(c) The revenue bonds may be made redeemable before maturity at the option of the municipality, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the ordinance authorizing the issuance of the bonds.

(d) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(e) The ordinance authorizing the issuance of the revenue bonds must determine the form of the bonds, including any interest coupons to be attached to them, and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(f) The revenue bonds must contain a statement on their face that the municipality is not obligated to pay the principal or interest on

them, except from the special fund provided from the net revenues of the sewage works.

(g) The revenue bonds are negotiable instruments.

(h) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone, or as to both principal and interest, but fully registered bonds shall be made convertible to coupon bonds at the option of the registered owner.

(i) The revenue bonds shall be executed in the same manner as other revenue bonds issued by municipalities are executed.

(j) The revenue bonds shall be sold by the municipal fiscal officer in the manner that is determined to be in the best interests of the municipality, but at not less than par value and only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(k) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(l) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the ordinance authorizing the first issue, or in the trust indenture authorized by section 22 of this chapter, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

(m) Subject to the provisions and limitations of any ordinance or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section, for the purpose of improving any works acquired or constructed under this chapter.

(n) Revenue bonds issued under this section are exempt from taxation for all purposes.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-19

Bonds; actions to contest validity; limitations

Sec. 19. Any action to contest the validity of revenue bonds issued under this chapter must be brought at least five (5) days before the advertised date for the sale of the bonds.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-20

Bonds; disposition of proceeds; lien of holders or trustee

Sec. 20. (a) The first proceeds of any revenue bonds issued under this chapter shall be used to repay all amounts advanced for preliminary expenses under section 13 of this chapter. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(b) After the payments required by subsection (a) have been made,

any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by section 21 of this chapter.

(c) The holders of the revenue bonds, or the trustees under section 22 of this chapter, have a lien on the bond proceeds until they are applied under this section.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-21

Bonds; sinking fund

Sec. 21. At or before the time of issuance of revenue bonds under this chapter, the municipal legislative body, by ordinance, shall:

(1) establish a sinking fund for the payment of:

(A) the principal of and interest on the bonds; and

(B) the charges of banks or trust companies for making payment of the principal or interest; and

(2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The ordinance may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this chapter.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-22

Bonds; security by trust indenture permitted; terms of indenture

Sec. 22. (a) The municipal legislative body may secure revenue bonds issued under this chapter by a trust indenture between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana, or another state. However, such a trust indenture may not convey or mortgage any part of the sewage works.

(b) The ordinance authorizing the revenue bonds may provide that:

(1) the trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the municipality and the board in relation to:

(A) the construction, acquisition, improvement, operation, repair, maintenance, and insurance of the sewage works; and

(B) the custody, safeguarding, and application of all money; and

(2) the works shall be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers or their successors, assigns, or nominees, who may be given the right to specify the security to be given by contractors and by any depository of the proceeds of bonds, revenues of the works, or other money pertaining to

the works.

(b) The trust indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual right of action of bondholders as is customary in a trust indenture securing bonds and debentures of corporations. Except as otherwise provided in this chapter, the municipal legislative body may, by ordinance or in the trust indenture, specify:

(1) the officer, board, or depository that shall collect the proceeds of the sale of the bonds and the revenues of the sewage works; and

(2) the method of disbursing the proceeds and revenues.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-23

Bonds; enforcement rights of holders; receivership

Sec. 23. (a) The rights granted by this section are subject to any restrictions contained in the ordinance authorizing the issuance of revenue bonds or in any trust indenture securing the bonds.

(b) The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this chapter or under the ordinance or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works.

(c) If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the municipality, the bondholders, and the trustee, if any. The receiver may:

(1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;

(2) pay any revenue bonds and interest outstanding; and

(3) apply the revenues in conformity with this chapter, the ordinance authorizing the bond issue, and the trust indenture, if any.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-24

Fees; municipality subject to fees of sewage works

Sec. 24. The municipality is subject to the fees established under this chapter or to fees established in harmony with this chapter, for services rendered the municipality, and shall pay the fees when due. The fees are considered part of the revenues of the sewage works and are subject to the disposition authorized or required for other revenues of the works.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-25

Fees; factors used to establish; persons obligated to pay; disposition of certain fees; different fee schedules permitted; property not

occupied by owner

Sec. 25. (a) Subject to section 37 of this chapter, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of this chapter;
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) Except as otherwise provided in a provision included in an ordinance under subsection (f), the fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in

a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

(1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or

(2) the number of users in various locations.

(f) Notwithstanding IC 14-33-5-21, this subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this section, the municipal legislative body may include one (1) or more of the following provisions with respect to property occupied by someone other than the owner of the property:

(1) That fees for the services rendered by the sewage works to the property are payable by the person occupying the property.

At the option of the municipal legislative body, the ordinance may include any:

(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) That the fees for the services rendered by the sewage works to the property are payable by the person occupying the property if one (1) of the following conditions is satisfied:

(A) Either the property owner or the person occupying the property gives to the general office of the utility written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:

(i) is executed by the property owner and the person occupying the property;

(ii) identifies the person occupying the property by name; and

(iii) indicates that the person occupying the property is

responsible for paying the fees assessed by the utility with respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records maintained by the utility for the property otherwise indicate that:

(i) the property is occupied by someone other than the owner; and

(ii) the person occupying the property is responsible for paying the fees.

(C) The property owner or the person occupying the property satisfies any other requirements or conditions that the municipal legislative body includes in the ordinance.

(3) That fees assessed against the property for the services rendered by the sewage works to the property do not constitute a lien against the property, notwithstanding section 32 of this chapter, and subject to any requirements or conditions set forth in the ordinance.

This subsection may not be construed to prohibit a municipal legislative body from including in an ordinance adopted under this section any other provision that the municipal legislative body considers appropriate.

As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.317, SEC.23; P.L.35-1990, SEC.70; P.L.114-2008, SEC.29; P.L.196-2014, SEC.5.

IC 36-9-23-26

Fees; hearing; notice; adoption; readjustment

Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

(1) published in accordance with IC 5-3-1;

(2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and

(3) mailed to users of the sewage works for service to property located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time. Notice mailed under subdivision (3) must include the statement required by IC 8-1.5-3-8.1(c).

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. An ordinance adopted after March 31, 2012, that

imposes different rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality or to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges, as required by IC 8-1.5-3-8.1(d).

(c) Subject to section 37 of this chapter, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.45, SEC.62; P.L.77-1991, SEC.4; P.L.114-2008, SEC.30; P.L.139-2012, SEC.5.

IC 36-9-23-26.1

Objections to rates and charges; bonds; hearings

Sec. 26.1. (a) Owners of property connected or to be connected to and served by the sewage works authorized under this chapter may file a written petition objecting to the rates and charges of the sewage works so long as:

- (1) the petition contains the names and addresses of the petitioners;
- (2) the petitioners attended the public hearing provided under section 26 of this chapter;
- (3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 26 of this chapter;
- (4) the written petition states specifically the ground or grounds of objection; and
- (5) the petitioners have not filed a petition with the commission under IC 8-1.5-3-8.3 appealing the same rates and charges of the utility.

(b) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined by the court.

(c) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the

security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(d) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(e) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court.

As added by P.L.77-1991, SEC.5. Amended by P.L.139-2012, SEC.6.

IC 36-9-23-27

Fees; collection upon commencement of construction; amount

Sec. 27. After a contract for the construction of sewage works has been let and actual work has commenced, the municipality may bill and collect fees for the services to be rendered, in an amount sufficient to pay:

- (1) the interest on the revenue bonds; and
- (2) other expenses payable before the completion of the works.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-28

Deposit to ensure payment of fees; amount of deposit; refund; forfeiture; use to pay judgment; unclaimed deposits

Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

- (1) has been conveyed or transferred to another person; or
- (2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property

served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.236-1993, SEC.2; P.L.31-1995, SEC.8; P.L.2-2002, SEC.123.

IC 36-9-23-28.5

Unclaimed overpayments of sewer fees becoming property of municipality

Sec. 28.5. (a) This section does not apply to a deposit made under section 28 of this chapter.

(b) IC 32-34-1 does not apply to an overpayment described in subsection (d).

(c) As used in this section, "payor" refers to the owner, lessee, or user of property served by the sewage works who has paid for service from the sewage works.

(d) An overpayment of sewer fees that remains unclaimed by a payor for more than seven (7) years after the termination of the service for which the overpayment was made becomes the property of the municipality.

As added by P.L.40-1996, SEC.12. Amended by P.L.2-2002, SEC.124.

IC 36-9-23-29

Connections to sewer by abutting property; approval required; fees; liens; disposition of fees

Sec. 29. (a) If, as part of the construction of sewage works under this chapter, a municipality constructs a sewer suitable for use as a local or lateral sewer by abutting or adjoining property, it may charge a fee for connections to the sewer. The fee must be based on the pro rata cost of constructing a local or lateral sewer sufficient to serve the property.

(b) The board may approve or disapprove applications for connections and may fix the amount of the connection fee.

(c) A person who applies for a connection shall agree to pay the connection fee. If payment is not made as agreed, the fee constitutes a lien on the property for which the connection is made. Such a lien may be enforced in the manner prescribed by section 34 of this chapter.

(d) The municipal legislative body shall determine by ordinance whether the proceeds of connection fees collected under this section and other laws are to be used as:

- (1) net revenues of the sewage works;
- (2) payment toward the cost of construction of the works; or
- (3) payment toward the cost of improving the works in the future.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-30

Municipal power to require connections to sewer and discontinuance of privies, cesspools, septic tanks, and similar structures; conditions; penalties; court order; attorney's fees

Sec. 30. (a) Subject to subsection (b), a municipality that operates sewage works under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) may require:

- (1) connection to its sewer system of any property producing sewage or similar waste; and
- (2) discontinuance of the use of privies, cesspools, septic tanks, and similar structures.

(b) A municipality may exercise the powers granted by subsection (a) only if:

- (1) there is an available sanitary sewer within three hundred (300) feet of the property line of the affected property; and
- (2) it has given notice by certified mail to the property owner at the address of the property, at least ninety (90) days before the date specified for connection in the notice.

(c) A municipality may establish, enforce, and collect reasonable penalties for failure to make a connection under this section.

(d) A municipality may apply to the circuit or superior court for the county in which it is located for an order to require a connection under this section. The court shall assess the cost of the action and reasonable attorney's fees of the municipality against the property owner in such an action.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.135.

IC 36-9-23-31

Fees; nonpayment; delinquency penalty; civil action to recover

Sec. 31. If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.136.

IC 36-9-23-32

Liens for nonpayment of fees; priority; attachment; subsequent owners; property not occupied by owner; notice to owner

Sec. 32. (a) Except as otherwise provided in a provision included

in an ordinance under section 25(f)(3) of this chapter, fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) Except as otherwise provided in a provision included in an ordinance under section 25(f)(3) of this chapter, a lien attaches against real property occupied by someone other than the owner only if the utility notifies the owner not later than twenty (20) days after the time the utility fees become sixty (60) days delinquent. A notice sent to the owner under this subsection must be sent by first class mail or by certified mail, return receipt requested (or an equivalent service permitted under IC 1-1-7-1) to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice of the delinquency, or to another address specified by the owner, in a written notice to the utility, at which the owner requests to receive a notice of delinquency under this subsection. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.131-2005, SEC.7; P.L.113-2010, SEC.153; P.L.196-2014, SEC.6.

IC 36-9-23-33

Collection of unpaid fees; recording of liens; certification to county auditor; fees, charges, and penalties; collection with property taxes

Sec. 33. (a) Subsections (c) through (l) do not apply to unpaid fees

and penalties assessed against property occupied by someone other than the property owner if:

- (1) the municipal legislative body has adopted an ordinance provision described in section 25(f) of this chapter concerning property occupied by someone other than the property owner;
- (2) the ordinance provision described in section 25(f) of this chapter provides that fees assessed against the property for services rendered by the sewage works to the property do not constitute a lien against the property, as described in section 25(f)(3) of this chapter; and
- (3) any requirements or conditions:
 - (A) described in section 25(f)(1) or 25(f)(2) of this chapter; and
 - (B) included in the ordinance;have been satisfied.

(b) An officer described in subsection (c) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days. However, in the case of property that is occupied by someone other than the owner, this subsection does not relieve the utility of its duty under section 32(c) of this chapter to notify the owner not later than twenty (20) days after the time user fees become sixty (60) days delinquent.

(c) Except as provided in subsection (m), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

- (1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:
 - (A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.
 - (B) A description of the premises, as shown by the records of the county auditor.
 - (C) The amount of the delinquent fees, together with the penalty.
- (2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(d) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (g), shall be added to each delinquent fee that is recorded.

(e) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under

subsection (c) and recorded under subsection (d), the officer shall certify to the county auditor, according to a schedule agreed upon by the county treasurer and the officer, a list of the unpaid liens for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.

(f) This subsection applies to a county not described in subsection (e). Using the lists and instruments prepared under subsection (c) and recorded under subsection (d), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (d), certify to the county auditor a list of the unpaid liens for collection with the next May installment of property taxes. The county and its officers and employees are not liable for any material error in the information on this list.

(g) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(h) On receipt of the list under subsection (e) or (f), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next cycle's installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(i) After certification of liens under subsection (f), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(j) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(k) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(l) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(m) A board may write off a fee or penalty under subsection (b) that is for less than forty dollars (\$40).

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.354-1987, SEC.1; P.L.45-1990, SEC.8; P.L.1-1993, SEC.249; P.L.57-1993, SEC.18; P.L.88-1995, SEC.11; P.L.236-1997, SEC.1; P.L.10-1997, SEC.36; P.L.98-2000, SEC.29; P.L.171-2002, SEC.2; P.L.174-2003, SEC.1; P.L.39-2008, SEC.6; P.L.196-2014, SEC.7.

IC 36-9-23-34

Liens; foreclosure; attorney's fees

Sec. 34. (a) A municipality or board may foreclose a lien established by this chapter in order to collect fees and penalties. The municipality or board shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

As added by Acts 1981, P.L.309, SEC.96.

IC 36-9-23-35

Proceedings under other chapters not required; administrative powers and duties not affected by chapter

Sec. 35. No proceedings other than those prescribed by this chapter are required for:

- (1) the construction or acquisition of sewage works;
- (2) the issuance or sale of bonds; or
- (3) the establishment of fees;

under this chapter. However, the functions, powers, and duties of the department of environmental management, the environmental rules board, and the state department of health are not affected by this chapter.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.200; P.L.2-1992, SEC.894; P.L.113-2014, SEC.125.

IC 36-9-23-36

Municipal powers; areas outside corporate boundaries

Sec. 36. (a) Except as provided in subsections (b) and (c), a municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries.

(b) The mileage limitation in subsection (a) does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.

(c) In an area referred to in subsection (a), a municipality may not:

- (1) impose fees under this chapter; or
- (2) otherwise exercise powers granted by this chapter;

to provide storm water management services to the area if the county provides storm water management services to the area under IC 8-1.5-5.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.318-1989,

SEC.2; P.L.114-2008, SEC.31.

IC 36-9-23-37

Memorandum of understanding between municipality and storm water board to provide storm water management services

Sec. 37. (a) As used in this section:

(1) "service" means:

(A) imposing fees; and

(B) otherwise exercising powers;

to provide storm water management services; and

(2) "storm water board" refers to a board defined in IC 8-1.5-5-2.

(b) This section applies only if actions of:

(1) a board under section 36 of this chapter; and

(2) a storm water board under IC 8-1.5-5;

are pending at the same time to service the same area outside a municipality's corporate boundaries.

(c) The board and the storm water board must negotiate the adoption by the board and the storm water board of a memorandum of understanding that permits only the board or only the storm water board to service the area referred to in subsection (b). Neither the board nor the storm water board may service the area before a memorandum of understanding is adopted under this subsection. The entity designated to service the area in the memorandum of understanding may finalize the entity's action referred to in subsection (b). The entity not designated to service the area in the memorandum of understanding must terminate the entity's action referred to in subsection (b).

As added by P.L.114-2008, SEC.32.

IC 36-9-24

Chapter 24. Leasing of Sewage Disposal Facilities

IC 36-9-24-1

Application of chapter

Sec. 1. This chapter applies to all municipalities that own and operate sewage works under IC 36-9-23.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-2

"Sewage disposal facilities" defined

Sec. 2. As used in this chapter, "sewage disposal facilities" means all or part of the facilities of a sewage disposal company furnishing service within the corporate boundaries of a municipality, or within one (1) mile outside those boundaries, including:

- (1) certificates of territorial authority;
- (2) indeterminate permits;
- (3) franchises;
- (4) rights-of-way; and
- (5) easements;

but does not include the company's corporate stock, going-concern value, or good will.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-3

Authorization

Sec. 3. (a) A municipality may lease sewage disposal facilities from a sewage disposal company that:

- (1) holds a certificate of territorial authority under IC 8-1-2-89; and
- (2) is a corporation organized under Indiana law for the purpose of acquiring, constructing, and leasing sewage disposal facilities to a municipality.

(b) In addition to the authority described in subsection (a), a municipality may lease from any person facilities to provide for treatment or disposal of sludge generated by the municipality's sewage works. The lessor under this subsection may be an individual, partnership, corporation, or other entity organized to lease sewage works to a municipality. Notwithstanding any other law, a lessor may acquire, construct, and lease facilities described in this subsection to a municipality without the approval of the utility regulatory commission.

(c) The municipality may operate the leased facilities in conjunction with the operation of the municipally owned sewage works.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.5-1988, SEC.222; P.L.186-1988, SEC.2.

IC 36-9-24-4

Maximum duration; options to renew

Sec. 4. The term of a lease under this chapter may not exceed fifty (50) years. However, the lease must provide that the municipality has an option to renew the lease for a further term on similar conditions. *As added by Acts 1981, P.L.309, SEC.97.*

IC 36-9-24-5

Options to purchase; authorization of bonds to finance purchase; disposition of property when option not exercised

Sec. 5. (a) A lease under this chapter must provide that the municipality has an option to purchase the property covered by the lease, under the terms and conditions specified in the lease.

(b) If the municipality exercises the option to purchase, it may obtain money to pay the purchase price by issuing and selling revenue bonds under the statutes governing the issuance and sale of sewage works revenue bonds for additions and extensions to the municipally owned sewage works.

(c) If the municipality does not exercise the option to purchase, the property covered by the lease becomes the absolute property of the municipality when:

- (1) the lease has expired; and
- (2) the municipality has discharged and performed all its obligations under the lease.

The lessor shall then execute proper instruments conveying good and merchantable title to the property to the municipality.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-6

Optional provisions of leases; payment of taxes, assessments, insurance, and maintenance expenses

Sec. 6. (a) A lease under this chapter may provide that:

- (1) as part of the lease rental for the facilities, the municipality shall agree to:
 - (A) pay all property taxes and assessments levied against or on account of the facilities; and
 - (B) maintain insurance on the facilities for the benefit of the lessor; and
- (2) the municipality shall assume all responsibilities for the operation, maintenance, repair, alteration, and extension of the facilities.

(b) However, the lease rental and the expenses incurred under this chapter are payable solely from the revenues derived from sewage and sewer fees to be collected by the municipality from property and users in the area served by the facilities.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.3.

IC 36-9-24-7

Proposed leases; notice and hearing

Sec. 7. (a) When a municipality and a lessor agree on the terms and conditions of a lease proposed to be entered into under this

chapter, notice of a hearing to be held before the municipal legislative body shall be given to all interested persons by publication in accordance with IC 5-3-1. The notice must name the date, place, and hour of the hearing, and set forth a summary of the principal terms of the lease agreed upon, including the name of the lessor, the character of the property to be leased, the lease rental to be paid, and the number of years the lease is to be in effect.

(b) The date of the hearing may not be less than twenty (20) days after publication of the notice.

(c) The proposed lease shall be kept available for inspection by the public before and at the hearing.

(d) At the hearing, all interested persons are entitled to be heard as to the necessity for the execution of the lease and whether the rental to be paid to the proposed lessor under the lease is a fair and reasonable rental for the facilities. The hearing may be adjourned to a later date or dates.

(e) After the hearing, the municipal legislative body may authorize the execution of the lease as originally agreed on, or may, with the consent of the proposed lessor, modify the lease. However, the lease rental as set out in the published notice may not be increased without a new notice and hearing.

As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.63; P.L.186-1988, SEC.4.

IC 36-9-24-8

Notice of signing of lease contract; petitions, notice, and hearing concerning objections to lease rental

Sec. 8. (a) When a municipal legislative body authorizes the execution of a lease under section 7 of this chapter, notice of the signing of the contract shall be given by publication in the manner prescribed by section 7 of this chapter. Within thirty (30) days after publication of the notice, fifty (50) or more of the:

- (1) users in the municipality served by the municipally owned sewage works; or
- (2) users served by the facilities to be leased;

may file with the utility regulatory commission (if the lessor is leasing facilities under section 3(a) of this chapter), or with the circuit or superior court of the county where the facility is located (if the lessor is leasing facilities under section 3(b) of this chapter), a petition setting forth their objections to the lease rental, including facts showing that the lease rental is not fair and reasonable.

(b) On receipt of the petition, the commission or the court shall fix a time and place for a hearing on whether the lease rental is fair and reasonable. The hearing may not be less than twenty (20) nor more than sixty (60) days after the commission's or the court's receipt of the petition. At least ten (10) days before the date of the hearing, the commission or the court shall mail notice of the hearing to:

- (1) the municipal executive;
- (2) the municipality; and
- (3) the first ten (10) petitioners listed on the petition, at their

usual place of residence.

(c) The decision of the commission or the court as to whether the lease rental is fair and reasonable is final.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.126; P.L.186-1988, SEC.5.

IC 36-9-24-9

Limitations on actions to contest leases

Sec. 9. An action to contest the validity of a lease under this chapter, or to enjoin the performance of any of the terms and conditions of such a lease, may not be instituted later than:

- (1) thirty (30) days after publication of notice under section 8(a) of this chapter; or
- (2) if a petition has been filed with the utility regulatory commission or the court twenty (20) days after the decision of the commission or the court.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.127; P.L.186-1988, SEC.6.

IC 36-9-24-10

Determination of sufficiency by department of environmental management

Sec. 10. A lease under this chapter does not become effective until its provisions for sewage treatment have been found sufficient by the department of environmental management according to rules adopted by the environmental rules board.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.143-1985, SEC.201; P.L.113-2014, SEC.126.

IC 36-9-24-11

Fees; establishment; procedure

Sec. 11. (a) A municipality that leases facilities under this chapter may, by ordinance, establish, bill, and collect fees from the property and users in the area served by the leased facilities. The fees must be sufficient to pay the costs of operation, maintenance, repair, alterations, depreciation, additions, and extensions of the leased facilities, and to pay the lease rental as it becomes due.

(b) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on or in the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of the sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Any other factors the legislative body considers necessary.

(c) After introduction of the ordinance establishing the fees, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which all of the users of the leased facilities and owners of property served or to be served by the facilities may be

heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be published in accordance with IC 5-3-1. The hearing may be adjourned from time to time.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified.

(e) The fees established for any class of users shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(f) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(g) The fees established and collected by the municipality are not subject to the jurisdiction of the utility regulatory commission.

(h) The municipality may collect delinquent fees in the manner provided by IC 36-9-23-31 through IC 36-9-23-34.

As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.64; P.L.23-1988, SEC.128; P.L.186-1988, SEC.7.

IC 36-9-24-12

Tax liability and exemptions

Sec. 12. Facilities leased to a municipality under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of such a lease is subject to all applicable taxes.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.8.

IC 36-9-24-13

Exception from compliance with certain statutes

Sec. 13. Except as specifically required in this chapter, a municipality acting under this chapter need not comply with other statutes concerning the lease and acquisition of facilities by municipalities.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.9.

IC 36-9-24-14

Operation and lease of facilities within one mile of boundaries considered furnishing of sewage and sewer service

Sec. 14. A municipality that leases and operates sewage disposal facilities in an area within one (1) mile outside its corporate boundaries is considered to be furnishing sewage and sewer service in that area for purposes of IC 36-4-3-13.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-25

Chapter 25. Sanitation Department in Certain Cities

IC 36-9-25-1

Application of chapter

Sec. 1. (a) This chapter applies to the following:

(1) A second class city located in a county having a population of more than one hundred eleven thousand (111,000) but less than one hundred fifteen thousand (115,000).

(2) Each municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) in which the legislative body has adopted this chapter by ordinance.

(b) This chapter also applies to each second class city not in such a county in which the legislative body has adopted this chapter by ordinance.

(c) In addition, in a consolidated city, sections 9 through 38 of this chapter apply to the department of public works and the board of public works, subject to IC 36-3-4-23.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.179; P.L.80-1997, SEC.19; P.L.170-2002, SEC.168; P.L.119-2012, SEC.230.

IC 36-9-25-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to a board of sanitary commissioners, or board of public works of a consolidated city.

"Department" refers to a department of public sanitation, or department of public works of a consolidated city.

"District" means the area within the jurisdiction of a department.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-3

Establishment of department; composition of board of commissioners; oaths, surety bonds, and compensation of commissioners

Sec. 3. (a) A department of public sanitation is established as an executive department of the municipality. However, in the case of a district described in subsection (b)(2), the department is established as an executive department of each municipality in the district.

(b) The department is under the control of a board of sanitary commissioners, which is composed as follows:

(1) If the department is established under section 1(a) of this chapter, the board consists of not less than three (3) but not more than five (5) commissioners. All of the commissioners shall be appointed by the municipal executive, unless one (1) commissioner is the municipal engineer. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not

more than three (3) may be of the same political party.

(2) Notwithstanding subdivision (1), if the department is established under section 1(a) of this chapter and the district contains at least one (1) city having a population of less than one hundred thousand (100,000) and at least one (1) town, the board consists of one (1) commissioner from each municipality in the district. The executive of each of those municipalities shall appoint one (1) commissioner. If after all appointments are made the board has fewer than five (5) commissioners, the executive of the municipality with the largest population shall appoint the number of additional commissioners needed to bring the total to five (5). Not more than three (3) of the commissioners may be of the same political party.

(3) If the department is established under section 1(b) of this chapter, the board consists of not less than three (3) commissioners but not more than five (5) commissioners. One (1) commissioner is the city civil engineer. All other commissioners shall be appointed by the city executive. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) of the commissioners may be of the same political party. However, if the department is located in a county having a population of:

(A) more than one hundred five thousand (105,000) but less than one hundred ten thousand (110,000);

(B) more than one hundred eleven thousand (111,000) but less than one hundred fifteen thousand (115,000);

(C) more than one hundred seventy thousand (170,000) but less than one hundred seventy-five thousand (175,000); or

(D) more than one hundred twenty-five thousand (125,000) but less than one hundred thirty-five thousand (135,000);

and the city does not have a city civil engineer, one (1) of the commissioners must be a licensed engineer, appointed by the executive, with at least five (5) years experience in civil or sanitary engineering. In addition, in such a city the commissioners may not hold another public office. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) of the commissioners may be of the same political party.

(c) Before beginning the commissioner's duties, each commissioner shall take and subscribe the usual oath of office. The oath shall be endorsed upon the certificate of appointment and filed with the municipal clerk.

(d) Each commissioner shall also execute a bond in the penal sum of five thousand dollars (\$5,000) payable to the state and conditioned upon the faithful performance of the commissioner's duties and the faithful accounting for all money and property that comes under the commissioner's control. The bond must be approved by the municipal executive.

(e) The appointed commissioners are entitled to a salary of not less than three thousand six hundred dollars (\$3,600) a year during actual construction and not less than six hundred dollars (\$600) a year in other years.

(f) Notwithstanding IC 36-1-8-10, whenever this section requires that the membership of the board of sanitary commissioners not exceed a stated number of members from the same political party, at the time of appointment the appointee must:

- (1) have voted in the two (2) most recent primary elections held by the party with which the appointee claims affiliation; or
- (2) if the appointee did not vote in the two (2) most recent primary elections or only voted in one (1) of those elections, be certified as a member of the party with which the appointee claims affiliation by that party's county chairman for the county in which the appointee resides.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.64; P.L.319-1989, SEC.1; P.L.320-1989, SEC.1; P.L.12-1992, SEC.180; P.L.170-2002, SEC.169; P.L.175-2006, SEC.21; P.L.17-2007, SEC.1; P.L.119-2012, SEC.231.

IC 36-9-25-4

Commissioners; terms of office; vacancies

Sec. 4. (a) The initial terms of the commissioners are as follows:

- (1) If the department is established under section 1(a) of this chapter, the initial terms are one (1), two (2), and three (3) years for the first three (3) commissioners. If additional commissioners are appointed, their initial terms are four (4) years.
- (2) If the department is established under section 1(b) of this chapter, the initial terms of the two (2) appointed commissioners are four (4) and three (3) years respectively. However, if a third commissioner has also been appointed, the commissioner's initial term is two (2) years.

All terms begin on January 1 following the establishment of the department.

(b) As the initial terms expire, successors shall be appointed for four (4) year terms. In a county that is listed in section 3(b)(3) of this chapter, the appointments must be made before January 16 in the year the term begins. If a vacancy occurs on the board, the appointing authority shall appoint a commissioner for the remainder of the term within thirty (30) days after the vacancy occurs.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.65; P.L.320-1989, SEC.2; P.L.12-1992, SEC.181.

IC 36-9-25-5

Commissioners; removal from office; appeals

Sec. 5. (a) A commissioner may not be removed from office except upon charges preferred before the municipal executive and a hearing held on them. The only permissible reasons for removal are neglect of duty and incompetence. The commissioner must be given

at least ten (10) days' notice of the time and place of the hearing and the opportunity to produce evidence and examine and cross-examine witnesses. All testimony shall be given under oath. The municipal executive shall put his findings in writing and file them with the municipal clerk.

(b) If the charges are sustained and the commissioner removed, he may appeal the findings within ten (10) days after the date they are filed with the clerk to the circuit or superior court of the county in which the municipality is located. The commissioner shall file an original complaint against the executive, stating the charges preferred and the findings made. The court shall hear the appeal within thirty (30) days after it is filed without a jury and shall either ratify or reverse the finding of the executive. The judgment of the court is final and an appeal may not be taken.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-6

Commissioners; meetings; officers; quorum; approval of actions; adoption of rules

Sec. 6. (a) Within six (6) months after the date this chapter is adopted by ordinance, or within thirty (30) days after the commissioners are appointed in a county that is listed in section 3(b)(3) of this chapter, the board shall hold a meeting for the purpose of organization. The board shall choose one (1) of its members to be president and another to be vice president, who shall perform the usual duties of those offices. The officers serve for a period of one (1) year or until their successors are elected and qualified. The municipal fiscal officer shall perform the same duties with the funds and accounts of the board as with the funds and accounts of the other executive departments of the municipality, except as otherwise provided in this chapter. The fiscal officer receives no additional compensation for performing these duties.

(b) A majority of the members of the board constitutes a quorum, and the concurrence of a majority is necessary for any action of the board. The board shall hold regular meetings at the times it fixes and may call special meetings at the times and upon the notice that it fixes by rule or resolution. All meetings must be open to the public. The board may adopt the rules that it considers necessary to conduct its meetings and business and to control and manage the property under its jurisdiction.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.66; P.L.12-1992, SEC.182.

IC 36-9-25-7

Certain cities; effect of adoption of chapter; enabling ordinances

Sec. 7. (a) This section applies to cities in a county that is listed in section 3(b)(3) of this chapter. However, subsections (b) and (c) of this section also apply to municipalities that adopt this chapter by ordinance under section 1(a) of this chapter.

(b) This chapter does not affect the enabling ordinances, the duties

of the municipality, or the rights of bondholders with regard to sewage works revenue bonds or other outstanding revenue bonds issued before this chapter was adopted by ordinance.

(c) Adoption of this chapter by ordinance does not affect the system of fees for sewage treatment. All revenue derived from fees shall be applied only to the following purposes:

(1) The administrative expense, operation, construction, and maintenance of sewage works.

(2) The retirement of outstanding revenue bonds and any additional revenue bonds that may be issued for construction of sewage works and improvements, additions, and extensions to them.

(3) The payment of the cost of improvements, additions, and extensions to the extent permitted by the ordinances authorizing the issuance of revenue bonds.

(d) The ordinance adopting this chapter must specify that the district initially includes all territory within the corporate boundaries of the city, including any territory, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the city that has been taken into or has been connected with the public sanitation system of the city in accordance with another statute if the sewage or drainage of that area discharges into or through the sewage system of the city.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.67; P.L.12-1992, SEC.183.

IC 36-9-25-8

Certain cities; enabling ordinances, specifications of purpose; interim board members; prior approval of bonds

Sec. 8. (a) This section applies to cities in a county having a population of more than one hundred twenty-five thousand (125,000) but less than one hundred thirty-five thousand (135,000).

(b) The ordinance adopting this chapter must specify the purpose or purposes for which the district is established, which must be one (1) or more of the following:

(1) To provide for the collection, treatment, and disposal of sanitary sewage and other water-carried wastes of the district.

(2) To provide for the drainage of storm and surface water to relieve sanitary sewers of that water.

(3) To reduce the pollution of watercourses in the district.

(4) To provide for the collection and disposal of trash, garbage, and solid waste.

If not all of these purposes are listed in the ordinance, one (1) or more of the remaining purposes may, by subsequent ordinance, be added to the purposes of the district.

(c) After adoption of the ordinance, three (3) interim members of the board shall be appointed for terms until the January 1 following the adoption. On the January 1 following the adoption, members shall be appointed as provided in sections 3 and 4 of this chapter.

(d) Bonds of the district may not be sold without the prior

approval of the city legislative body. In addition, the legislative body must approve all budgets and tax levies of the district.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.68; P.L.12-1992, SEC.184; P.L.170-2002, SEC.170; P.L.119-2012, SEC.232.

IC 36-9-25-9

Jurisdiction of board

Sec. 9. The board shall manage and control all sewage works of the district. The board has concurrent power with the works board of the municipality to construct, reconstruct, maintain, repair, and regulate the use of all connecting and intercepting sewers. The board shall collect and remove garbage, ashes, and other waste materials to prevent the pollution of watercourses within the district and to protect the public health. The board may purchase, acquire, construct, reconstruct, operate, repair, and maintain all sewage works.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-10

Powers of board

Sec. 10. In performing its duties the board may do the following:

- (1) If needed for sewage works, condemn, appropriate, lease, rent, purchase, and hold any real or personal property within the district or within five (5) miles outside the boundaries of the district.
- (2) Enter upon any lots or lands for the purpose of surveying or examining them to determine the location of any sewage works or other structures, roads, levees, or walls connected with or necessary for the use or operation of the facilities.
- (3) Design, order, contract for, construct, reconstruct, and maintain the sewage works.
- (4) Build or have built all roads, levees, walls, other structures, or lagoons that may be desirable in connection with sewage works and make improvements to the grounds and premises under its control, including the erection and operation of a plant for the removal of sand and gravel from the grounds.
- (5) Compel the owners, operators, or lessees of all factories, shops, works, plants, or other structures to treat, purify, or eliminate from the sewage and trade waste of the premises any ingredients that interfere with the successful operation of the sewage works. It may compel the owners, operators, or lessees of the premises located on a watercourse to direct an excessive flow of water into the watercourse.
- (6) Review and approve plans for privately constructed plants for the treatment or elimination of trade waste. This is to insure that an owner, operator, or lessee of a house, factory, shop, works, plant, or other structure that may be directly or indirectly connected with sewers emptying into the sewage works does not construct a purification plant, machine, or other device for eliminating or treating the trade waste from those places for the

purpose of eliminating ingredients that would harm the sewage works until the plans have been submitted to and approved by the board. After plans have been submitted to the board, it may reject them in their entirety or order changes to be made that include its supervision and regulation of the operation. An appeal may be taken from the decision of the board rejecting the plans submitted or ordering changes by the owner, operator, or lessee of a proposed private plant, in the same manner as appeals from the works board as far as applicable.

(7) Build or have built a plant or plants and all appurtenances for the treatment of sludge, pressing of sludge, or converting sludge into marketable fertilizer.

(8) Sell any byproduct from the sewage works, or furnish any byproduct free for the use of the municipality or for other public uses, with revenue derived from the sale above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.

(9) Compel the owners, lessees, or agents in possession of lots or land from which sewers discharge sewage or drainage and pollute a watercourse or body of water or constitute a menace to public health and welfare to connect the sewers with drains leading directly or indirectly into sewage works regulating the use and assessing reasonable charges.

(10) Construct or have constructed regulating devices at the junction of combined sewers with intercepting sewers to regulate the discharge into the intercepting and connecting sewers to prevent the pollution of streams or bodies of water or a menace to the public health and welfare.

(11) Construct, add to, reconstruct, or maintain an incinerating or reduction plant or other plants for the conversion, destruction, or disposal of garbage, filth, ashes, dirt, and rubbish. The board may operate the plant in connection with sewage works, and sell any byproducts derived from the garbage, filth, ashes, or rubbish, including sand and gravel taken from lands under the control of the board at prices that are determined by the board, or furnish it free to the municipality or for other public uses, with revenue derived above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.

(12) Take charge of all real property, belonging to the municipality and under the control of the works board, suitably located for sewage works if the board demands the works board, subject to contracts, to relinquish and transfer control of real and personal property used by the works board for the collection and removal of garbage and ashes. The transfer of personal property must be made by resolution adopted by the works board describing the property, with a copy of the resolution to be delivered to the board and made a matter of record in the minutes of the proceedings of the board.

(13) Collect and remove, or contract for the collection and removal of, all garbage, ashes, dead animals, refuse, and wastes from domestic premises, and construct or have constructed stations, including barns, garages, sheds, blacksmith shops, dumps, incinerators, and all other useful or necessary improvements for this purpose. This includes the power to collect and remove soil and other sewage in areas not provided with sewers, and then to discharge or dispose of it into sewage works.

(14) Enter into contracts in the name of the municipality, with the approval of the executive as provided by law. However, in the case of a district described in section 3(b)(2) of this chapter, the board may enter into contracts in the name of:

(A) a municipality in the district, with the approval of the executive of the municipality; or

(B) the district, with the approval of the board.

(15) Employ and pay for all engineering, architectural, legal, and other professional services needed in carrying out this chapter, including determining the number, prescribing the duties, and fixing the compensation for all its engineers, chemists, attorneys, bacteriologists, surveyors, inspectors, clerks, stenographers, laborers, supervisors, and other employees as provided by law for other executive departments of the municipality.

(16) Adopt resolutions, rules, and bylaws that are necessary to carry out this chapter, including repealing or amending them consistent with this chapter.

(17) Prepare a schedule of reasonable service fees and collect them from persons who own, lease, or possess or control as tenants or as agents lots or lands located outside the boundaries of the district if the lots or lands are benefited by connection into the sanitary sewer system of the district as described in this chapter, with the proceeds from sewage connections and treatment service credited to the general fund of the district for general use and maintenance purposes. The fees may be fixed, repealed, or amended, or the service discontinued, by the board at its discretion.

(18) Sue or be sued in the name of the municipality, with payment for obligations and of a judgment against the municipality in an action to be made solely from funds of the department and its district that may be available for this purpose. In the case of a district described in section 3(b)(2) of this chapter, the board may sue or be sued in the name of any municipality in the district or in the name of the district. If a judgment is entered against a municipality in the district, payment of obligations and the judgment shall be made solely from available funds of the department or the district.

(19) Pay for services rendered or for any other obligations incurred by the board while executing its powers, or pay any judgments, including interest and costs, by issuing and selling

the bonds of the district, or obtaining temporary loans or levying taxes as authorized by this or other statutes for any other purpose.

(20) Lease, rent, purchase, and hold real or personal property more than five (5) miles outside the boundaries of the district if the property is needed:

(A) to store sludge;

(B) to convert sludge into marketable fertilizer; or

(C) by the district to conduct activities that are related to activities described in clause (A) or (B).

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.175-2006, SEC.22.

IC 36-9-25-11

Fees; persons obligated to pay; establishment by resolution; public hearing required; fee schedule; change of fees; nonpayment of fees; penalties and liens; cost recovery; property not occupied by owner

Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and, except as otherwise provided in an ordinance provision described in subsection (l), the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the

office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the board may recover, in a civil action in the name of the municipality, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee from:

- (1) the delinquent user; or
- (2) the owner of the property;

subject to any ordinance described in subsection (l).

(g) Except as otherwise provided in subsection (h) or in an ordinance provision described in subsection (l), fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the:

- (1) penalties under subsections (f) and (g); or
- (2) alternative penalty available under section 11.5 of this chapter;

a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

- (1) established under this subsection or any other law; and
- (2) used to provide financial assistance under section 42 of this

chapter;
is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

(l) For purposes of this subsection, "municipal legislative body" refers to the legislative body of each municipality in the district, in the case of a district described in section 3(b)(2) of this chapter. This subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this chapter, the municipal legislative body may include one (1) or more of the following provisions with respect to property occupied by someone other than the owner of the property:

(1) That fees for the services rendered by the sewerage system to the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:

(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) That the fees for the services rendered by the sewerage system to the property are payable by the person occupying the property if one (1) of the following conditions is satisfied:

(A) Either the property owner or the person occupying the property gives to the board written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:

(i) is executed by the property owner and the person occupying the property;

(ii) identifies the person occupying the property by name; and

(iii) indicates that the person occupying the property is responsible for paying the fees assessed by the board with respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records maintained by the board for the property otherwise indicate that:

(i) the property is occupied by someone other than the owner; and

(ii) the person occupying the property is responsible for paying the fees.

(C) The property owner or the person occupying the property

satisfies any other requirements or conditions that the municipal legislative body includes in the ordinance.

(3) That fees assessed against the property for the services rendered by the sewerage system to the property do not constitute a lien against the property, notwithstanding subsection (g), and subject to any requirements or conditions set forth in the ordinance.

This subsection may not be construed to prohibit a municipal legislative body from including in an ordinance adopted under this chapter any other provision that the municipal legislative body considers appropriate.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.65; Acts 1982, P.L.77, SEC.22; P.L.55-1988, SEC.13; P.L.64-1989, SEC.3; P.L.175-2006, SEC.23; P.L.168-2009, SEC.10; P.L.196-2014, SEC.8.

IC 36-9-25-11.1

Deposits to secure payment of fees

Sec. 11.1. In a consolidated city, the board may also require the users of the sewage service to make a reasonable deposit in advance of a connection or reconnection to the sewerage system to secure payment of the fees. The deposit may not exceed thirty-three percent (33%) of the estimated annual cost of the service for a particular user.
As added by P.L.349-1985, SEC.1.

IC 36-9-25-11.2

Fees; notice of delinquency

Sec. 11.2. If a fee established under section 11 of this chapter is not paid within thirty (30) days after it is due, a copy of any notice of delinquency sent to a delinquent user who is a tenant must be sent to the owner of the property occupied by the tenant at the latest address of the owner as shown on the property tax records of the county in which the property is located.
As added by P.L.237-1997, SEC.1.

IC 36-9-25-11.3

Procedure for setting fees in certain districts

Sec. 11.3. (a) This section applies to a board and district created under section 3(b)(2) of this chapter.

(b) For purposes of this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) For purposes of this section, "fees" means fees:

- (1) for the treatment and disposal of sewage and other waste discharged into the sewer system of the district; and
- (2) related to property that is subject to full taxation.

(d) Fees do not take effect until the fees are:

- (1) approved by the board; and
- (2) either:
 - (A) approved in an ordinance adopted by the legislative body of each municipality in the district; or

(B) established by the commission under this section.

(e) Not earlier than thirty (30) days after fees are approved under subsection (d)(1), the board may petition the commission to establish the fees under:

- (1) the procedures set forth in IC 8-1-2; and
- (2) subsection (f).

(f) The commission shall observe the following requirements when establishing fees for a district:

(1) Fees must be sufficient to enable the district to furnish reasonably adequate services and facilities.

(2) Fees for a service must be nondiscriminatory, reasonable, and just and must produce sufficient revenue, together with taxes levied under this chapter, to do the following:

(A) Pay all legal and other necessary expenses incident to the operation of the utility, including the following:

- (i) Maintenance costs.
- (ii) Operating charges.
- (iii) Upkeep.
- (iv) Repairs.
- (v) Depreciation.
- (vi) Interest charges on bonds or other obligations, including leases.

(B) Provide a sinking fund for the liquidation of bonds or other obligations, including leases.

(C) Provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the board. The amount may not exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals, if any.

(D) Provide adequate money for working capital.

(E) Provide adequate money for making extensions and replacements to the extent not provided for through depreciation in clause (A).

(F) Provide money for the payment of taxes that may be assessed against the district.

(3) The fees charged by the district must produce an income sufficient to maintain district property in a sound physical and financial condition to render adequate and efficient service. Fees may not be too low to meet these requirements.

(4) If the board petitions the commission under subsection (e), the fees established must produce a reasonable return on the sanitary district facilities.

(5) Fees other than fees established for a municipally owned utility taxed under IC 6-1.1-8-3 must be sufficient to compensate the municipality for taxes that would be due the municipality on the utility property located in the municipality if the property were privately owned.

(6) The commission must grant a request by the board to postpone an increase in fees until after the occurrence of a future event.

(g) The board may transfer fees in lieu of taxes established under subsection (f)(5) to the general fund of the appropriate municipality.

(h) Fees established by the commission under this section take effect to the same extent as if the fees were approved by an ordinance adopted by the legislative body of each municipality in the district.
As added by P.L.175-2006, SEC.24.

IC 36-9-25-11.5

Discontinuance of water service; disputed bills; notice; liability of utility

Sec. 11.5. (a) As an alternative to the penalties provided in section 11 of this chapter, the board may require that the water utility providing water service to a delinquent user discontinue service until payment of all overdue user fees, together with any penalties provided in this section, are received by the municipality.

(b) If a fee established is not paid within one (1) monthly billing cycle after it is due, the board or its designee shall send notice to the delinquent user stating:

- (1) the delinquent amount due, together with any penalty;
- (2) that water service may be disconnected if the user continues not to pay the delinquency and any penalty; and
- (3) the procedure for resolving disputed bills.

The municipality shall provide by ordinance a procedure for resolving disputed bills that includes an opportunity for a delinquent user to meet informally with designated personnel empowered to correct incorrect charges. Payment of a disputed bill and penalties by a user does not constitute a waiver of rights to subsequently claim and recover from the municipality sums improperly charged to the user.

(c) If the user fails to pay the delinquent amount or otherwise resolve the charges as specified in subsection (a), the board or its designee shall give written notice to the water utility serving the user to discontinue water service to the premises designated in the notice until notified otherwise. The notice must identify the delinquent sewer user in enough detail to enable the water utility to identify the water service connection that is to be terminated. Upon receipt of the notice, the water utility shall disconnect water service to the user.

(d) Water service may not be shut off under this section if a local board of health has found and certified to the municipality that the termination of water service will endanger the health of the user and others in the municipality.

(e) The water utility that discontinues water service in accordance with an order from the board or its designee does not incur any liability except to the extent of its own negligence or improper conduct.

(f) If the water utility does not discontinue service within thirty (30) days after receiving notice from the municipality, the utility is liable for any user fees incurred thirty (30) days after receipt of notice to discontinue water service and that are not collected from the user.
As added by P.L.349-1985, SEC.2. Amended by P.L.55-1988,

SEC.14; P.L.64-1989, SEC.4; P.L.93-1993, SEC.9; P.L.98-1993, SEC.6.

IC 36-9-25-11.7

Overdue user fees; ordinance to expense as bad debts

Sec. 11.7. A municipality may, by ordinance, establish a procedure to expense as bad debt overdue user fees, together with any penalties provided under this chapter, if the amount of fees and penalties involved does not exceed twenty-five dollars (\$25).

As added by P.L.55-1988, SEC.15.

IC 36-9-25-12

Basis of fees; measurement of water and sewage usage

Sec. 12. (a) The fees for the treatment and disposal of sewage may be based on:

- (1) a flat charge for each sewer connection;
- (2) the amount of water used on the premises;
- (3) the number and size of water outlets on the premises;
- (4) the amount, strength, or character of sewage discharged into the sewers;
- (5) the size of sewer connections; or
- (6) any combination of these factors or other factors that the board determines necessary in order to establish just and equitable rates and charges.

(b) The board may enter into contracts with a water utility furnishing water service to users or property served in the district relative to:

- (1) ascertaining the amount of water consumed;
- (2) the computation of the amount of charge to be billed to each user or property served;
- (3) the billing and collection of the amounts; and
- (4) the discontinuance of water service to delinquent users as provided in section 11.5 of this chapter.

(c) As an alternative to subsection (b), the board may require a water utility furnishing water service to users or property served in the district to perform the functions listed in subsection (b). If the water utility and the board do not agree upon the reasonable compensation to be paid to the water utility for the services described in subsection (b), the board or the water utility may apply to the utility regulatory commission to establish the reasonable compensation for the services. Upon receipt of an application, the utility regulatory commission, after notice to the water utility and the board and after a hearing, shall establish the reasonable compensation to be paid for the services. The water utility shall then render the services described in return for the compensation fixed.

(d) If a person owns or occupies real property that is connected to the sewage works and either directly or indirectly uses water obtained from a source other than a water utility that is not measured by a water meter acceptable to the board, then the board may require the person, at his own expense, to furnish, install, and maintain a water

or sewage measuring device acceptable to the board.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.349-1985, SEC.3; P.L.23-1988, SEC.129.

IC 36-9-25-13

Authorized actions; regulation of kinds or amounts of chemicals and strengths of waste and other substances detrimental to sewage works

Sec. 13. (a) The board, in the name of the municipality, may bring an action to recover damages for:

- (1) the breach of an agreement, express or implied, relating to the construction, management, or repair of sewage works under its control, including real property; or
- (2) injury to the personal or real property used in the sanitary disposal of sewage in a municipality located within the district.

(b) The board may recover possession of property, may bring an action for the specific performance of an agreement, and may use, in the name of the municipality, any legal or equitable remedy necessary to protect and enforce the rights and perform the duties of the department.

(c) The board may establish limits on the kinds or amounts of chemicals and the strength of the waste or other substances the board considers detrimental to the sewage works. If a person discharges sewage into the sewage works that exceeds limits set by the board, the board may order the person to cease using the sewage works upon a hearing with notice. However, if evidence indicates a public health hazard is being created, the board may summarily order the person to cease without notice or hearing. Orders of the board may be enforced by bringing an action to enjoin discharges into the sewer works in any court in the county having jurisdiction to hear equity actions. A person aggrieved by an order of the board is entitled to appeal the order to the circuit or superior court of the county in which the city is located. If an order is given without notice, an appeal must be perfected within ten (10) days after receipt of the order or the right to appeal is considered waived.

(d) The board of a department in a district described in section 3(b)(2) of this chapter may bring an action in the name of:

- (1) a municipality in the district with the approval of the executive of the municipality; or
- (2) the district, with the approval of the board.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.175-2006, SEC.25.

IC 36-9-25-14

Special taxing districts; incorporation of territory upon request; sewer service agreements

Sec. 14. (a) As to each municipality to which this chapter applies:

- (1) all the territory included within the corporate boundaries of the municipality; and
- (2) any territory, town, addition, platted subdivision, or

unplatted land lying outside the corporate boundaries of the municipality that has been taken into the district in accordance with a prior statute, the sewage or drainage of which discharges into or through the sewage system of the municipality; constitutes a special taxing district for the purpose of providing for the sanitary disposal of the sewage of the district in a manner that protects the public health and prevents the undue pollution of watercourses of the district.

(b) Upon request by:

(1) a resolution adopted by the legislative body of another municipality in the same county; or

(2) a petition of the majority of the resident freeholders in a platted subdivision or of the owners of unplatted land outside the boundaries of a municipality, if the platted subdivision or unplatted land is in the same county;

the board may adopt a resolution incorporating all or any part of the area of the municipality, platted subdivision, or unplatted land into the district.

(c) A request under subsection (b) must be signed and certified as correct by the secretary of the legislative body, resident freeholders, or landowners. The original shall be preserved in the records of the board. The resolution of the board incorporating an area in the district must be in writing and must contain an accurate description of the area incorporated into the district. A certified copy of the resolution, signed by the president and secretary of the board, together with a map showing the boundaries of the district and the location of additional areas, shall be delivered to the auditor of the county within which the district is located. It shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) In addition, upon request by ten (10) or more interested resident freeholders in a platted or unplatted territory, the board may define the limits of an area within the county and including the property of the freeholders that is to be considered for inclusion into the district. Notice of the defining of the area by the board, and notice of the location and limits of the area, shall be given by publication in accordance with IC 5-3-1. Upon request by a majority of the resident freeholders of the area, the area may be incorporated into the district in the manner provided in this section. The resolution of the board incorporating the area into the district and a map of the area shall be made and filed in the same manner.

(e) In addition, a person owning or occupying real property outside the district may enter into a sewer service agreement with the board for connection to the sewage works of the district. If the agreement provides for connection at a later time, the date or the event upon which the service commences shall be stated in the agreement. The agreement may impose any conditions for connection that the board determines. The agreement must also provide the amount of service charge to be charged for connection if the persons are not covered under section 11 of this chapter, with the amount to be fixed by the board in its discretion and without a hearing.

(f) All sewer service agreements made under subsection (e) or (after June 30, 2013) a signed memorandum of the sewer service agreement shall be recorded in the office of the recorder of the county where the property is located. The agreements run with the property described and are binding upon the persons owning or occupying the property, their personal representatives, heirs, devisees, grantees, successors, and assigns. Each agreement that is recorded, or each agreement of which a signed memorandum is recorded, and that provides for the property being served to be placed on the tax rolls shall be certified by the board to the auditor of the county where the property is located. The certification must state the date the property is to be placed on the tax rolls, and upon receipt of the certification together with a copy of the agreement, the auditor shall immediately place the property certified upon the rolls of property subject to the levy and collection of taxes for the district. An agreement may provide for the collection of a service charge for the period services are rendered before the levy and collection of the tax.

(g) Except as provided in subsection (j), sewer service agreements made under subsection (e) must contain a waiver provision that persons (other than municipalities) who own or occupy property agree for themselves, their executors, administrators, heirs, devisees, grantees, successors, and assigns that they will:

- (1) neither object to nor file a remonstrance against the proposed annexation of the property by a municipality within the boundaries of the district;
- (2) not appeal from an order or a judgment annexing the property to a municipality; and
- (3) not file a complaint or an action against annexation proceedings.

(h) This subsection does not affect any rights or liabilities accrued or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, a waiver of the right to remonstrate under subsection (g) is binding as to an executor, administrator, heir, devisee, grantee, successor, or assign of a party to a sewer service agreement under subsection (g) only if the executor, administrator, heir, devisee, grantee, successor, or assign:

- (1) has actual notice of the waiver; or
- (2) has constructive notice of the waiver because the sewer service agreement or a signed memorandum of the sewer service agreement stating the waiver has been recorded in the chain of title of the property.

(i) This section does not affect any sewer service agreements entered into before March 13, 1953.

(j) Subsection (g) does not apply to a landowner if all of the following conditions apply:

- (1) The landowner is required to connect to a sewer service because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of service or connection to the sewer service are paid by a person other than the landowner or the municipality.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.66; P.L.172-1995, SEC.6; P.L.243-2013, SEC.4.

IC 36-9-25-15

Special taxing districts; incorporation of territory by board

Sec. 15. (a) The board, on its own initiative, whenever any territory, by its contour and watershed, or because of the extension of sewers by the municipality, is capable of draining sewage into or connecting with the sanitary system, may incorporate any territory, whether platted or unplatted, into the district by adopting a resolution to that effect describing the reason it is to be included. A certified copy of the resolution is conclusive evidence in any proceeding that the territory described was properly incorporated and constitutes a part of the district, subject to this chapter.

(b) Immediately after the passage of a resolution under subsection (a), a notice stating the time and place for a public hearing on the resolution shall be published in accordance with IC 5-3-1. By the date and time of the hearing any affected person may file in the office of the board a written remonstrance to having his lands included. The board shall either confirm, modify, or rescind the resolution after the hearing. An appeal may be taken from the decision by one (1) or more persons considering themselves aggrieved or injuriously affected, as long as those appealing have filed written remonstrances, as provided in this subsection, by filing their complaint within thirty (30) days after the final decision of the board. The appeal shall be governed by IC 34-13-6.

(c) If the court is satisfied upon hearing an appeal under subsection (b):

(1) that less than seventy-five percent (75%) of the persons owning property in the territory sought to be incorporated in the district have remonstrated; and

(2) that the incorporation of the territory into the district will be for its interest and will cause no manifest injury to the persons owning property in the territory;

the court shall so find and the incorporation shall be ordered. If the court is satisfied that seventy-five percent (75%) or more of the persons owning property in the territory sought to be incorporated have remonstrated, then the incorporation may not be ordered unless the court further finds from the evidence that unless it is incorporated, the health and welfare of residents of the territory or of the adjoining lands will be materially affected and that the safety and welfare of the inhabitants and property of other persons and property will be endangered.

(d) Pending an appeal under subsection (b) and during the time within which the appeal may be taken, the territory sought to be incorporated is not a part of the district. Upon the determination of the appeal, the judgment must particularly describe the resolution

upon which the appeal is based. The clerk of the court shall deliver a certified copy of the judgment to the secretary of the board, who shall record it in the minute book of the board and make a cross-reference to the page upon the margin where the original resolution was recorded. If a decision is adverse to an incorporation, further proceedings may not be taken by the board to incorporate that territory within the district for a period of one (1) year after the rendition of the judgment.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.67; P.L.1-1998, SEC.216.

IC 36-9-25-16

Tax levies; liability of disannexed and newly added territory

Sec. 16. (a) If any bonds of the district are outstanding, and until they are fully paid, all property included within the district at the time the bonds were issued and sold remains subject to taxes levied and for its proportion of the indebtedness, notwithstanding that the property and territory may have been disannexed from the district.

(b) Any property in territory added to the district, as a condition of the special benefits it receives, becomes liable for its proportion of all taxes levied to pay all bonds of the special taxing district that are either outstanding or are later issued and sold. The proportion of taxation shall be determined in the same manner as when territory is annexed to a municipality under IC 36-4-3.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-17

Payment of preliminary expenses

Sec. 17. (a) All preliminary expenses actually incurred by the board in providing necessary records, giving notice, employing clerks, engineers, attorneys, and other employees, making surveys, and all other expenses that must be paid before the issue and sale of the bonds under section 27 of this chapter, and before the collection of taxes levied under section 32 of this chapter, shall be met and paid according to this section. The board shall, from time to time, certify items of expense to the municipal fiscal officer, directing him to pay those amounts. The fiscal officer shall at once draw his warrant, with the warrant to be paid out of the unappropriated part of the general fund of the municipality, without a special appropriation being made by the municipal legislative body.

(b) If there is no unappropriated money in the general fund, the fiscal officer shall recommend to the legislative body either the temporary transfer from other funds of the municipality of a sufficient amount to meet the items of expense, or the making of a temporary loan for this purpose. The legislative body shall, at once, make the transfer or authorize the temporary loan in the same manner that other temporary loans are made by the municipality. However, the fund or funds of the municipality from which payments are made must be fully reimbursed and repaid by the board:

(1) out of the first proceeds of the sale of bonds to the extent

that expenses paid are chargeable to the cost of acquiring land or the construction of a work under a resolution adopted and confirmed under section 18 of this chapter; or

(2) out of the fund raised by taxation under section 32 of this chapter to the extent that expenses paid are in the nature of a general expense of the board.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-18

Findings; preparation of general plans in connection with project; declaratory resolutions; adoption; remonstrance; hearings and appeals

Sec. 18. (a) If upon investigation it is found by the board of a municipality located on or near a watercourse that:

(1) the watercourse is being polluted by the discharge of sewage, drainage, or other harmful matter from the sewage or drainage systems of the municipality;

(2) a system of sewage disposal is necessary for the public health and welfare; and

(3) the construction of a system for the disposal of the sewage and drainage of the territory will be of public utility and benefit; the board shall have prepared general plans for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also have prepared separate descriptions of all real property and of all personal property affected, and shall determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any part of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.

(b) When general plans under subsection (a) have been prepared by the board, it shall adopt a resolution declaring that, upon investigation, it has been found:

(1) that the watercourse particularly described in the resolution is being polluted by the discharge of sewage, drainage, or other harmful matter accumulating within the boundaries of the district; and

(2) that it is necessary for the public health and welfare and will be of public utility and benefit to construct and maintain sewage works to prevent the pollution of the watercourse, and, for that purpose, to appropriate the property described.

The board shall adopt all general plans and estimates in the resolution, which must be open to inspection by all persons interested in or affected by the appropriation of property or the construction of the work.

(c) Upon the adoption of the resolution, the board shall, in accordance with IC 5-3-1, publish notice of:

(1) the adoption; and

(2) the fact that general plans and estimates have been prepared and can be inspected.

The notice must name a date on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings and when it will determine the public utility and benefit of the project. A similar notice shall be mailed to each owner of land to be appropriated under the resolution. If a nonresident owner's residence is unknown to the board, then he is considered to have been notified of the pendency of the proceedings by the publication of notice. All persons affected in any manner by the proceeding, including all taxpayers in the district, are considered to be notified of the pendency of the proceedings and of all subsequent acts, hearings, adjournments, and orders of the board by the original notice by publication.

(d) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased, to be purchased, or to be appropriated or damaged to give a description of the entire tract by metes and bounds whether the property is composed of one (1) or more lots or parcels and whether it is owned by one (1) or more persons. If the land or a part of it is to be acquired by purchase, the resolution must also state the maximum proposed cost.

(e) The board may, at any time before the adoption of the resolution, obtain from the owner or owners of the land an option for its purchase or may enter into a contract for its purchase upon terms and conditions that the board considers best. The option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution and to the condition that the land may be paid for only out of the special fund resulting from the sale of sanitary district bonds as provided in this chapter.

(f) The title to any land, rights-of-way, or other property acquired under the resolution, whether by purchase or by appropriation, does not vest in the municipality until it is paid for out of the special fund created by the sale of bonds. Neither an indebtedness nor an obligation of any kind is incurred by the municipality in its corporate capacity because of the acquisition of land, rights-of-way, or other property. All land, rights-of-way, or other property acquired shall be held by the municipality in trust for sanitary purposes for the use and benefit of the district and for the general public.

(g) At or before the time fixed for the hearing, an owner of land, rights-of-way, or other property to be appropriated under the resolution or injuriously affected, including any person owning real or personal property located within the boundaries of the district, may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances that have been filed. After considering them, the board shall take final action

determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution. The final action shall be recorded, and is final and conclusive upon all persons. However, a person who has remonstrated in writing as provided in this subsection and who is aggrieved by the decision of the board, may, within ten (10) days, take an appeal to the superior court of the county in which the district is located.

(h) The remonstrator shall file in the office of the clerk of the court a copy of the order of the board and his remonstrance, together with his bond conditioned to pay the costs of the appeal if the appeal is determined against him. The only ground of remonstrance that the court has jurisdiction to hear on appeal is whether it will be of public utility and benefit to establish and construct the proposed sewage works described in the resolution. The burden of proof is on the remonstrator. The cause shall be summarily tried by the court without a jury as other civil cases are tried. All of the judges of the court shall sit in the trial. All remonstrances upon which an appeal is taken shall be consolidated and heard as one (1) cause of action by the court. The cause shall be heard and determined by the court within thirty (30) days after the time of the filing of the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall either confirm the final action of the board or sustain the remonstrance. The judgment of the court is final and conclusive upon all persons, and an appeal may not be taken from the judgment of the court.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.68; P.L.38-1984, SEC.4; P.L.17-1985, SEC.26.

IC 36-9-25-19

Construction of sewage works; special tax

Sec. 19. After final action of the board or of the court confirming the resolution in its original or a modified form, all property located within the boundaries of the district is subject to a special tax to provide money to pay the total cost of the construction of the sewage works, including the acquisition of all necessary land or rights-of-way as described in the resolution of the board and all necessary incidental expenses. The special tax constitutes the amount of benefits resulting to the property from the proceedings and shall be levied as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-20

Construction of sewage works; condemnation; list of affected property and owners

Sec. 20. If the resolution provides for the appropriation of property or rights-of-way, after final action by the board or by the court on appeal, the board shall have prepared a list of all the owners or holders of property and of interests sought to be taken or that will be injuriously affected. The list must also show with reasonable certainty a description of the property to be appropriated or

injuriously affected belonging to those persons or owners, and this certainty in names and descriptions need not exceed that required in the assessment of taxes.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-21

Construction of sewage works; condemnation awards; notification of owners

Sec. 21. (a) After completion of the list, the board shall consider, determine, and award the damages sustained by the owners of the parcels of land or rights-of-way required to be taken and appropriated or that will be injuriously affected. When the awards are completed, the board shall have a written notice served upon the owner of each piece of property, showing the amount of the award, by leaving a copy at his last usual place of residence in the municipality or county or by delivering the copy to the owner personally.

(b) If the person is a nonresident, or if his residence is unknown, he shall be notified by publication in accordance with IC 5-3-1. The notice must name a date on which the board shall receive or hear remonstrances from persons regarding the amount of their respective awards of damages. Persons not included in the lists of awards, but claiming to be entitled to them, are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board as provided in section 18 of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.69.

IC 36-9-25-22

Construction of sewage works; condemnation awards; mentally incompetent persons

Sec. 22. (a) If a person having an interest in land affected by the proceedings is mentally incompetent or under eighteen (18) years of age, the board shall certify that fact to its attorney.

(b) The attorney shall apply to the proper court and secure the appointment of a guardian for that person. The board shall then give notice to the guardian, who shall appear and protect the interest of the protected person. However, if the mentally incompetent person or person under eighteen (18) years of age already has a guardian, the notice may be served upon that guardian. The requisites of notice to the guardian are the same as for other notices.

(c) If there are defects or irregularities in the proceedings with respect to one (1) or more interested persons, they do not affect the proceedings unless they touch the interests or property of the person or persons and do not affect any other person. If a defect does exist, supplementary proceedings may be had in order to supply them.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.33-1989, SEC.128.

IC 36-9-25-23

Construction of sewage works; condemnation awards;

remonstrances; hearings

Sec. 23. (a) A person notified or considered to be notified under the preceding sections of this chapter may appear before the board on the day fixed for hearing remonstrances regarding awards and remonstrate in writing against them. All persons appearing before the board who have an interest in land or rights-of-way to be appropriated or injuriously affected must be given a hearing.

(b) After the remonstrances have been received and the hearing held, the board shall either sustain the awards or modify the awards by increasing or decreasing them.

(c) A person remonstrating in writing who is aggrieved by the decision of the board may, within ten (10) days after the decision, take an appeal to the circuit or superior court in the county in which the municipality is located. The appeal affects only the amount of the award of the person appealing.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-24**Construction of sewage works; condemnation awards; appeals**

Sec. 24. (a) An appeal may be taken by filing an original complaint in court against the board stating the action of the board regarding the award and stating the facts relied upon as showing an error on the part of the board. The court shall hear the matter of the award de novo and confirm, decrease, or increase the award. The cause shall be tried by the court without a jury as other civil cases are tried.

(b) All appeals shall be heard and determined by the court within thirty (30) days after the appeal is filed. The plaintiff in the appeal may recover costs only if the court increases the amount of damages awarded in favor of the property owner by ten percent (10%) or more.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.317, SEC.24.

IC 36-9-25-25**Construction of sewage works; condemnation awards; manner of payment**

Sec. 25. (a) The board shall, upon the completion of the award of damages or upon the determination of appeals taken, make out certificates for the proper amounts and in favor of the proper persons. Upon the presentation of the certificate to the municipal fiscal officer, the person is entitled to the amount due out of the separate and specific fund derived from the sale of bonds provided in section 27 of this chapter. The payments may not be made from other sources or funds.

(b) Certificates or vouchers shall, whenever practical, be actually tendered to the person entitled to them. If this is impractical, they shall be kept for the persons in the office of the board. The making and filing of the certificates constitute valid and effectual tender to the person entitled to them at the time or as soon as there is sufficient

money to pay them. They shall be delivered to him on request.

(c) In case of dispute or doubt as to which person is entitled to the money, the board shall make out the certificate in favor of the attorney appointed by the board for the use of persons entitled to it. The attorney shall then draw the money and pay it into the court in a proceeding requiring the various claimants to interplead and have their respective rights determined.

(d) If an injunction is obtained because damages have not been paid or tendered, the board may tender the certificate for the amount with interest from the time of entry upon the property if entry has been made, plus all accrued costs. The injunction shall then be disposed of, if there is sufficient money to pay the certificate. The pendency of an appeal as provided in section 24 of this chapter does not affect the validity of a tender made under this section, but the board may enter upon and take possession of the property in question.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-26

Construction of sewage works; notice of confirmation of resolution; bids; contracts

Sec. 26. (a) If the board, or the court hearing an appeal, finally confirms the resolution, the board shall have published, in accordance with IC 5-3-1, a notice of the general nature of the work and of the fact that detailed plans, drawings, and specifications are on file in the office of the board.

(b) The board may advertise for and receive construction bids at any time after confirming the resolution. The board shall require each bidder to deposit with his bid a certified check or satisfactory bond by an incorporated surety company in good standing and qualified to do business in Indiana in an amount that the board determines to be at least sufficient to insure the execution of the contract for which the bid is made. Each bidder shall also file with his bid an affidavit that he has not, directly or indirectly, entered into any combination, collusion, understanding, or agreement with another bidder to maintain the price of the work or contract, to prevent another bidder from bidding, or to induce a bidder to refrain from bidding on the contract or work. The affidavit must also state that the bidding is made without regard to any other bidder and without any agreement, understanding, or combination, either directly or indirectly, with any other persons concerning the bidding.

(c) If, after a contract has been let, it appears that the successful bidder is guilty of collusion, combination, understanding, or agreement, as defined in the affidavit, the successful bidder forfeits the contract and the work shall be relet by the board. The board may impose conditions upon the bidders regarding bond surety, guaranteeing the good faith and responsibility of the bidders and the faithful performance of the work according to contract, keeping the work in repair for a given length of time, or for another purpose. The board may reject any bids, but if it does reject all bids notices must

be published as originally required before other bids may be received.

(d) The board may let part of the proposed work under different contracts. A contract may not be let at a bid higher than the estimate of cost of the work to be performed under the contract. However, the board may make a new estimate of the cost of the work at any time after the adoption of the resolution required by section 18 of this chapter and before the advertising for the receipt of bids for the construction of the work. If a new estimate is made, notice shall be given by publication in accordance with IC 5-3-1 naming a date when a public hearing will be held to determine the public utility of the new estimate.

(e) The contracts must expressly state that payments for all work shall be made only from the special fund derived from the proceeds of bonds authorized for this purpose. If a contract is executed for the construction of sewage works under this chapter, the validity of the contract may be questioned only in an action to enjoin the performance of the contract brought within fifteen (15) days after the date of execution. Sixteen (16) days after execution, all proceedings and orders of the board preliminary to and including the contract are valid, conclusive, and binding upon all persons and are not subject to attack.

(f) Additions or extensions to sewage works constructed under this chapter shall be built under contract entered into under this section in the same manner as the contract for the original works. The cost of additions or extensions, including additional land or rights-of-way acquired by the board, may be met by the sale of additional bonds to be issued and sold by the board and the levy of special taxes to retire the bonds as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.70.

IC 36-9-25-27

Construction of sewage works; bond issues

Sec. 27. (a) To raise money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in sections 19 and 29 of this chapter, the board may have issued, in the name of the municipality, the bonds of the district. The bonds may not exceed in amount the estimated cost of all land, rights-of-way, and other property to be acquired and the estimated cost of all construction as provided in the resolution, including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction. The expenses to be covered by the bond issue include all expenses of every kind actually incurred preliminary to acquisition of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses.

(b) If different parcels of land are to be acquired, or if more than one (1) contract for work is let by the board at approximately the

same time, whether under one (1) or more resolutions of the board, the estimated cost may be combined in one (1) bond issue. The bonds shall be issued in denominations of at least one thousand dollars (\$1,000) each and shall have a final maturity of not later than fifty (50) years from the date of issue. The bonds are negotiable unless registered, but may be made registrable for principal only or principal and interest. The bonds may be made redeemable before the stated maturities on terms and conditions and at the premiums that the board determines in the resolution authorizing the issuance of the bonds.

(c) Upon adoption of a resolution ordering bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The municipal executive shall execute the bonds and the fiscal officer shall attest them. The bonds and interest are exempt from taxation for all purposes, except the financial institutions tax imposed under IC 6-5.5 or an inheritance tax imposed under IC 6-4.1. All bonds issued by the board shall be sold by the fiscal officer to the highest bidder, but not for less than par, after giving notice of the sale by publication in accordance with IC 5-3-1.

(d) The bonds are not a corporate obligation or indebtedness of the municipality, but constitute an indebtedness of the district as a special taxing district. Except as provided in section 29(c) of this chapter, the bonds and interest are payable only out of a special tax levied upon all the property of the district as provided in this chapter. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(e) The board may sell bonds of the district to run for a period of five (5) years from the date of sale. The five (5) year bonds are exempt from taxation for all purposes except for the financial institutions tax imposed under IC 6-5.5. The board may sell bonds of the district in series for the purpose of refunding at any time the five (5) year bonds. Actions questioning the validity of the bonds issued or to prevent their issue may not be brought after the date set for the sale of the bonds, and all bonds are incontestable for any cause after that date.

(f) The total amount of the bond issue, including bonds already issued and to be issued, may not exceed twelve percent (12%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds issued in violation of this subsection are void.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.71; P.L.27-1986, SEC.5; P.L.21-1990, SEC.57; P.L.80-1997, SEC.20; P.L.254-1997(ss), SEC.34; P.L.6-1997, SEC.223; P.L.2-1998, SEC.86; P.L.2-1998, SEC.87.

IC 36-9-25-28

Deposit and use of funds

Sec. 28. (a) All proceeds from the sale of bonds under section 27 of this chapter shall be kept as a separate and specific fund to pay the cost of land, rights-of-way, and other property acquired and for

construction under the resolution, including all costs and expenses incurred in connection with the project. The proceeds may not be used for any other purpose. The proceeds shall be deposited at interest with the depository or depositories of other public funds of the municipality, and all interest collected on them belongs to the fund. Any surplus of funds remaining out of the proceeds after all expenses are paid shall be paid into and becomes a part of the sanitary district bond fund.

(b) Money derived from sources other than the sale of bonds, such as state or federal reimbursement grants, matching funds, or other contributions, including money derived from a project financed from bond monies, shall be deposited in:

- (1) the sanitary district bond fund;
- (2) the sanitary maintenance and general expense fund; or
- (3) a separate fund established by the board for extensions, additions, and improvements to the sewage works of the district.

The money may be expended as other money is expended by the board.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-29

Construction of sewage works; payment of bonds; tax levy; use of revenues in lieu of levy

Sec. 29. (a) In order to raise money to pay all bonds issued under section 27 of this chapter, including interest, and except as set forth in subsection (c), the board shall levy each year a special tax upon all the property of the district, to meet and pay the principal of the bonds as they mature, together with all accrued interest. The board shall have the tax levied each year certified to the municipal fiscal officer and to the auditor of the county in which the district is located by October 1. The tax as levied and certified shall be estimated and entered upon the tax duplicate by the county auditor. The tax shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the sanitary district bond fund. It shall be applied to the payment of the bonds and interest as they mature and not to another purpose. All accumulations of the fund before their use for the payment of the bonds and interest shall be deposited with the depository or depositories of other public funds in the municipality. The fund may also be invested as other funds are invested. In determining the amount of levy necessary for this section, the board shall consider the amount of revenue, if any, to be derived from the collection of fees for sewage treatment service above the amount of revenues necessary to be applied to the operation, maintenance, and administrative expenses of the district.

(c) In lieu of making a levy under this section, or to reduce the amount of the levy, the board may set aside, by resolution, the revenues of the district to be collected before the maturity of the principal and interest of the bonds payable in the following calendar

year. If the board adopts the resolution, then the board may not use any part of the amount set aside out of the revenues for any purpose other than the payment of the bonds and interest. A proportionate payment of the amount shall be made to the bond fund monthly.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.21.

IC 36-9-25-30

Construction of sewers, drains, or appurtenances; procedure

Sec. 30. (a) If the board finds it necessary to build, alter, or repair a sewer, drain, or appurtenance used in connection with sewage works in a public way or other public place in the district or a highway outside its boundaries, it shall file with the works board of the municipality, or the executive of the county in which the municipality is located, a petition and a map showing the route of the sewer or drain or the location of the structure or appurtenance proposed to be built, altered, or repaired, including the part of the public way or other public place to be used in the work. That body shall then adopt a resolution granting the board the right to use the public way or other public place.

(b) If the board shows in the petition that it is necessary to open or vacate a public way or public place, the appropriate body shall promptly begin the proceedings necessary for the opening or vacation. Within a reasonable time after the completion of the work, the board shall restore the surface of a public way or public place to the same condition that it was in before the performance of the work.

(c) If the land on which it is necessary to build, alter, or repair a sewer, drain, structure, or appurtenance in connection with the sewage works is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute and is being used for that purpose by the body appropriating it, the public use or prior condemnation does not bar the board from condemning the use of the land for purposes in connection with the sewage works. However, the use by the board does not permanently prevent the use of the land for the public use or by the body condemning or appropriating the land. In addition, in a proceeding prosecuted by the board to condemn the use of the land for purposes permitted by this chapter, the burden is upon the board to show that its proposed use will not permanently interfere with the continued public use of the land or by the body condemning it, including its successors.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-31

Payment of general expenses; special tax levy for payment of bonds

Sec. 31. To provide money to pay for general expenses of the board not chargeable to the cost of any property acquired or work done under a resolution of the board for which bonds of the district are issued, the board may issue the bonds of the district in an aggregate amount not to exceed two percent (2%) of the adjusted value of the taxable property within the district as determined under

IC 36-1-15. The bonds are payable from a special tax, which the board shall levy annually at the rate required to finance the bonds. The tax shall be levied, collected, and expended according to section 32 of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.6-1997, SEC.224.

IC 36-9-25-32

General expenses and operation of sewage works; tax levy; procedure; loans

Sec. 32. (a) To provide money to pay:

- (1) all general expenses of the board, including salaries of officers and employees, fees and expenses for professional services, and other items of expense not chargeable to the cost of property acquisition or work done under a resolution of the board for which bonds of the district are issued; and
- (2) for the operation, maintenance, and repair of sewage works, including the cost of the collection and removal of garbage and ashes;

a tax on all the taxable property in the district, at the rate required to provide the money needed to defray all expenses, shall be levied annually by the board.

(b) The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes in the same manner as state and county taxes are estimated, entered, collected, and enforced. The county treasurer shall, by the tenth day of each month, notify the board of the amount of taxes collected during the preceding month and shall credit a fund to be known as the sanitary maintenance and general expense fund with that amount. The fund may not be used for a purpose other than one stated in this section. The board has complete and exclusive authority to expend on behalf of the district all money thus realized. Warrants for the expenditures shall be drawn by the municipal fiscal officer upon vouchers of the board.

(c) The board may, by resolution, make:

- (1) temporary loans in anticipation of taxes actually levied under this section; or
- (2) emergency loans for the expenditure of any sums not provided for in the current levy of the board, for which a levy shall then be made in the next annual budget of the board.

The loans mature and shall be paid within one (1) year after the date the loan is made and may bear interest at any rate payable at the maturity of the loan. The warrants or other evidence of the loans may not be sold for less than par. Before making the loan, notice of the time, place, amount, and terms of the loan shall be given by publication in accordance with IC 5-3-1. The warrants carry no personal obligation for their payment and are payable only out of the tax levied.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.72; Acts 1982, P.L.77, SEC.23.

IC 36-9-25-33**Disposition of surplus funds; funds belonging to sanitary districts**

Sec. 33. (a) All money remaining in a fund to the credit of the board at the end of the calendar year belongs to the fund for use by the board for the purposes for which the fund was created. In addition, all money raised under this section shall be deposited at interest with the depository of other public funds of the municipality, with all interest collected on the fund belonging to the fund.

(b) Notwithstanding the provisions of any other statute, money collected for or belonging to a sanitary district belongs to the sanitary district, and not to any city or town in the sanitary district. This money shall be deposited in an interest bearing account, and all interest earned from this deposit shall belong to the sanitary district. If no statutory provision exists to require the crediting or deposit of this interest to a specific fund of the sanitary district, the interest shall be deposited in the sanitary district's sanitary maintenance and general expense fund.

(c) Notwithstanding subsections (a) through (b), money may be transferred from the fund as provided in IC 36-1-8-4.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.318, SEC.1; P.L.57-1991, SEC.4.

IC 36-9-25-34**Deposit and use of fees; revolving fund for payment of preliminary expenses**

Sec. 34. (a) All revenues derived from the collection of fees for sewage treatment become a part of the sanitary maintenance and general expense fund established under section 32 of this chapter and shall be deposited, held, and used as provided in that section, except any part that the board sets aside in the sanitary district bond fund established under section 29 of this chapter or the sinking fund established under section 41 of this chapter.

(b) The board may appropriate and set aside from the sanitary maintenance and general expense fund an amount of money to be used as a revolving fund for the payment of necessary preliminary expenses incurred by the board in connection with proposed projects, such as making surveys, estimating cost, employing engineers and other employees, preparing plans and specifications, and all other expenses to be paid before the issuance and sale of bonds under section 27 of this chapter.

(c) The revolving fund shall be fully repaid by the board out of the first proceeds of the sale of bonds to the extent that the expenses paid are chargeable to the cost of acquiring land or construction under a resolution adopted and confirmed under section 18 of this chapter. The appropriations to the revolving fund shall be made in accordance with statutes governing appropriations by municipal corporations, but it is not necessary to appropriate the money set aside in the revolving fund before making expenditures from it.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.22.

IC 36-9-25-35**Payment of contracts, condemnation awards, etc.; retention of portion of contract payments**

Sec. 35. (a) From the sanitary district bond fund and not from any other source, the board shall pay to the appropriate parties the amounts respectively due them for land, rights-of-way, or other property taken or purchased or for work done by contract or otherwise. If all or part of the land, rights-of-way, or other property is secured by purchase or contract, payment shall be made according to the terms of the contract. If property is taken by condemnation under this chapter, the amount of damages assessed shall be paid within ninety (90) days after the final determination of the condemnation proceedings or as soon after that as the fund from the bonds is available. The title to the land, rights-of-way, or other property or that part paid for or otherwise acquired for that purpose then vests in the municipality in the manner, to the extent, for the purpose, and subject to the limitations of this chapter.

(b) The board shall order that payments from the funds be made to contractors in the amounts and at the times they determine. The board may retain a part of the amount otherwise due the contractor. The amount that may be retained by the board is as follows:

- (1) Until work is fifty percent (50%) complete, not more than ten percent (10%) of the payment claimed.
- (2) When work is fifty percent (50%) complete, five percent (5%) of the value of all work satisfactorily completed to date, as long as the contractor is making satisfactory progress and there is no specific cause for greater withholding.
- (3) When the work is substantially complete (operational or beneficially occupied), an amount below five percent (5%) that is necessary to assure completion.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-36**Property acquisitions; filing and recording requirements**

Sec. 36. Within sixty (60) days after land or a right in it is paid for and acquired under this chapter, the board shall file and have recorded in the recorder's office in the county in which the land is located a description of it sufficiently accurate for its identification, together with a statement of the purpose for which it is acquired or taken signed by a majority of the board members.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-37**Authority to expend money; warrants and vouchers**

Sec. 37. Money raised under this chapter may be expended only upon warrants drawn by the municipal fiscal officer upon vouchers of the board. An appropriation is not necessary, but all money raised under this chapter is considered appropriated to the respective purposes stated and is under the control of the board. The board has complete and exclusive authority to expend the money for the

purposes provided.
As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-38

Construction of sewers connecting with sewage works

Sec. 38. After the erection and completion of sewage works under this chapter, any municipality within the boundaries of the district shall construct and maintain sewers so that they directly or indirectly convey all sewage and drainage matter into the sewage works.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-39

Certain departments; temporary loans in anticipation of funds

Sec. 39. (a) This section applies only to departments in a county having a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

(b) The board may secure temporary loans in anticipation of revenues of the district actually levied and in the course of collection for the fiscal year in which loans are made. The loans must be authorized by a resolution of the board, and the securities evidencing them shall be issued and sold in the same manner as tax anticipation warrants by second class cities in anticipation of property tax revenues as provided in IC 36-4-6-20. The temporary loans shall be evidenced by time warrants of the district in terms designating the nature of the consideration, the time or times payable, the funds and revenues in anticipation of which the warrants are issued and out of which they are payable, and the place where they are payable upon presentation on or after the date of maturity. The interest accruing on the warrants to date of maturity shall be included in their face value. The resolution authorizing the issue of the temporary loans must appropriate and pledge a sufficient amount of the current revenues in anticipation of which the warrants are issued for their payment.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.185; P.L.119-2012, SEC.233.

IC 36-9-25-40

Certain districts; exercise of powers on behalf of second class city alone

Sec. 40. If the district of a department established under section 1(b) of this chapter includes territory of another municipality, the powers granted the board over local sewers and drains, solid waste collection, and collection of dead animals may be exercised for the use and benefit of the second class city alone as long as all of the direct and allocable costs of the service are paid from money raised solely from the property located within the city, from charges made to persons within the city, or both.

As added by Acts 1981, P.L.309, SEC.98.

IC 36-9-25-41

Consolidated cities; revenue bonds for sewage works

Sec. 41. (a) This section applies to each consolidated city.

(b) To raise money to pay the costs of acquiring, constructing, and improving sewage works and property necessary for sewage works, the board may have issued, in the name of the municipality, revenue bonds payable solely from the revenues of the sewage works for which they are issued. Revenue bonds issued under this section are not a corporate indebtedness of the district or the municipality.

(c) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the board and will be payable and mature at the time or times determined by the board in the resolution.

(d) The revenue bonds may be made redeemable before maturity at the option of the board, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the revenue bonds must determine the form of the bonds and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(g) The revenue bonds must contain a statement on their face that neither the district nor the municipality is obligated to pay the principal or interest on them, except from the net revenue of the sewage works that are deposited in the sinking fund established by subsection (t).

(h) The revenue bonds are negotiable instruments.

(i) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone or as to both principal and interest.

(j) The revenue bonds shall be executed in the same manner as other bonds issued under section 27 of this chapter.

(k) The revenue bonds shall be sold by the district and the municipal fiscal officer in the manner that is determined to be in the best interests of the district, but only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(l) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(m) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the first issue, the additional revenue bonds are considered part of the first issue and are entitled

to payment from the same fund, without priority for the first issue.

(n) Subject to the provisions and limitations of any resolution or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section for the purpose of improving any works acquired or constructed under this chapter without priority of one (1) issue over another.

(o) Revenue bonds issued under this section are exempt from taxation for all purposes.

(p) Any action to contest the validity of revenue bonds issued under this section must be brought at least five (5) days before the advertised date for the sale of the bonds.

(q) The first proceeds of any revenue bonds issued under this section shall be used to repay all amounts advanced for preliminary expenses. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(r) After the payments required by subsection (q) have been made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by subsection (t).

(s) The holders of the revenue bonds have a lien on the bond proceeds until they are applied under this section.

(t) At or before the time of issuance of revenue bonds under this section, the board, by resolution, shall:

(1) establish a sinking fund for the payment of:

(A) the principal of and interest on the revenue bonds; and

(B) the charges of banks or trust companies for making payment of the principal or interest on the revenue bonds; and

(2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The resolution may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this section.

(u) The rights granted by this section are subject to any restrictions contained in the resolution authorizing the issuance of revenue bonds or in any trust indenture securing the bonds. The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this section or under the resolution or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works. If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the district, municipality, the bondholders, and the trustee, if any. The receiver may:

- (1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;
- (2) pay any revenue bonds and interest outstanding; and
- (3) apply the revenues in conformity with this chapter, the resolution authorizing the bond issue, and the trust indenture, if any.

(v) Bonds issued under this section are subject to the requirements of IC 36-3-5-8.

As added by P.L.80-1997, SEC.23.

IC 36-9-25-42

Financial assistance to certain property owners

Sec. 42. (a) The board may adopt a resolution authorizing the board to provide financial assistance, including grants, to property owners to construct or install regulating devices, improvements, or overhead plumbing or backflow prevention devices for one (1) or more of the following purposes:

- (1) To regulate or prevent discharge into private dwellings.
- (2) To prevent the pollution of streams or bodies of water.
- (3) To reduce or ameliorate inflow and infiltration in sewage works.
- (4) To remedy or prevent a menace to the public health and welfare.

(b) A resolution adopted by the board under subsection (a) must do the following:

- (1) State that provided financial assistance as described in subsection (a) will accomplish one (1) or more of the purposes listed in subsection (a)(1) through (a)(4).
- (2) State that the board anticipates that the costs associated with providing the financial assistance will be less than the financial burdens potentially incurred if the financial assistance is not provided.
- (3) Find that providing financial assistance as described in subsection (a) is necessary to avoid or reduce additional financial burdens.
- (4) Establish rules and regulations concerning financial assistance provided under subsection (a). A rule or regulation must provide that:
 - (A) a grant or other financial assistance provided by the board may not exceed eighty percent (80%); and
 - (B) the property owner that receives the financial assistance must pay for at least twenty percent (20%);of the total anticipated cost of the project for which the financial assistance is provided.

As added by P.L.168-2009, SEC.11.

IC 36-9-26

Chapter 26. Cumulative Building Fund for Municipal Sewers

IC 36-9-26-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.100.

IC 36-9-26-2

Authority to establish fund; purposes

Sec. 2. (a) A municipality may, by ordinance, establish a cumulative building and sinking fund under IC 6-1.1-41 to provide money for one (1) or more of the following purposes:

- (1) The planning, erection, remodeling, extension, and repair of sewage disposal plants and sewers to convey sanitary sewage to those plants.
- (2) The construction, remodeling, repair, and extension of storm sewers.
- (3) Relief sewers and drains in aid of the sanitary system or storm sewers.
- (4) The payment of the municipality's part of the costs of any public sewer or drainage project that:
 - (A) lies partly or wholly within the municipality; and
 - (B) aids or is connected to the sewage collection or drainage system of the municipality.
- (5) The payment of the part of any project that is allocable to property owners by special assessment under IC 36-9-39, for repayment to the cumulative building and sinking fund.

(b) The statement for repayment under subsection (a)(5) shall be mailed to the property owner separately from the property tax statement.

As added by Acts 1981, P.L.309, SEC.100. Amended by P.L.98-1993, SEC.15; P.L.17-1995, SEC.37.

IC 36-9-26-3

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-26-4

Tax levy

Sec. 4. A municipality that has established a cumulative building and sinking fund may levy a tax in compliance with IC 6-1.1-41 not to exceed one dollar (\$1) on each one hundred dollars (\$100) of taxable property in the municipality.

As added by Acts 1981, P.L.309, SEC.100. Amended by P.L.17-1995, SEC.38.

IC 36-9-26-5

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-26-6

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-27

Chapter 27. Drainage Law

IC 36-9-27-1

Application of chapter

Sec. 1. This chapter applies to all counties. However, sections 6, 7, 9, 10, 30, 31, and 32 of this chapter do not apply to a county having a consolidated city.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-2

Definitions

Sec. 2. As used in this chapter:

"Affected land" means land within a watershed that is affected by the construction, reconstruction, or maintenance of a regulated drain.

"Board" refers to the drainage board of a county.

"Crossing" means a drainage structure that passes over, under, or through a location used for the passage of people, livestock, or vehicles.

"Dam" means a dam or other structure and its appurtenances that impounds a small lake at the lake's outlet.

"Maintenance" means work on a drain as described in section 34(c) of this chapter for any of the purposes stated in that section.

"Mutual drain" means a drain that:

- (1) is located on two (2) or more tracts of land that are under different ownership;
- (2) was established by the mutual consent of all the owners; and
- (3) was not established under or made subject to any drainage statute.

"Open drain" means a natural or artificial open channel that:

- (1) carries surplus water; and
- (2) was established under or made subject to any drainage statute.

"Owner" refers to the owner of any interest in land.

"Private drain" means a drain that:

- (1) is located on land owned by one (1) person or by two (2) or more persons jointly; and
- (2) was not established under or made subject to any drainage statute.

"Reconstruction" means work on a drain as described in section 34(b) of this chapter to correct any of the problems with the drain that are enumerated in that section up to and including the discharge portion of the drain.

"Regulated drain" means an open drain, a tiled drain, or a combination of the two.

"Rural drain" means a regulated drain that provides adequate drainage or impounds water for rural land.

"Rural land" means affected land that:

- (1) will not appreciably benefit from more drainage than is necessary to expediently remove water after frequent or periodic

flooding; and

(2) is generally used for crop production, pasture, forest, or similar purposes.

"Small lake" means a lake, pond, or similar body of water that:

(1) covers less than twenty (20) acres;

(2) is surrounded by two (2) or more tracts of affected land that are under different ownership or a tract of land that is owned by a not-for-profit corporation having more than one (1) member;

(3) is not constructed, reconstructed, or maintained under this chapter as part of an open drain;

(4) is not a private crossing, control dam, or other permanent structure referred to under section 72 of this chapter;

(5) is not owned by a state or any of its political subdivisions; and

(6) is not designed and constructed primarily for reduction or control of pollutants or cooling before discharge of a liquid.

"Tiled drain" means a tiled channel that:

(1) carries surplus water; and

(2) was established under or made subject to any drainage statute.

"Urban land" means affected land that:

(1) will appreciably benefit from drainage that will provide the maximum practicable protection against flooding or the impounding of water in a small lake; and

(2) is used or will in the reasonably foreseeable future be used generally for commercial, industrial, large estate, higher density residential, or similar purposes.

"Watershed" means an area of land from which all runoff water drains to a given point or that is affected by a small lake.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.2; P.L.205-1984, SEC.1.

IC 36-9-27-2.5

"Dam" defined; certain sections not applicable; designation as regulated drain; jurisdiction

Sec. 2.5. (a) For the purposes of this chapter, a reference to "drain", "drainage", or "ditch" is deemed to include a "dam". However, sections 16(b), 17, 21, 22, 23, 24, 26, 27, 28, 54, and sections 56 through 66 of this chapter do not apply to a dam.

(b) Any owner may petition a board to designate a dam as a regulated drain, and any board may assume jurisdiction over a dam in the same manner that an owner may petition and the board may assume jurisdiction over a mutual drain. A board does not otherwise have jurisdiction over a dam.

(c) A board may reconstruct or maintain a dam over which the board has assumed jurisdiction, but an agency may not construct a new dam.

As added by P.L.166-1983, SEC.3.

IC 36-9-27-3

Authority to exercise rights and powers of political subdivisions and state

Sec. 3. (a) The rights and powers of a political subdivision under this chapter as an owner shall be exercised on behalf of the political subdivision by:

- (1) the works board, for a municipality;
- (2) the executive, for a county or a township; and
- (3) the fiscal body, for any other political subdivision.

(b) The rights and powers of the state as an owner under this chapter shall be exercised on behalf of the state by the director of the department, office, or institution charged by law with the maintenance, supervision, or control of the affected land owned by the state.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-4

Establishment

Sec. 4. There is established in each county a drainage board, which shall act in the name of "The _____ County Drainage Board" (designating the name of the county).

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-5

Composition

Sec. 5. (a) Except in a county having a consolidated city or as provided in subsection (d), the drainage board consists of either:

- (1) the county executive; or
- (2) three (3) or five (5) persons, at least one (1) of whom must be a member of the executive, appointed by the executive;

at the option of the executive. Appointees under subdivision (2) must be resident freeholders of the county who are knowledgeable in drainage matters. Freeholders appointed to the board serve for terms of three (3) years, with their initial appointments made so as to provide for staggering of terms on an annual basis. In addition, the county surveyor serves on the board as an ex officio, nonvoting member.

(b) In a county having a consolidated city, the board of public works of the consolidated city comprises the drainage board, subject to IC 36-3-4-23.

(c) In a county having a consolidated city, the department of public works of the consolidated city has all the powers, duties, and responsibilities of the county surveyor under this chapter, subject to IC 36-3-4-23.

(d) The following apply in a county that is subject to IC 36-2-2.5:

- (1) The drainage board consists of:
 - (A) the single county executive; and
 - (B) two (2) or four (4) persons (as determined by the single county executive) who are appointed by the single county executive.
- (2) Appointees under subdivision (1)(B) must be resident

freeholders of the county who are knowledgeable in drainage matters.

(3) The freeholders appointed to the drainage board serve for terms of three (3) years, with the freeholders' initial appointments made so as to provide for staggering of terms on an annual basis.

(4) The county surveyor serves on the drainage board as an ex officio, nonvoting member.

(5) The terms of members serving on the drainage board at the time the first single county executive is elected under IC 36-2-2.5 expire on January 1, 2019, and the single county executive shall make the appointments to the board as provided in this subsection.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.77-2014, SEC.23.

IC 36-9-27-6

Special members; appointment; powers and duties; compensation

Sec. 6. (a) When the membership of the board is reduced to less than three (3) because of disqualifications, the board shall immediately certify that fact to the circuit court of the county. The court shall then restore the membership of the board to three (3) by appointing the appropriate number of resident freeholders of the county to serve as special members for the particular drainage proceedings.

(b) A special member of the board has the same duties and powers as a regular member of the board, and is entitled to a per diem, to be paid as an expense of the board, in an amount fixed by the county fiscal body for each day or major part of a day spent in actual attendance at any meeting of the board or in the performance of official business of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990, SEC.9.

IC 36-9-27-7

Officers; meetings; quorum; approval of actions

Sec. 7. (a) The board shall organize at a meeting each January, by electing one (1) of its members as chairman and one (1) of its members as vice chairman. At the same time, the board shall elect a secretary, who need not be a member of the board.

(b) The county surveyor may not hold an office on the board.

(c) The board shall fix the time and dates for regular meetings, which shall be held in the office of the county surveyor. However, if the surveyor's office is not adequate, the county executive shall provide an adequate meeting place.

(d) Special meetings of the board may be called by the chairman, any two (2) members, or the county surveyor, by mailing a written notice setting forth the time, date, and place of the meeting to each member not less than five (5) days before the date of the meeting. A member may waive the mailing of notice of a special meeting by

filing a written waiver with the secretary or by his presence at the meeting.

(e) Meetings of the board may be adjourned from day to day or to a day certain without written notice being given.

(f) All meetings of the board must be open to the public, and the minutes of the meetings are open to public inspection.

(g) A majority of the voting members of the board constitutes a quorum, and the concurrence of a majority of the voting members present at a meeting is necessary to authorize any action under this chapter.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-8

Power to sue

Sec. 8. The board may bring civil actions in its own name to enforce any of the provisions of this chapter.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-9

Employment of attorney

Sec. 9. The board may employ and fix the compensation of an attorney to represent and advise the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.137-1989, SEC.17.

IC 36-9-27-10

Compensation of members and employees

Sec. 10. (a) Each member of the board and each person employed by the board under this chapter shall be paid at a rate equal to that provided by law for state employees for each mile necessarily traveled while performing the duties of his office.

(b) The county fiscal body may provide the members of the county executive who serve as members of the board with per diem for their services as members of the board, in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.

(c) Each appointed freeholder member serving on the board is entitled to a per diem in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990, SEC.10.

IC 36-9-27-11

Payment of expenses

Sec. 11. All expenses of the board shall be paid from money appropriated from the county general fund. Claims for expense reimbursements and per diem must be:

- (1) accompanied by an itemized written statement;
- (2) approved by a recorded motion of the board; and
- (3) allowed as provided by statute.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-12

Conflicts of interest

Sec. 12. (a) This section does not apply to a joint board that includes three (3) or more counties in a drainage basin of more than one hundred thousand (100,000) acres.

(b) Whenever it appears, in any proceeding for the construction, reconstruction, or maintenance of a regulated drain, that a member of the board has an interest in the proceedings because of his ownership of real property affected by the drain, that member shall immediately disqualify himself from serving on the board in those proceedings. However, the fact that county highways will be affected by any proceedings does not disqualify a regular member of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.350-1985, SEC.1.

IC 36-9-27-13

Certain counties; county drainage advisory committees established; powers and duties

Sec. 13. (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) There is established a county drainage advisory committee. The executive of each township in the county shall appoint one (1) resident of his township to serve on the committee. Committee members serve for four (4) year terms. Members may not receive per diem or mileage for service on the committee.

(c) The county drainage advisory committee shall advise and assist the board in the performance of its powers, duties, and functions. The board or the county legislative body may assign responsibilities to the committee concerning drainage. The committee may select one (1) of its members as chairman and may meet at his call or at the call of any three (3) of its members.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992, SEC.186.

IC 36-9-27-14

Proceedings affecting more than one county; joint boards

Sec. 14. (a) Whenever it appears to the county surveyor that any proceedings instituted under this chapter may affect land in more than one (1) county, he shall immediately forward notification of that fact to the chairman of the board of each county in which the land is located, by certified mail with return receipt requested. The notice must state the number of counties involved and fix a date, hour, and place for a meeting of a joint board. The date for the meeting may not be less than twenty (20) nor more than thirty (30) days after the notice is mailed.

(b) After the notice is given, all proceedings in the matter shall be heard and determined by a board appointed from the membership of

the board of each county in which lands that may be affected are located, as follows:

(1) If land in two (2) counties may be affected, the chairman of the board of each county shall appoint two (2) of the members of his board, other than the county surveyor, to serve on the joint board. In addition, a fifth member shall be appointed by the four (4) members of the joint board. The fifth member must reside in a county that is not affected by the drainage problem.

(2) If land in more than two (2) counties may be affected, the chairman of the board of each county shall appoint one (1) of the members of his board, other than the county surveyor, to serve on the joint board. If, as a result of the appointments, the board has an even number of members, the members of the joint board shall appoint an additional member to the joint board. The additional member must reside in a county that is not affected by the drainage problem.

(3) The surveyor of the county having the greatest length of drain or proposed drain serves as an ex officio member of the joint board, and has the same duties, powers, and responsibilities he would have if the proposed construction, reconstruction, or maintenance affected lands lying solely within one (1) county.

(c) A joint board may authorize the employment of one (1) or more persons to assist the county surveyor who serves on the board in the performance of his duties in connection with the joint board. The joint board shall set the rate of compensation for the assistants and authorize an advance on the general drain improvement fund of each county in proportion to the apparent percentage of the total land area in each county to be affected by the drain. The cost of the assistants and the advance is a part of the operating expense of the joint board, which shall be finally adjusted and allocated as provided in subsection (e).

(d) Whenever the county surveyor finds that a joint board should be appointed and that:

(1) the area of affected land in his county exceeds eighty percent (80%) of the total area of land affected by the drain; or

(2) ninety percent (90%) or more of the length of the affected drain lies within his county;

he may request in writing that each board in the lesser affected county or counties waive the right to be represented on a joint board and that the board of his county be the board for the proceedings. The request and all subsequent communications in the proceedings, including notice of any benefits or damages to the lands within a lesser affected county, shall be forwarded by certified mail with return receipt requested to the chairman of the board of each lesser affected county. If the surveyor does not receive a negative response to his request from the board of a lesser affected county within thirty (30) days, the surveyor may request his board to resolve itself as the board for the proceedings. The board shall serve notice only on the board of a lesser affected county and shall certify to the auditor of

that county a single claim for all benefits in that county, unless the surveyor or board of that county furnishes to the board full and acceptable information concerning all individual parcels of affected land in that county, including maps.

(e) If the joint board proceeds with the proposed improvement or maintenance, all operating expense of the joint board, including the compensation of the fifth member appointed under subsection (b)(1) and the additional member appointed under subsection (b)(2) shall be:

- (1) divided among the counties represented on it in the same proportion that the total land assessment allocated to each county bears to the total cost of the improvement or maintenance; or
- (2) paid from the joint drain's maintenance fund after the fund is established and maintenance funds are collected.

If the joint board does not proceed, all operating expense of the joint board shall be apportioned by the joint board to the counties represented on it as justice requires.

(f) To the extent applicable, a joint board is governed by the provisions of this chapter concerning:

- (1) the powers, duties, and procedures of a board that serves one (1) county; and
- (2) the rights and remedies of owners affected by the proceedings of a board that serves one (1) county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.225-1986, SEC.9; P.L.276-2001, SEC.11.

IC 36-9-27-15

Jurisdiction over regulated drains

Sec. 15. Each regulated drain in a county is under the jurisdiction of the board and subject to this chapter, except as otherwise provided by this chapter.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-16

Private and mutual drains exempt from chapter

Sec. 16. (a) Private and mutual drains are not subject to this chapter.

(b) Land drained by a private or mutual drain is subject to assessment for the construction, or reconstruction, or maintenance of a regulated drain if the land is also drained by the regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.4.

IC 36-9-27-17

Private and mutual drains; connection with regulated drains; procedure

Sec. 17. (a) Whenever:

- (1) an owner wants to construct or extend a private or mutual drain, and outlet that drain into a regulated drain that is subject

to this chapter; and

(2) the construction or extension will not go through land owned by other persons;

the owner shall file with the county surveyor having jurisdiction of the regulated drain for permission to connect his drain with the regulated drain.

(b) The owner shall file with his request the plans and specifications of the private or mutual drain that will be constructed or extended. However, if the private or mutual drain will have a tiled outlet of twelve (12) inches or less, and he alleges this in his request, no specifications need be filed.

(c) If the county surveyor determines that the regulated drain is adequate to handle the additional flow of water, if any, that would result from the connection, and that no harmful pollution is likely to result from the connection, he shall grant the request.

(d) If the county surveyor determines that the regulated drain is not adequate to handle the additional flow of water resulting from the connection without being reconstructed, he shall deny the request, and the request may not be granted until the regulated drain is reconstructed under sections 49 through 52 of this chapter.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-18

Private and mutual drains; conversion to regulated drain; procedure upon request by all owners

Sec. 18. (a) Whenever all of the owners affected by a private or mutual drain request the board in writing to assume jurisdiction over the private or mutual drain, the board shall refer the request to the county surveyor, who shall determine whether the private or mutual drain meets the standards of design and construction established under section 29 of this chapter.

(b) If the surveyor determines that the private or mutual drain meets the standards of design and construction, he shall make a written report of that fact to the board, which shall issue an order granting the request. The drain becomes a regulated drain when the request is granted.

(c) If the surveyor determines that the private or mutual drain does not meet the standards of design and construction, he shall make a written report of that fact to the board, which shall deny the request.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.12.

IC 36-9-27-19

Mutual drains; conversion to regulated drain; procedure upon request by single owner

Sec. 19. (a) Any owner affected by a mutual drain may file a written request with the board to make the mutual drain a regulated drain under this chapter. Upon receipt of such a request, the board shall fix the date, time, and place for a hearing, which may not be less than thirty (30) days after receipt of the request.

(b) At least twenty (20) days before the date of the hearing, the owner making the request shall give the owners of all land affected by the request notice of the date, time, place, and purpose of the hearing. Service of the notice shall be made in the manner set forth in section 58 of this chapter or in the manner summonses are served in civil actions.

(c) Any owner affected by the mutual drain may, on or before the date of the hearing, file with the board written evidence for or against the granting of the request. At the hearing the board shall consider all of the evidence filed, and if it finds that:

(1) the owners of more than fifty percent (50%) in acreage of the affected land will be benefited if the drain is made a regulated drain under this chapter; and

(2) the benefit to owners benefited is likely to be greater than the damages to owners damaged by reason of the mutual drain being made a regulated drain;

it shall make written findings to that effect and issue an order granting the request.

(d) Before adjourning the hearing, the board shall announce its findings and order. This announcement constitutes notice to all affected persons, and, if judicial review is not requested under section 106 of this chapter within twenty (20) days after the date of notice, the findings and order are conclusive.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-20

Drains located in municipalities or sanitary districts; relinquishment of jurisdiction by board

Sec. 20. A board may, by resolution, relinquish its jurisdiction over ditches and drains located in a municipality or a sanitary district, if that jurisdiction is accepted by the municipality or sanitary district.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-20.5

Drain maintenance fund; transfer of jurisdiction over drain to municipality or sanitary district

Sec. 20.5. (a) A municipal or sanitary district drain maintenance fund is established for each drain:

(1) that is subject to assessments by the board for periodic maintenance and repair; and

(2) jurisdiction over which is transferred by the board to a municipality or sanitary district under section 20 of this chapter.

(b) Except as provided in subsections (c) and (d), on or after the date the board transfers jurisdiction over a drain to the municipality or sanitary district, the county treasurer shall transfer the following to the municipal or sanitary district drain maintenance fund established under this section:

(1) The balance of the maintenance fund established under section 44 of this chapter.

(2) Except as provided in subsection (e), any assessments for

periodic maintenance of the drain that:

(A) were imposed before the date on which the board transfers jurisdiction of the drain; and

(B) are collected after the date on which the board transfers jurisdiction of the drain.

(c) Except as provided in subsection (d), if the board transfers jurisdiction over part of a drain to a municipality or sanitary district, the county treasurer shall transfer under subsection (b):

(1) the part of the balance in the maintenance fund established under section 44 of this chapter that bears the same proportion to the balance in the fund that the length of the part of the drain transferred to the municipality or sanitary district bears to the total length of the drain; and

(2) except as provided in subsection (e), the proportion determined under subdivision (1) of any assessments for periodic maintenance of the drain that:

(A) were imposed before the date on which the board transfers jurisdiction of part of the drain; and

(B) are collected after the date on which the board transfers jurisdiction of part of the drain.

(d) The board and a municipality or sanitary district to which jurisdiction over part of a drain is transferred may agree in writing to an apportionment of the maintenance fund and outstanding assessments different from the apportionment under subsection (c) based on disproportionate maintenance requirements between the part of the drain transferred and the part remaining under the jurisdiction of the board. Subject to subsection (e), a county treasurer who receives a written agreement under this subsection shall transfer under subsection (b) the amounts specified in the agreement.

(e) If payment for maintenance work for a drain was made from the general drain improvement fund under section 45 of this chapter, the county treasurer shall transfer all or part of the assessment described in subsection (b)(2) to the general drain improvement fund to reimburse the fund for all or part of the cost of the maintenance work.

(f) The expenses of a municipal or sanitary district drain maintenance fund established by subsection (a) shall be paid from the fund. The municipality or sanitary district to which jurisdiction over a drain is transferred shall deposit money in the fund established for the drain under subsection (a) in accordance with IC 5-13-6. Any interest earned by the fund shall be credited to the fund. Any balance remaining in the fund at the end of a fiscal year shall be carried over in the fund for the following fiscal year.

(g) A municipal or sanitary district drain maintenance fund established under subsection (a) is subject to the use of the municipality or the sanitary district for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains for which the fund was established whenever the municipality or sanitary district finds that it is necessary. Except as provided in subsection (h), payment for all the maintenance work

for a drain or combination of drains shall be made out of the municipal or sanitary district drain maintenance fund established for the drain or combination of drains under subsection (a).

(h) If the balance of a maintenance fund is not sufficient to pay for all of the maintenance work, the municipality or sanitary district shall pay for any deficiency from the funds used by the municipality or the sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund. A drain maintenance fund shall close upon payment of all money in the fund.

(i) If the amount of funds on deposit in a municipal or sanitary district drain maintenance fund is less than five hundred dollars (\$500), the balance of the municipal or sanitary district drain maintenance fund may be transferred to the fund used by the municipality or the sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund, and the drain maintenance fund shall be closed.

As added by P.L.111-2003, SEC.1.

IC 36-9-27-20.6

Right of entry and right-of-way powers

Sec. 20.6. If jurisdiction over a drain is transferred by the board to a municipality or sanitary district under section 20 of this chapter, the municipality or sanitary district has, with respect to that drain, the same right of entry and right-of-way powers over and upon private land that are given to the county surveyor or drainage board under section 33 of this chapter.

As added by P.L.111-2003, SEC.2.

IC 36-9-27-21

Certain municipal drains exempt from chapter; assessment of lands benefited by regulated drains

Sec. 21. (a) A drain that is located partly or wholly within the corporate boundaries of a municipality is subject to this chapter only if it was constructed by the municipality under this chapter, IC 19-4 (repealed February 26, 1982), or a statute repealed by Acts 1965, c.305, s.1003.

(b) If a municipal drain not subject to this chapter flows directly or indirectly into a regulated drain that is subject to this chapter, the board shall assess the land benefited by the municipal drain to the extent that it is benefited by the construction, reconstruction, or maintenance of the regulated drain.

(c) This subsection applies to any parcel of land that is partly within the corporate boundaries of a municipality having a drain affected by subsection (b). Notwithstanding section 38 of this chapter, the drainage board may make only one (1) assessment for the same purpose on each individual drain on the parcel. For purposes of making this one (1) assessment, the total acreage of the parcel must be considered to be located where most of the land in the parcel is situated, either within the boundaries or outside the boundaries.

As added by Acts 1981, P.L.309, SEC.101. Amended by

IC 36-9-27-22

Construction, reconstruction, or maintenance of municipal drains flowing into regulated drains; procedure

Sec. 22. (a) A municipality acting under a statute other than this chapter may not construct, reconstruct, or maintain a drain that:

- (1) is located partly or wholly within the corporate boundaries of the municipality; and
- (2) will flow directly or indirectly into a regulated drain that is subject to this chapter;

without the written approval of the board.

(b) The municipality shall file with the board a written request for consent to use the regulated drain as an outlet, subject to this chapter.

The request must be accompanied by:

- (1) the plans and specifications for the proposed construction, and reconstruction, or maintenance; and
- (2) an estimate by the municipal civil engineer, or another qualified person, of the amount of water that will be discharged into the regulated drain as a result of the proposed construction, reconstruction, or maintenance.

(c) The board shall refer the request for consent to the county surveyor, who shall determine whether the regulated drain is adequate to handle the additional flow of water, if any, that would result from the construction, reconstruction, or maintenance proposed by the municipality. If the surveyor finds that the regulated drain is adequate to handle the additional flow of water, the surveyor shall make a written report of that fact to the board, which shall issue its order consenting to the construction, reconstruction, or maintenance by the municipality. If the surveyor finds that the regulated drain is not adequate, the surveyor shall:

- (1) prepare a preliminary plan for the reconstruction of the regulated drain so that it will be adequate to handle the additional flow of water;
- (2) estimate the total cost of the reconstruction;
- (3) file the plan and estimate with the board; and
- (4) serve a copy of the plan and estimate on the municipality.

(d) If the municipality binds itself by resolution to pay the cost of the reconstruction of the regulated drain, the county surveyor shall prepare final plans and specifications for the work, reestimate the cost of the work except for damages to affected land, and file the plans and estimate with the board. The board shall determine the amount of damages sustained by any owner as a result of the reconstruction of the regulated drain and shall serve upon each owner a notice:

- (1) describing the owner's lands;
- (2) stating the amount of each owner's damages;
- (3) explaining the injury upon which the determination was based; and
- (4) stating the date, time, and place of a hearing by the board on objections to the amount of damages.

The notice shall be served and the hearing held in accordance with sections 49 through 52 of this chapter.

(e) The board shall add the damages to affected land to the county surveyor's reestimation of the costs of the reconstruction and shall certify that amount to the municipality. When the municipality pays the amount certified by the board into the office of the county treasurer for the use of the board in the reconstruction of the regulated drain, the board shall issue an order consenting to the use of the regulated drain by the municipality and shall proceed with the reconstruction of the regulated drain in accordance with the plans and specifications of the surveyor.

(f) After the contracts for the reconstruction are let in accordance with sections 77 through 79.1 of this chapter, the board shall compute the actual cost of the reconstruction. If the actual cost is less than the estimated cost, the excess shall be returned to the municipality on certification by the board to the county auditor of the amount to be returned. If the actual cost of the reconstruction is more than the estimated cost, the board shall certify that fact to the municipality, which shall immediately pay the difference into the office of the country treasurer.

(g) When the board consents to a request made by a municipality under subsection (b), the board shall fix the annual assessment against the municipality for the periodic maintenance of the regulated drain in accordance with sections 38 through 43 of this chapter.

(h) This section does not prohibit a municipality from petitioning the board for the construction of a new regulated drain under sections 54 through 65 of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.42-2011, SEC.86.

IC 36-9-27-23

Requests to connect private drains with regulated drains; water pollution control; procedure

Sec. 23. (a) Whenever:

- (1) a person wants to connect a drain with a regulated drain that is subject to this chapter; and
- (2) the connection would result in the discharge into the regulated drain of liquid wastes that would cause or contribute to pollution of the receiving waters;

the person seeking the connection must obtain written approval from the department of environmental management for the discharge, and shall file that written approval with the board having jurisdiction of the regulated drain when filing his request to connect.

(b) The board may deny a connection request, even though approval of the department of environmental management is given or is not required.

(c) The board shall deny a connection request whenever the approval of the department of environmental management is required and is not obtained.

(d) The provisions of this section requiring department of

environmental management approval do not apply to the discharge of sewage from a single or two (2) family residence.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.143-1985, SEC.202.

IC 36-9-27-24

Drains located in conservancy districts; jurisdiction

Sec. 24. (a) A regulated drain that is located within a conservancy district is not subject to this chapter if:

(1) the drain has been designated for construction, reconstruction, or maintenance in the district plan of the conservancy district; and

(2) the district plan was approved before January 1, 1966.

However, if the drain has a direct or indirect outlet into any other drain that is subject to this chapter, the board shall assess the district for any benefits it receives from the construction, reconstruction, or maintenance of the other drain.

(b) A court may not approve the district plan or an amendment to the district plan of a conservancy district if it includes the construction, reconstruction, or maintenance of a regulated drain in the district, unless written approval for the district to perform the work is filed with the court by the board or by the department of natural resources.

(c) When a drain located in a conservancy district is not subject to this chapter, the district, with the approval of the court having jurisdiction over the district, may file a written request with the board for the board to assume jurisdiction over the drain. The drain becomes subject to this chapter when the request is filed.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-25

Drains included in flood control projects; exemption from chapter

Sec. 25. Whenever a regulated drain that is subject to this chapter is included in a flood control project approved by the department of natural resources, the drain ceases to be subject to this chapter. The construction, reconstruction, and maintenance of such a drain is the responsibility of the local agency that constructs and maintains the project.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-26

Drains under jurisdiction of certain drainage maintenance and repair districts and associations; exemption from chapter

Sec. 26. A drain that is under the jurisdiction of:

(1) a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8; or

(2) an association established under Acts 1913, c. 165;

is not subject to annual assessments for periodic maintenance under this chapter, and the district or association is solely responsible for the maintenance of the drain. However, if the drain flows directly or

indirectly into a regulated drain that is subject to this chapter, the board shall assess the land within the district or association for any benefits it receives from the construction, reconstruction, or maintenance of the regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995, SEC.88.

IC 36-9-27-26.5

Change of drain and drainage maintenance jurisdiction; transfer of funds and administration

Sec. 26.5. (a) A county executive may change a regulated drain that is subject to this chapter into a drain that is subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8.

(b) When a drain that is subject to assessments for periodic maintenance and repair under this chapter becomes subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8, the county treasurer shall transfer all money in the drain's maintenance fund established under section 44 of this chapter to the drain's drainage maintenance fund established under IC 14-27-8-19.

(c) The county executive shall establish procedures for the transition of a drain from administration under this chapter to administration under IC 14-27-8.

As added by P.L.154-1993, SEC.5. Amended by P.L.1-1995, SEC.89; P.L.97-2004, SEC.132.

IC 36-9-27-27

Dissolution of certain drainage maintenance and repair districts; procedure

Sec. 27. (a) A written statement alleging that a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8 is not active and is not properly maintaining the drains under its control may be filed with the board by:

- (1) the owners of fifty-one percent (51%) in area of the land located in the district; or
- (2) fifty-one percent (51%) of the owners of land located in the district.

When the statement is filed, the board may file with the court that established the district a complaint that sets forth the allegations in the statement and requests the court to dissolve the district.

(b) The drainage maintenance and repair district shall be named defendant in the action, and a summons shall be served:

- (1) on any commissioner of the district; or
- (2) on the district by publication if a commissioner cannot be found.

The issues shall be considered closed by a general denial, without the filing on any specific pleadings.

(c) The court shall hear the action without a jury. A change of venue from the county may not be granted.

(d) If the court finds that the allegations in the complaint are true, it shall dissolve the district. All the drains formerly under the jurisdiction of the district become regulated drains subject to this chapter when the district is dissolved.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995, SEC.90.

IC 36-9-27-28

Drains maintained by certain associations; assumption of jurisdiction by board; procedure

Sec. 28. (a) A written statement alleging that an association established under Acts 1913, c. 165 for the purpose of maintaining and repairing a drain is not active and is not properly maintaining the drain may be filed with the board by:

(1) members of the association who own fifty-one percent (51%) in area of the land within the jurisdiction of the association; or

(2) fifty-one percent (51%) of the members of the association.

When the statement is filed, the board may notify the association of its intention to declare the drain to be subject to this chapter.

(b) The notice must fix a date, time, and place for a hearing on the matter, and shall be:

(1) served personally or by registered mail upon any director or officer of the association who did not sign the statement filed with the board; or

(2) published in accordance with IC 5-3-1, if such a director or officer cannot be found.

(c) On or before the date of the hearing, any member of the association may file written evidence with the board.

(d) If the board finds that the allegations in the statement are true, it shall issue an order declaring the drain to be a regulated drain that is subject to this chapter. The finding and order shall be marked filed and shall be announced publicly at the hearing. The board shall then publish a notice setting forth its order in accordance with IC 5-3-1. Judicial review of the order under section 106 of this chapter may be requested by any member of the association within twenty (20) days after publication of the notice. The drain becomes subject to this chapter when the order becomes final and conclusive.

(e) If the board finds that the allegations in the statement are not true, it shall dismiss the proceedings.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.74.

IC 36-9-27-29

County surveyors; powers and duties

Sec. 29. The county surveyor is the technical authority on the construction, reconstruction, and maintenance of all regulated drains or proposed regulated drains in the county, and he shall:

(1) investigate, evaluate, and survey all regulated drains or proposed regulated drains, and prepare all reports, plans,

profiles, and specifications necessary or incident to any proposed construction, reconstruction, or maintenance of regulated drains;

(2) prepare and make public standards of design, construction, and maintenance that will apply to all regulated drains and their appurtenances, taking into consideration in preparing these standards the published recommendations made by Purdue University, the American Society of Agricultural Engineers, the American Society of Civil Engineers, the United States Department of Agriculture, the department of natural resources, the United States Army Corps of Engineers, and other reliable sources of information;

(3) supervise all construction, reconstruction, and maintenance work performed under this chapter;

(4) catalog and maintain a record of all surveying notes, plans, profiles, and specifications of all regulated drains in the county, and of all mutual and private drains when available; and

(5) perform the functions set forth in sections 67 through 69 of this chapter concerning all urban drains under his jurisdiction.

In preparing plans under subdivision (1), the surveyor shall, when feasible, include the seeding of the banks of all open drains. The surveyor shall, when feasible, use United States Geological Survey data on plans and profiles prepared under subdivision (1).

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.5.

IC 36-9-27-30

Qualified deputies; appointment; duties; compensation

Sec. 30. (a) Whenever the county surveyor is not registered under IC 25-21.5 or IC 25-31 and that statute prohibits an unregistered person from performing any function that the county surveyor is directed to do under this chapter, the surveyor shall employ and fix the compensation of a person who is a professional engineer or professional surveyor in performing those functions. However, if the county surveyor does not employ a registered person within one (1) year of the acceptance of a petition for construction or reconstruction of a drain, the board may make the appointment of a registered person that this section requires.

(b) The person employed by the county surveyor, who shall be known as a qualified deputy, shall file with the county surveyor the original of all plans, specifications, and other documents made by the person in performing the work for which the person was employed. Those plans, specifications, and other documents become a part of the permanent file of the county surveyor's office, which the county surveyor shall maintain for the use of the board as provided in section 109 of this chapter.

(c) The rate of compensation paid to a qualified deputy shall be assessed against the drainage project for which the deputy was employed.

(d) This subsection applies whenever the county surveyor is not

registered under IC 25-21.5 or IC 25-31, and the county surveyor has not employed a registered person as provided in subsection (a). If the county has a full-time employee who is registered as a professional surveyor under IC 25-21.5 or as a professional engineer under IC 25-31, the board may, subject to the approval of the county executive and the county surveyor, designate that person to perform the functions of the county surveyor under this chapter that are allowed under the employee's license as a professional surveyor or professional engineer. If a designation is made and approved under this subsection, the county surveyor may not employ a registered person under subsection (a) to perform that same function.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.1; P.L.76-1989, SEC.5; P.L.2-1997, SEC.84; P.L.2-1998, SEC.88; P.L.241-1999, SEC.4; P.L.57-2013, SEC.101.

IC 36-9-27-31

Counties without elected surveyors; employment of engineers or surveyors by board

Sec. 31. If for any reason there is no elected county surveyor in any county, the board shall employ and fix the compensation of a part-time or full-time engineer or surveyor. The engineer or surveyor, who must be registered under IC 25-21.5 or IC 25-31 and must be or become a resident of Indiana, shall perform the functions required of the county surveyor in this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.2-1997, SEC.85.

IC 36-9-27-32

Contract deputies; appointment; powers and duties; compensation

Sec. 32. (a) Whenever the board finds that it is necessary to advance the work of construction or of reconstruction, as determined from the long-range plan established under section 36 of this chapter, to a degree inconsistent with the work load of the county surveyor, the board shall publicly declare an emergency and shall authorize the employment of an engineer, firm of engineers, or professional surveyor as a contract deputy to perform the necessary work, including:

- (1) the preparation of the county surveyor's report or specified parts of it; and
- (2) the supervision of the construction or reconstruction.

(b) A contract deputy shall be employed by contract. Each contract must be for work on a specific drainage project, and may be on a per project fee basis or on a per diem basis of compensation.

(c) A contract deputy must have the same qualifications as an engineer or professional surveyor employed or appointed by the board under section 30 or 31 of this chapter.

(d) The original of all plans, specifications, and other documents made by a contract deputy in performing the work for which the contract deputy was employed, or facsimiles of them in reproducible form, shall be transmitted to the board and shall be permanently

retained by the board or by the county surveyor in the manner in which similar documents prepared by the county surveyor or the board are retained.

(e) The compensation of a contract deputy shall be assessed against the drainage project for which the deputy was employed, and may be paid from the general drain improvement fund before the order for the construction or reconstruction.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.2; P.L.57-2013, SEC.102.

IC 36-9-27-33

Right of entry over private land; extension of spoil banks beyond right-of-way

Sec. 33. (a) The county surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter has the right of entry over and upon land lying within seventy-five (75) feet of any regulated drain. The seventy-five (75) foot limit shall be measured at right angles to:

- (1) the center line of any tiled drain; and
- (2) the top edge of each bank of an open drain;

as determined by the surveyor.

(b) Spoil bank spreading resulting from the construction, reconstruction, or maintenance of an open drain may extend beyond the seventy-five (75) foot right-of-way if:

- (1) the county surveyor finds that the extension is necessary; and
- (2) the extension has been provided for in the engineer's report on the construction, reconstruction, or maintenance.

(c) All persons exercising the right given by this section shall, to the extent possible, use due care to avoid damage to crops, fences, buildings, and other structures outside of the right-of-way, and to crops and approved structures inside the right-of-way. The county surveyor shall give oral or written notice of the entry on the land to the property owner of record, and in the case of a municipality, to the executive of that municipality. The notice must state the purpose for the entry.

(d) The owners of land over which the right-of-way runs may use the land in any manner consistent with this chapter and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when so ordered by the board or by the county surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the surveyor, the board, or their representatives. Trees, shrubs, and woody vegetation may not be planted in the right-of-way without the written consent of the board, and trees and shrubs may be removed by the surveyor if necessary to the proper operation or maintenance of the drain.

(e) This subsection applies to new regulated drains established after September 1, 1984, and to urban drains. Except as provided in subsection (f), the board may reduce the seventy-five (75) foot right-of-way requirement of subsections (a) and (b) to any distance of not less than:

- (1) twenty-five (25) feet from the top of each bank of an open ditch; and
- (2) fifteen (15) feet from the center line of any tiled drain;

as measured at right angles.

(f) This subsection applies only to a platted subdivision. Upon the recommendation of the county surveyor, the board may further reduce the right-of-way for any tiled drain, including a tiled urban drain that was reduced under subsection (e)(2). However, the board shall not make a reduction that results in a right-of-way that is:

- (1) less than seven (7) feet from each side of the center line as measured at right angles; or
- (2) less than the recommendation made by the county surveyor.

(g) A reduction of a right-of-way under subsection (e) or (f) does not:

- (1) affect a public utility's use of; or
- (2) deprive a public utility of the use of;

the right-of-way if, at the time the right-of-way is reduced, the public utility is occupying and using the right-of-way for the location of the public utility's structures, including pipelines, electric lines, or any related structures.

(h) The surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter does not commit criminal trespass under IC 35-43-2-2.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.3; P.L.76-1989, SEC.6; P.L.145-2013, SEC.1.

IC 36-9-27-34

Classification of drains by county surveyor

Sec. 34. (a) The county surveyor shall classify all regulated drains in the county as:

- (1) drains in need of reconstruction;
- (2) drains in need of periodic maintenance; or
- (3) drains that should be vacated.

The surveyor shall also consider the designation of urban drains under section 67 of this chapter.

(b) A regulated drain is in need of reconstruction when:

- (1) it will not perform the function for which it was designed and constructed;
- (2) it no longer conforms to the maps, profiles, and plans prepared at the time when the legal drain was established; or
- (3) topographical or other changes have made the drain inadequate to properly drain the lands affected without extensive repairs or changes, including:

- (A) converting all or part of an open drain to a tiled drain or a tiled drain to an open drain;

- (B) adding an open drain to a tiled drain or a tiled drain to an open drain;
- (C) increasing the size of the tile;
- (D) deepening or widening an open drain;
- (E) extending the length of a drain;
- (F) changing the course of a drain;
- (G) constructing drainage detention basins and drainage control dams;
- (H) providing for erosion control and for grade stabilization structures; or
- (I) making any major change to a drainage system that would be of public utility.

(c) A regulated drain is in need of periodic maintenance when, with or without the use of mechanical equipment, it can be made to perform the function for which it was designed and constructed, and to properly drain all affected land under current conditions, by periodically:

- (1) cleaning it;
- (2) spraying it;
- (3) removing obstructions from it; and
- (4) making minor repairs to it.

(d) A regulated drain should be vacated when:

- (1) the drain does not perform the function for which it was designed and constructed, or it has become inadequate to properly drain all affected land under current conditions;
- (2) the expense of reconstruction outweighs the benefits of reconstruction; and
- (3) the vacation will not be detrimental to the public welfare.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.6.

IC 36-9-27-35

Submission of classifications and order of work priority of drains to board; notice and hearing on classification and reclassification requests

Sec. 35. (a) The county surveyor shall submit to the board a written report setting forth his classification of regulated drains in order of priority for action by the board. This report may be made from time to time during the surveyor's process of classification.

(b) The board may adopt the classifications and order of work priority as made by the county surveyor, or may modify them.

(c) If ten percent (10%) of the owners' request the board to classify or reclassify a drain affecting their land, the board shall, after giving notice to all affected owners, conduct a hearing on the request and adopt a proper classification. The notice shall be given by publication in accordance with IC 5-3-1. Notice shall be given to an attorney of record in the manner provided in section 110 of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.75.

IC 36-9-27-36

Long range plan for reconstruction, maintenance, and vacation of drains; requests for advancement

Sec. 36. (a) When the classification of drains, or a partial classification of drains, has been adopted by the board, the county surveyor shall prepare a long-range plan for:

- (1) the reconstruction of regulated drains classified as in need of reconstruction;
- (2) the establishment of an annual maintenance assessment for regulated drains classified as in need of periodic maintenance; and
- (3) the vacating of regulated drains classified as drains that should be vacated.

The plan must set forth the approximate date each drain will be referred to the surveyor for report, taking into consideration the work load of the surveyor and the estimation by the surveyor of the time it will take to prepare each report.

(b) The long-range plan is subject to approval by the board, may be amended by the board at any time, and shall be reconsidered and brought up to date before June 1 of each year.

(c) The board shall refer each regulated drain to the county surveyor for a report in accordance with the long-range plan. If no long-range plan has been adopted by the board, and if the surveyor has classified only part of the regulated drains, the board may refer the regulated drains that have been classified to the surveyor for a report in the order of priority set forth in the partial classification.

(d) Ten percent (10%) of the owners of land affected by a regulated drain that has been classified as a drain that:

- (1) is in need of reconstruction;
- (2) is in need of periodic maintenance; or
- (3) should be vacated;

may file with the board a written request that the board advance the proposed date when the drain will be referred to the county surveyor for report. Upon receipt of such a request, the board shall set the request for hearing at its next regular meeting and shall promptly mail notice of the time, date, and place of the hearing to the owners making the request. At the meeting any affected owner or the surveyor may present evidence for or against the request. After the hearing, the board may advance the date the drain will be referred to the surveyor if it is practicable to do so.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-37

Vacation of drains; procedure; appeals

Sec. 37. (a) When instituting proceedings to vacate a regulated drain, the board shall:

- (1) serve a notice of intention to vacate on all owners of affected land;
- (2) fix a date for a hearing;
- (3) receive all objections filed;

- (4) hold the hearing; and
 - (5) issue an order vacating or reclassifying the drain.
 - (b) A board acting under this section shall:
 - (1) comply with the applicable provisions of sections 49 through 52 of this chapter; and
 - (2) consider section 34(d) of this chapter in determining whether a drain should be vacated.
 - (c) An owner aggrieved by the final order of the board may obtain judicial review of the order under section 106 of this chapter.
 - (d) When a drain is vacated, the county treasurer shall transfer all money in that drain's maintenance fund to the general drain improvement fund.
- As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.4.*

IC 36-9-27-38

Periodic maintenance of drains; surveyor's report

Sec. 38. When the board refers a regulated drain classified in need of periodic maintenance to the county surveyor, he shall prepare a maintenance report that includes the following items:

- (1) The estimated annual cost of periodically maintaining the drain.
- (2) The name and address of each owner of land that will be affected by the proposed maintenance, and the legal description of the land of each owner, as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. If the name of an owner is not known, and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.
- (3) The nature of the maintenance work required and how frequently the work should be performed.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-39

Periodic maintenance of drains; schedule of assessments

Sec. 39. When the board receives a maintenance report under section 38 of this chapter, it shall prepare a schedule of assessments that includes the following items:

- (1) A description of each tract of land determined to be benefited, and the name and address of the owner, as listed on the county surveyor's report.
- (2) The percentage of the estimated cost of periodically maintaining the drain to be assessed against each tract of land. The percentage shall be based upon the benefit accruing to each tract of land from the maintenance, and must be at least one

hundred percent (100%) and as near to one hundred percent (100%) as is practicable.

(3) The amount annually assessed against each tract of land for maintenance.

The board may consider the factors listed in section 112 of this chapter in preparing the schedule.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-40

Periodic maintenance of drains; notice and hearing on surveyor's report and schedule of assessments; objections; publication of notice of final order

Sec. 40. (a) The board shall fix a date, time, and place for a hearing on the maintenance report of the surveyor and on the schedule of assessments, and shall prepare a written notice for each owner of land proposed to be assessed. The notice, which must describe the land to be assessed, must state:

- (1) the name and identifying number by which the drainage proceedings are known;
- (2) that the maintenance report of the county surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the surveyor;
- (3) that the surveyor has estimated that the annual cost of periodically maintaining the drain is in the sum of _____ dollars;
- (4) that the land of the owner is shown by the schedule of assessments to be annually assessed _____ percent of the total cost of periodically maintaining the drain;
- (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for periodically maintaining the drain; and
- (6) the date, hour, and place of the hearing before the board on the surveyor's maintenance report and on the schedule of assessments.

(b) Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedule of assessments.

(c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:

- (1) identify the drainage proceedings;
- (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and
- (3) state that:
 - (A) the maintenance report of the surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
 - (B) a hearing will be held before the board on the schedule

of assessments, specifying the time and place of the hearing.

(d) Not less than five (5) days before the hearing, any owner of land named in the schedule of assessments may file with the board a written objection alleging that he is the owner of land assessed as benefited and the benefits assessed against his land are excessive. Each objector may file written evidence in support of his objection. The failure of an owner to file an objection constitutes a waiver of his right to subsequently object, on the ground stated in this subsection, to any final action of the board.

(e) On or before the day of the hearing, the surveyor shall, and any owner of land named in the schedule of assessments may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).

(f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(g) After considering all objections and evidence, the board may amend the schedule of assessments as justice may require. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of assessments as originally filed or as amended, mark the order filed, and publicly announce the order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(h) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the order becomes conclusive.

(i) The notice required by subsections (a) and (b) for each owner of land proposed to be assessed is not required for a joint board that includes three (3) or more counties in a drainage basin that exceeds eighty thousand (80,000) acres, except that when the proposed assessment affects land owned by a public utility or railroad the requirements of subsections (a) and (b) shall be met as to the public utility or railroad.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.76; P.L.370-1983, SEC.1; P.L.239-1996, SEC.1.

IC 36-9-27-41

Periodic maintenance of drains; combination of drains for assessment purposes; procedure

Sec. 41. (a) If recommended by the county surveyor, the board may, after notice and hearing to affected owners, combine regulated drains located in the same watershed for the purpose of annually assessing the owners benefited for periodic maintenance.

(b) The notice shall be published in accordance with IC 5-3-1.

Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.

(c) In combining drains, the board shall consider:

- (1) whether the drains are tiled or open; and
- (2) the uniformity of topography and soil types;

so that the drains that are combined represent substantially the same maintenance problem and can be kept in proper repair at a cost sufficiently uniform as to constitute no substantial inequity for any owner included in the combination of drains.

(d) The board may, from time to time, add regulated drains to a combination of drains established under this section.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.77.

IC 36-9-27-42

Increases and decreases in assessments for periodic maintenance of drains; procedure

Sec. 42. (a) The board may at any time increase or decrease the amount annually assessed for periodic maintenance of a regulated drain if the board finds that the county surveyor's estimate of the cost of maintaining the drain was insufficient or excessive.

(b) The board may decrease the amount annually assessed without notice to the affected owners if the percentage of benefit assigned to all tracts of land affected is not changed from that originally determined by the board.

(c) The board may increase the amount annually assessed once without notice to the affected owners if:

- (1) the percentage of benefit assigned to all tracts of land affected is not changed from that originally determined by the board; and
- (2) the increase does not exceed twenty-five percent (25%) of the amount initially established.

(d) If the board:

- (1) finds that the percentage of benefit assigned to any particular tract or tracts of land should be increased due to a change in land use or for any other reason; or
- (2) proposes an increase or decrease that would affect all of the lands assessed for the maintenance of the drain and that is not exempted from the giving of notice under subsection (b) or (c);

the board shall mail a notice to the owner or owners of the land. The notice must state the proposed change in the assessment, and specify a date, time, and place, not less than ten (10) days after the notice is mailed, when the board will hear objections to the change. An owner may file written objections to the proposed change on or before the date of the hearing. At the hearing, the board shall consider all objections and evidence filed and shall enter an order as justice may require. The board shall mail a copy of its order to the owner or owners affected. If an owner does not request judicial review of the order under section 106 of this chapter within twenty (20) days after his receipt of the copy of the order, the order becomes conclusive.

(e) A joint board that includes three (3) or more counties in a drainage basin that exceeds one hundred thousand (100,000) acres shall publish notice in accordance with IC 5-3-1 instead of mailing notice to the owner or owners of land as required by subsection (d). *As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.25; P.L.370-1983, SEC.2.*

IC 36-9-27-43

Omission of annual assessment

Sec. 43. (a) If in any year a maintenance fund established under section 44 of this chapter has an unencumbered balance equal to or greater than four (4) times the estimated annual cost of periodically maintaining the drain for which the fund was established, the annual assessment for the maintenance of that drain may be omitted for that year.

(b) The county drainage board may collect the drain assessment even though the unencumbered balance of the maintenance fund is equal to or greater than four (4) times the estimated annual cost of periodic maintenance of the drain for which the fund was established if the drainage board does the following:

(1) Conducts a public hearing in accordance with section 40 of this chapter.

(2) At the public hearing estimates what the unencumbered balance of the maintenance fund would be, as a multiple of the estimated annual cost of periodic maintenance of the drain, after the collection of the total amount that the board intends to collect in assessments.

However, the annual assessment for the maintenance of the drain shall be omitted if, according to the estimate of the board, the collection of the intended total amount of assessments would increase the unencumbered balance of the maintenance fund to equal or exceed eight (8) times the estimated annual cost of periodic maintenance of the drain for which the fund was established.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.13.

IC 36-9-27-44

Establishment of maintenance funds for drains

Sec. 44. (a) A maintenance fund is established for each regulated drain and for each combination of drains established under section 41 of this chapter. A maintenance fund consists of:

(1) money received from annual assessments upon land benefited by the periodic maintenance of a drain;

(2) penalties received on collection of delinquent annual assessments made for the periodic maintenance of a drain; and

(3) money received from any person as compensation for damages suffered to a drain.

(b) The county auditor shall:

(1) set up a separate ledger account for each regulated drain or combination of drains whenever the board fixes an annual

assessment for the periodic maintenance of the drain or combination; and

(2) extend the assessments upon the ditch duplicate in each year that the assessments are to be made.

(c) Whenever the county surveyor's estimate for annual maintenance of any drain is not more than one thousand five hundred dollars (\$1,500), the board may exempt that drain from the requirement that a maintenance fund be established. Expenses up to one thousand five hundred dollars (\$1,500) in each year for the drain shall be paid from the general drain improvement fund established under section 73 of this chapter. The surveyor may make these minor repairs without advertising or letting a contract or contracts, but the total of these expenditures in any one (1) county in each year may not exceed ten dollars (\$10) per mile of regulated drains in the county. Expenditures under this subsection may not be assessed to the affected owners.

(d) The board may deposit money that is in a maintenance fund in the manner and to the extent provided by IC 5-13-6.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.351-1985, SEC.1; P.L.19-1987, SEC.55.

IC 36-9-27-45

Maintenance funds for drains; use of funds

Sec. 45. A maintenance fund established under section 44 of this chapter is subject to the use of the board for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains, which may be done whenever the board, upon the recommendation of the county surveyor, finds that it is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund. However, if:

(1) a maintenance fund has not been established for the drain or combination of drains; or

(2) a maintenance fund has been established but it is not sufficient to pay for the work;

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

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.14.

IC 36-9-27-45.5

Excess drainage maintenance fund balance; transfer of funds

Sec. 45.5. (a) This section applies when a county surveyor advises the drainage board that in the county surveyor's opinion a maintenance fund has a balance in excess of the amount reasonably needed in that fund for maintenance work in the foreseeable future.

(b) The board may transfer an amount up to a maximum of seventy-five percent (75%) of the money in the maintenance fund to a reconstruction fund that covers the same watershed as the

maintenance fund from which the money is transferred.
As added by P.L.154-1993, SEC.6.

IC 36-9-27-46

Obstruction of drains; repair procedure

Sec. 46. (a) When a regulated drain is obstructed or damaged by logs, trees, brush, unauthorized structures, trash, debris, excavating, filling, or pasturing livestock, or in any other way, the county surveyor shall immediately remove the obstruction and repair any damage.

(b) Notwithstanding subsection (a), if the obstruction or damage is caused by an owner of land affected by the drain, the county surveyor shall first mail a notice to the owner, with return receipt requested, requiring the owner to remove the obstruction and repair the damage. If the owner fails to comply within ten (10) days after receipt of the notice, the surveyor shall perform the work, and the cost of the work shall be paid out of the annual maintenance fund of the drain if one has been established, or, if no such fund has been established, out of the general drain improvement fund.

(c) If the obstruction or damage has been caused by the acts or omissions of an owner of land affected by the drain, the board may, after a hearing with written notice served on the owner, add an amount sufficient to pay for the damage to the next annual assessment made against the land of the owner. The board shall certify the assessment to the county auditor in the same manner as any other assessment.

(d) If the obstruction or damage is caused by the acts or omissions of a person other than the owner of land affected by the drain, the board may bring an action against that person in court. The board is entitled to recover the reasonable value of removing the obstruction and repairing the damage, plus a reasonable attorney's fee.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-47

Persons entering land under contract, easement, or statute; damage to drains; repair procedure

Sec. 47. (a) Whenever any person:

- (1) goes upon any land under any contract, easement, or statute; and
- (2) damages a regulated drain or impedes the flow of such a drain by placing pipe, cable, or other material over, under, or through the drain;

the board shall serve upon the person an order requiring him to immediately repair the damages and remove the obstruction.

(b) If the person fails to comply with the order, the county surveyor shall repair the damage and remove the obstruction. The board may then bring an action against the person to recover damages, including the reasonable cost of repairing the damage and removing the obstruction, along with reasonable attorney's fees.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-48**Construction or reconstruction of drains; relocation of public utility equipment; procedure**

Sec. 48. (a) Whenever, in the construction or reconstruction of a regulated drain, the county surveyor determines that:

- (1) the proposed drain will cross a pipeline, cable, or similar equipment of a public utility; and
- (2) the equipment will interfere with the proper operation of the drain;

he shall include in his plans the relocation requirements of the equipment. The surveyor shall, by registered mail, send a copy of the requirements to the public utility owning the equipment.

(b) If requested by the public utility, the county surveyor shall meet with the public utility at a time and place to be fixed by the surveyor and hear objections to the requirements. After the hearing, the surveyor may change the requirements as justice may require.

(c) If the board finds that the relocation of a pipeline, cable, or similar equipment owned by a public utility is necessary in the construction or reconstruction of a regulated drain, the cost of relocation shall be paid by the public utility.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-49**Reconstruction of drains; surveyor's report**

Sec. 49. (a) When the board refers a regulated drain to the county surveyor for a reconstruction report, the surveyor shall determine and set forth in his report the best and cheapest method of reconstructing the drain so that it will adequately drain all affected land.

(b) The county surveyor shall make the necessary surveys, maps, profiles, plans, and specifications, and he may include in them:

- (1) all of the repairs or changes specifically set forth in section 34(b) of this chapter; and
- (2) any other repairs or changes that good engineering practice requires, including arms where none existed before.

(c) The county surveyor shall estimate the costs of the proposed reconstruction, including costs of notices and advertising, and he shall also estimate the annual cost of periodically maintaining the proposed reconstruction.

(d) The county surveyor shall include in his report the name and address of each owner of land that will be affected by the proposed reconstruction, and the legal description of the land of each owner as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. If the name of an owner is not known, and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-50

Reconstruction of drains; preparation of schedule of assessments and damages

Sec. 50. When the county surveyor files a reconstruction report, he shall consult with the board, and the board shall take the following actions:

(1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the reconstruction, and the name and address of the owner of the land. The name, address, and description shall be taken from the surveyor's report. The board shall enter in the assessment schedule the percentage of the total cost of the reconstruction to be assessed against each tract of land, with the percentage to be based upon the benefit accruing to the land from the reconstruction. The percentage allocated to all lands benefited must be at least one hundred percent (100%) and as near to one hundred percent (100%) as is practicable.

(2) Determine the amount of damages sustained by any owner as a result of the reconstruction, and prepare a schedule of damages containing:

(A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the surveyor's report;

(B) the amount of each owner's damages; and

(C) an explanation of the injury upon which the determination was based.

The surveyor shall add the damages to all lands as determined by the board to the estimated costs and expenses contained in his report, and the result constitutes the total estimated cost of the reconstruction.

(3) Set forth the amount of each owner's assessment based on the total estimated cost of the reconstruction.

(4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the reconstruction. The percentage used in computing the annual assessment may, but need not be, the same for each tract of land as the percentage used in computing the general assessment.

The board may consider the factors listed in section 112 of this chapter in preparing the schedules.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-51

Reconstruction of drains necessitated by changes in land use; assessments

Sec. 51. Whenever it becomes necessary to reconstruct a regulated drain that has become inadequate due to an increased flow of drainage resulting, in whole or in part, from a change in land use by one (1) or more owners of land affected by the drain, the board shall consider that fact in assessing benefits to pay the cost of the

reconstruction, and the owner or owners necessitating the reconstruction shall be assessed accordingly.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-52

Reconstruction of drains; notice and hearing on surveyor's report and schedules; objections; final order

Sec. 52. (a) When the schedules of damages and assessments are completed and marked filed, the board shall fix a date, time, and place for a hearing on the reconstruction report of the county surveyor and on the schedules of damages and assessments, and shall prepare a notice for each owner of land affected by the reconstruction. The notice must state:

- (1) the name and identifying number by which the proposed reconstruction is known;
- (2) that the reconstruction report of the surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the surveyor;
- (3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of _____ dollars;
- (4) that the land of the owner is shown by the schedule of assessments to be assessed _____ percent of the total cost of reconstruction, and that _____ percent of the estimated total cost of the reconstruction is in the sum of _____ dollars;
- (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for estimated periodic maintenance of the reconstruction; and
- (6) the date, hour, and place of the hearing on the surveyor's reconstruction report and on the schedules of damages and assessments.

(b) Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedules of damages and assessments.

(c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:

- (1) identify the proposed reconstruction;
- (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and
- (3) state that:
 - (A) the reconstruction report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
 - (B) a hearing will be held before the board on the report and schedules, specifying the time and place of hearing.

(d) Not less than five (5) days before the board's hearing on a

reconstruction report, an owner of lands affected by the report or by the schedules of damages and assessments may file with the board written objections to the report, schedules, or both. The objections may be for one (1) or more of the following causes:

(1) The costs, damages, and expenses of the proposed reconstruction will exceed the benefits that will result to the owners of all land benefited.

(2) The objector is the owner of land assessed as benefited, and the benefits assessed against his land are excessive.

(3) The objector is the owner of land damaged by the reconstruction, and:

(A) the board failed to find that his land is damaged; or

(B) the damages assessed to his land are inadequate.

Each objector may file written evidence in support of his objections. The failure of an owner to file objections constitutes a waiver of his right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

(e) On or before the day of the hearing, the county surveyor shall, and any owner of land affected by the proposed reconstruction may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).

(f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(g) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments, and the county surveyor may modify his report, as justice may require.

(h) Before final adjournment of the hearing, the board shall determine in writing whether the costs, damages, and expenses of the proposed reconstruction will be less than the benefits accruing to the owners of land benefited by the construction. If the board answers this question in the negative, it shall dismiss the proceedings. If the board answers the question in the affirmative, it shall adopt the reconstruction report of the county surveyor and the schedule of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings, and issue an order declaring the proposed reconstruction established. The board shall mark the findings and order filed and publicly announce the findings and order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

(i) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the findings and order become conclusive.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,

P.L.45, SEC.78; P.L.180-1995, SEC.6.

IC 36-9-27-52.5

Authorization for reconstruction of regulated drain

Sec. 52.5. (a) If:

- (1) a proposed project for the reconstruction of a regulated drain is presented to the board for approval;
- (2) the proposed project consists exclusively of the relocation of a regulated drain from one (1) site on property owned by a person to another site on property owned by the same person;
- (3) the specifications for the project have been approved by the county surveyor;
- (4) the project will be completed under the supervision of the county surveyor;
- (5) the person who owns the property on which the regulated drain will be relocated will pay the entire cost of the project;
- (6) the county surveyor has investigated whether any other owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project, and has communicated the results of the investigation to the board;
- (7) the board finds that no owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project; and
- (8) the board, at a public meeting, votes to approve the proposed project;

the board may issue an order authorizing the reconstruction of a regulated drain.

(b) The board may issue an order authorizing the reconstruction of a regulated drain under subsection (a) without:

- (1) the preparation and filing of a reconstruction report under sections 49 and 50 of this chapter;
- (2) the preparation by the county surveyor of a schedule of damages and assessments under section 50 of this chapter; and
- (3) a hearing on the reconstruction report and the schedules of damages and assessments under section 52 of this chapter.

As added by P.L.273-1995, SEC.3.

IC 36-9-27-53

Reconstruction proceedings; combination of drains; procedure

Sec. 53. (a) Whenever:

- (1) the board has initiated, or is considering initiating, a proceeding to reconstruct a regulated drain under this chapter;
- (2) one (1) or more other regulated drains in the same watershed are in need of reconstruction;
- (3) the board finds that no substantial injustice would result from treating the drains as a single drain; and
- (4) the board has given notice and a hearing to the owners of affected land;

the board may issue an order combining the drains.

(b) The notice shall be published:

- (1) at least once; and
- (2) not less than ten (10) nor more than thirty (30) days before the date of the hearing;

in a newspaper of general circulation in the area affected. Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.

(c) After an order is issued under this section, this chapter applies to the combined drains as if they were a single drain.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-53.5

Review of proposed reconstruction or maintenance project; potential onsite field review

Sec. 53.5. (a) A county surveyor or board planning to perform a project for the reconstruction or maintenance of a regulated drain under this chapter that:

- (1) is subject to regulation under:
 - (A) IC 14-26-5; or
 - (B) IC 14-28-1; or
- (2) requires an individual permit under Section 404 of the federal Clean Water Act (33 U.S.C. 1344);

shall request a review of the project through a written notification to the division of water of the department of natural resources (referred to as "the division" in this section). The notification may include a request to schedule an onsite field review of the project.

(b) If an onsite field review is requested, not more than fourteen (14) days after it receives the request under subsection (a), the division shall contact the county surveyor or the designee of the county surveyor and the department of environmental management to establish a date, time, and location for the onsite field review.

(c) If an onsite field review is scheduled, it shall be conducted by a team consisting of:

- (1) one (1) or more representatives of the county;
- (2) one (1) or more representatives of the department of natural resources, including an engineer from the division of water;
- (3) one (1) or more representatives of the department of environmental management; and
- (4) if applicable, representatives of the local soil and water conservation district.

(d) Not more than thirty (30) calendar days after the completion of a review under this section, the division shall provide the county surveyor with a written summary of the review. The summary must contain the following:

- (1) A narrative and map defining the project location.
- (2) A description of the proposed work.
- (3) A list of conditions that:
 - (A) the department of natural resources would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work;
 - (B) the department of environmental management would

place on a certification to comply with Section 401 of the federal Clean Water Act (33 U.S.C. 1341), if it is possible to ensure compliance with Section 401 by placing conditions on the certification; or

(C) both departments referred to in this subdivision would place on a permit or certification.

(e) The department of natural resources may not require or recommend the following as conditions for a permit for a project for the reconstruction or maintenance of a regulated drain:

- (1) Deed restrictions in connection with the proposed work.
- (2) Conservation easements in connection with the proposed work.
- (3) Tree planting or tree retention within the easement of the regulated drain, if:
 - (A) the project involves construction on only one (1) side of the drain;
 - (B) vegetation on the opposite overbank will not be disturbed; and
 - (C) the board agrees to establish a suitably sized vegetated filter strip consisting of grasses and legumes along the side of the drain on which the construction will occur.

(f) For the purposes of subsection (e)(3), a project involves construction on only one (1) side of a regulated drain if the work is limited to the entire area:

- (1) below the top of the banks; and
 - (2) within the drainage easement on one (1) side;
- of the stream or open drain.

(g) A county surveyor or board that is aggrieved by the permit conditions disclosed under subsection (d)(3) has the right to enter into further negotiations with the department of natural resources and the department of environmental management in order to obtain a mutually agreeable set of permit conditions.

(h) If the permit conditions disclosed under subsection (d)(3) concerning a project for the reconstruction or maintenance of a regulated drain are acceptable to the county surveyor and board, the conditions:

- (1) are binding upon the department of natural resources; and
- (2) may not be changed by the department of natural resources.

However, subdivisions (1) and (2) cease to apply to the permit conditions disclosed under subsection (d)(3) concerning a project if an application for a permit for the project is not submitted within two (2) years after the review.

As added by P.L.180-1995, SEC.7. Amended by P.L.2-1996, SEC.295; P.L.6-2014, SEC.4.

IC 36-9-27-54

Construction of drains; petitions

Sec. 54. (a) When one (1) or more persons want to establish a new regulated drain, and that drain cannot be established in the best and cheapest manner without affecting land owned by other persons, the

person or persons seeking to establish the drain must file a petition with the board. If the proposed drain will affect land in two (2) or more counties, the petition shall be filed in each of the affected counties. The petition shall be entitled "In the Matter of the _____ Drain Petition".

(b) The petition may be filed by:

(1) the owners of:

(A) ten percent (10%) or more in acreage; or

(B) twenty-five percent (25%) or more of the assessed valuation;

of the land that is outside the corporate boundaries of a municipality and is alleged by the petition to be affected by the proposed drain;

(2) a county executive that wants to provide for the drainage of a public highway;

(3) a township executive or the governing body of a school corporation that wants to drain the grounds of a public school; or

(4) a municipal legislative body that wants to provide for the drainage of the land of the municipality.

(c) The petition must include the following items:

(1) A statement showing that each petitioner is qualified to file the petition.

(2) The legal description of each tract of land that a petitioner believes will be affected by the proposed drain, and the name and address of each owner, as shown by the tax duplicate or record of transfers of the county. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. The petition must describe an area of land equal to three-fourths (3/4) or more in area of all the affected land.

(3) The general route of the proposed drain.

(4) A statement that in the opinion of the petitioner the costs, damages, and expenses of the proposed drain will be less than the benefits accruing to the owners of land likely to be benefited by the drain.

(5) A statement that in the opinion of the petitioner the proposed drain will:

(A) improve the public health;

(B) benefit a public highway in a county or a public street in a municipality;

(C) drain the grounds of a public school; or

(D) be of public utility.

(6) The name of the attorney representing the petitioner in the drainage petition.

(7) A statement that the petitioner shall pay the cost of notice and all legal costs, if the petition is dismissed.

The petitioner shall post a bond sufficient to pay the cost of notice and all legal costs if the petition is dismissed.

(d) The petition must be signed by each petitioner and filed in

duplicate with the county surveyor, who shall receive it on behalf of the board. The surveyor shall examine the petition and if it is in proper form he shall mark it filed, showing the date of filing, and give it a distinguishing name by insertion in its caption. If the petition is not in proper form, the surveyor shall return it to the attorney for the petitioner, pointing out in what respects the petition fails to comply with this chapter. The attorney may then amend the petition and refile it with the surveyor.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-55

Construction of drains; inspection and preliminary report by county surveyor

Sec. 55. When the county surveyor has accepted a petition and marked it filed under section 54 of this chapter, he shall make a personal inspection of the land described in the petition and file with the board a written preliminary report stating:

- (1) whether the proposed drain is practicable;
- (2) whether the proposed drain will improve the public health, benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school, or be of public utility; and
- (3) whether the costs, damages, and expenses of the proposed drain will probably be less than the benefits accruing to the owners of land likely to be benefited.

In determining whether the proposed drain is practicable, the surveyor may consider changing the route of the proposed drain from that set forth in the petition to conform with sound engineering principles.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-56

Construction of drains; negative findings by surveyor; procedure

Sec. 56. (a) If the county surveyor's report concerning any of the three (3) subdivisions of section 55 of this chapter is wholly in the negative, the board shall have a copy of the surveyor's preliminary report served upon the attorney for the petitioner.

(b) Within twenty (20) days after service is made under subsection (a), the petitioner may file with the board written objections to the report, along with written evidence in support of the objections.

(c) The board shall consider any objections and written evidence filed by petitioner, and may then adopt the surveyor's preliminary report as filed or amend it as justice may require. However, if the board finds that the report concerning any of the three (3) subdivisions of section 55 of this chapter should be wholly in the negative, it shall dismiss the petition, whether or not the petitioner has filed objections and evidence.

(d) The board shall serve a copy of its findings and the notice of dismissal, if any, on the attorney for the petitioner. The petitioner may file an appeal from the order of the board under section 106 of

this chapter within twenty (20) days after service of the order on his attorney.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-57

Construction of drains; affirmative findings by surveyor; procedure

Sec. 57. (a) If the county surveyor, in his preliminary report, or the board, after a hearing under section 56 of this chapter, finds that the report concerning each of the three (3) subdivisions of section 55 of this chapter should be in the affirmative, the surveyor shall determine if any land other than that described in the petition will be affected by the proposed drain. If the surveyor finds that additional land will be affected, he shall make a written report to the board, setting forth the boundary of the additional area of affected land.

(b) After receiving the county surveyor's report under subsection (a), the board shall determine if the petition describes an area of land equal to three-fourths (3/4) or more of all the affected land.

(c) If the board's determination under subsection (b) is in the negative, the board shall enter an order dismissing the petition, unless within a time specified by the board a supplementary petition describing a sufficient area contiguous to the area described in the original petition, with the signatures required to qualify the supplementing petition, is filed with the board. The board shall serve a copy of the report of the county surveyor and order of dismissal upon the attorney for petitioner. The dismissal does not prohibit the subsequent filing of a proper petition.

(d) If the county surveyor determines that additional land will be affected by the proposed drain, and that the petition described a sufficient area of land, he shall prepare a written report describing the boundary of the additional area and have a copy of the report served on the attorney for the petitioner. The petitioner, within thirty (30) days after service of the report upon his attorney, shall file with the surveyor an amendment to the petition, including:

- (1) the names and addresses of the owners of all land within the additional area described in the surveyor's report; and
- (2) a legal description of each owner's land.

The names, addresses, and legal descriptions shall be described in the manner prescribed by section 54(c)(2) of this chapter. If the petitioner fails to file the amendment to the petition within the thirty (30) day period, or within any additional time granted to the petitioner by the surveyor or the board, the surveyor shall report that fact to the board at its next meeting. The board shall then enter an order dismissing the petition and serve a copy of the order on the attorney for petitioner.

(e) If the county surveyor determines that the petition described all of the land that may be affected by the proposed drain, or if the surveyor determines otherwise and a proper amendment to the petition is filed under subsection (d), the surveyor shall immediately fix a date, hour, and place for a hearing before the board on the petition and shall have written notice of the hearing served on the

attorney for the petitioner. The date of the hearing may not be less than thirty (30) nor more than forty (40) days after the date of service of notice upon the petitioner's attorney. The surveyor shall call a special meeting of the board for the date, time, and place fixed in the notice unless a meeting of the board is already scheduled for the date, time, and place.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-58

Construction of drains; notice of hearing on petition

Sec. 58. (a) Within seven (7) days after the attorney for the petitioner is served with notice of a hearing under section 57(e) of this chapter, he shall prepare a written notice setting forth:

- (1) the fact of the filing and pendency of the petition;
- (2) the name and identifying number by which the petition is known;
- (3) the general route of the proposed drain; and
- (4) the date, hour, and place of the hearing before the board.

(b) The attorney for the petitioner shall, within the seven (7) day period, mail a copy of the notice in a five (5) day return envelope to each owner named in the petition.

(c) The attorney for the petitioner shall have a copy of the notice published in accordance with IC 5-3-1. The published notice shall be directed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered.

(d) On or before the day of the hearing, the attorney for the petitioner shall file with the board affidavits showing the mailing of the notices under subsection (b) and the publication of notice under subsection (c). The mailing and publication of the notice under this section constitute public notice to all owners of the pendency of the petition, whether or not they were individually named and notified, and are sufficient to give the board jurisdiction over those owners.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.79.

IC 36-9-27-59

Construction of drains; remonstrances and objections to petition

Sec. 59. (a) At least five (5) days before the board's hearing on a petition to establish a new regulated drain, one (1) or more persons who own two-thirds (2/3) in the area of the acreage and fifty-one percent (51%) of the assessed valuation of the land named in the petition, or that may be affected by an assessment of benefits or damages, may file with the board a written remonstrance, signed by each remonstrator, against the construction of the proposed drain.

(b) At least five (5) days before the board's hearing on a petition to establish a new regulated drain, any person named in the petition as the owner of land likely to be affected by the proposed drain may object to any member of the board acting in the proceedings to establish the drain, if that member has an interest in any of the land described in the petition. The objection must be in writing, filed with

the board, and verified by the signer.
As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-60

Construction of drains; hearing on petition; consideration of remonstrances and objections

Sec. 60. (a) At its hearing on a petition to establish a new regulated drain, the board shall consider:

- (1) any remonstrance filed under section 59(a) of this chapter; and
- (2) any objection filed under section 59(b) of this chapter.

(b) If the board finds that a proper remonstrance has been filed, it may dismiss the petition. If the board does not dismiss the petition, it shall forward the petition to the county surveyor for a final report.

(c) If the board finds that a proper objection has been filed, the person against whom the objection is made shall disqualify himself from any further action in the proceedings to establish the drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.26.

IC 36-9-27-61

Construction of drains; final report by county surveyor

Sec. 61. When the board refers a petition to the county surveyor for a final report under section 60(b) of this chapter, the surveyor shall do the following:

- (1) Make the necessary survey for the proposed drain.
- (2) Prepare plans for structures other than bridges or culverts crossing a railroad right-of-way or a highway owned by the state. In preparing the plans, the surveyor shall include all appurtenances needed to complete the proposed drain.
- (3) Prepare maps showing the location of the land proposed to be assessed.
- (4) Prepare profiles showing the cuts and gradient of the proposed work.
- (5) Determine the best and cheapest method of drainage, which may be by:
 - (A) removing obstructions from a natural or artificial watercourse;
 - (B) diverting a natural or artificial watercourse from its channel;
 - (C) deepening, widening, or changing the channel of a natural or artificial watercourse;
 - (D) constructing an artificial channel, with or without arms or branches;
 - (E) tiling all or part of an open drain;
 - (F) converting all or part of a tiled drain to an open drain;
 - (G) constructing a new drain as a part or the whole of the work;or
- (H) any combination of these methods.
- (6) Determine and describe the termini, route, location, and character of the proposed work, including grades, bench marks,

and all necessary arms. The surveyor may vary the line of the work from the line described in the petition, and he may fix the beginning and outlet so as to secure the best results.

(7) Divide the proposed drain into sections of not more than one hundred (100) feet in length, and compute and set out the number of cubic yards of excavation in each section.

(8) Estimate the cost of the proposed drain, including construction, seeding or sodding of disturbed areas and the banks of open drains, notices, advertising, and the attorney's fee for the petitioner's attorney. The amount of the attorney's fee is computed as follows:

(A) If the estimated cost of constructing the drain is less than one thousand five hundred dollars (\$1,500), the fee is fifteen percent (15%) of that cost.

(B) If the estimated construction cost is one thousand five hundred dollars (\$1,500) or more, but less than twenty-five thousand dollars (\$25,000), the fee is two hundred twenty-five dollars (\$225) plus five percent (5%) of the amount by which that cost exceeds one thousand five hundred dollars (\$1,500).

(C) If the estimated construction cost is twenty-five thousand dollars (\$25,000) or more, the fee is one thousand four hundred dollars (\$1,400) plus one percent (1%) of the amount by which that cost exceeds twenty-five thousand dollars (\$25,000).

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-62

Construction of drains; preparation of schedule of assessments; determination of damages

Sec. 62. (a) When the county surveyor has completed the maps, profiles, and plans required by section 61 of this chapter, he shall meet with the board, and the board shall take the following actions:

(1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the proposed drain and the name and address of the owner of the land. The name, address, and description shall be taken from the petition. The board shall enter in the assessment schedule the percentage of the total cost of the drain to be assessed against each tract of land. The percentage allocated to all lands benefited must be at least one hundred percent (100%) and as near to one hundred percent (100%) as is practicable.

(2) Determine the amount of damages sustained by all owners as a result of the proposed drain, and prepare a schedule of damages containing:

(A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the petition;

(B) the amount of each owner's damages; and

(C) an explanation of the injury upon which the determination was based.

The surveyor shall add the damages to all lands as determined

by the board to the estimated costs and expenses contained in his report, and the result constitutes the total estimated cost of the proposed drain.

(3) Set forth the amount of each owner's assessment based on the total estimated cost of the proposed drain.

(4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the proposed drain. The percentage used in computing the annual assessment may, but need not, be the same for each tract of land as the percentage used in computing the general assessment.

The board may consider the factors listed in section 112 of this chapter in preparing the schedules.

(b) If land that was not included in the petition is determined to be benefited or damaged, the names of the owners and a description of the land shall be taken from the tax duplicates or record of transfers of the county.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-63

Construction of drains; notice and hearing on surveyor's report and schedules of assessments and damages

Sec. 63. (a) When the schedules of assessments and damages prepared under section 62 of this chapter are completed and marked filed, the board shall fix the date, time, and place for a hearing on the county surveyor's report and on the schedules of assessments and damages. The board shall serve notice of the hearing, along with a copy of the schedules, upon the attorney for the petitioner. The date fixed by the board for the hearing may not be less than thirty (30) nor more than forty (40) days after service of notice upon the petitioner's attorney.

(b) Within five (5) days after service upon him of the notice of hearing, the attorney for the petitioner shall mail a notice in a five (5) day return envelope addressed to each owner named in the schedule of benefits and damages. The notice must state:

(1) the name and identifying number by which the proposed drain is known;

(2) that the report of the surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the county surveyor;

(3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of _____ dollars;

(4) that the land of the owner is shown by the schedule of assessments to be assessed _____ percent of the total cost of the drain, and that _____ percent of the estimated total cost of the drain is in the sum of _____ dollars;

(5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for the estimated periodic maintenance of the drain; and

(6) the date, hour, and place of hearing on the surveyor's report and on the schedules of damages and assessments.

(c) The attorney for the petitioner shall publish a notice in accordance with IC 5-3-1. The notice:

(1) shall be entitled "In the matter of the _____ drain petition";

(2) shall be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and

(3) must state that:

(A) the report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the surveyor; and

(B) a hearing will be held before the board on the report and schedules, specifying the time and place of the hearing.

(d) When the plans and specifications of the county surveyor disclose that part or all of the proposed drain will involve the construction of an open drain, the attorney for the petitioner shall mail a notice to the Indiana department of natural resources. The notice must give the time, date, and place of the hearing and state that the proposed drain will involve the construction of an open drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.80.

IC 36-9-27-64

Construction of drains depriving property owners of ingress and egress; damage awards

Sec. 64. (a) Whenever:

(1) a new open drain is to be constructed under this chapter; and

(2) the drain will cross a tract of land in such a manner that the owner of the tract will be deprived of ingress and egress to part of the tract unless a private crossing is constructed across the drain;

the board shall award damages to the owner in an amount equal to the cost of constructing a proper crossing. In determining the type and quality of the crossing, the board shall consider the use of the inaccessible land, the frequency of the crossing's use, the purpose of the crossing's use, and any other appropriate factors.

(b) When an owner is entitled to damages under subsection (a), he may, in lieu of accepting damages awarded by the board, file with the board his written consent to the construction of the crossing as part of the construction of the drain. The county surveyor shall then include the construction of the crossing in his plans and specifications for the drain, but the future maintenance of the crossing will then be the responsibility of the owner.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-65

Construction of drains; written objections to surveyor's report and

schedules; findings and final order by board

Sec. 65. (a) Not less than five (5) days before the board's hearing on a petition for a new regulated drain, any owner of land affected by the report of the county surveyor or by the schedules of damages and assessments may file with the board written objections to the report, schedules, or both. The objections may be for one (1) or more of the following causes:

- (1) The proposed drain, as reported by the surveyor, is not practicable and will not adequately drain the affected land. An objection on this ground must point out the impracticable aspects of the proposed drain and describe the specific lands that will not be adequately drained.
- (2) The costs, damages, and expenses of the drain will exceed the benefits that will result to the owners of all land benefited.
- (3) The proposed drain will not:
 - (A) improve the public health;
 - (B) benefit a public highway in a county or a public street in a municipality;
 - (C) drain the grounds of a public school; or
 - (D) be of public utility.
- (4) The objector is the owner of land damaged by the drain, and:
 - (A) the board failed to find that his land is damaged; or
 - (B) the damages assessed to his land are inadequate.
- (5) The objector is the owner of lands assessed as benefited, and the benefits assessed against his lands are excessive.

Each objector may file written evidence in support of his objections. The failure of an owner to file objections constitutes a waiver of his right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

(b) On or before the day of the hearing, the county surveyor shall, and any owner of affected land may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (a).

(c) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(d) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments, and the county surveyor may modify his report, as justice may require.

(e) Before final adjournment of the hearing, the board shall determine in writing:

- (1) whether the proposed drain, as reported by the county surveyor, is practicable and will adequately drain the affected land;
- (2) whether the costs, damages, and expenses of the proposed drain will be less than the benefits accruing to the owners of land benefited by the drain; and
- (3) whether the proposed drain will improve the public health,

benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school, or be of public utility.

If the board finds the issues set forth in subdivision (1), (2), or (3) in the negative, it shall dismiss the petition. If the board finds the issues set forth in subdivisions (1), (2), and (3) in the affirmative, it shall adopt the schedules of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings, and issue an order declaring the proposed drain established. The board shall mark the findings and order filed and publicly announce them at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

(f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the findings and order become conclusive.

(g) When the proposed drain is finally and conclusively established, the board shall allow the attorney for the petitioner the fee computed under section 61(8) of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.81.

IC 36-9-27-66

Construction of connecting drain through lands owned by others; procedure

Sec. 66. (a) Whenever:

- (1) land has been assessed as benefited by the construction, reconstruction, or maintenance of a regulated drain;
- (2) there is no open or tiled drain connecting the land with the regulated drain; and
- (3) the waters from the land flow over or through land owned by others to reach the regulated drain;

the owner of the land assessed may petition the board to construct through the land of the other owners a new drain that will connect the petitioner's lands with the regulated drain. The petition must describe the land through which the new regulated drain will run, state the name and address of each owner of that land, describe the general route of the proposed new regulated drain, and state the proposed method of construction.

(b) The board shall refer the petition to the county surveyor for a report.

(c) If the county surveyor determines that the proposed drain is not practicable, he shall report that fact to the board and the board shall deny the petition.

(d) If the county surveyor determines that the proposed drain is practicable, he shall, in the manner prescribed by sections 49 through 52 of this chapter, prepare plans and specifications and all

things necessary for the construction of the drain. The board shall, in the manner prescribed by sections 49 through 52 of this chapter, prepare a schedule of benefits and damages, serve the schedule upon the owners of land benefited or damaged, and hold a hearing on the schedule. Objections to the proceedings may be filed only on the grounds that:

- (1) the objector is the owner of land damaged by the proposed drain and the board failed to so find or, if it did so, find, the damages awarded were insufficient; and
- (2) the objector is the owner of land found by the board to be benefited, and the benefits assessed are excessive.

After the hearing, the board shall enter its order and findings in the manner prescribed by section 52 of this chapter.

(e) Any owner aggrieved by the final award of damages under subsection (d) may obtain judicial review under section 106 of this chapter. When the order of the board becomes conclusive, the board shall proceed to construct the drain in the manner prescribed by this chapter.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-67

Urban drains; designation

Sec. 67. (a) In his written report setting forth his order of priority for regulated drains under section 35 of this chapter, the county surveyor may designate any drain that is classified as in need of reconstruction as an urban drain. In adopting the classification and in making public the long-range plan, the board shall consider each designation of an urban drain and shall indicate the order of priority of action on urban drains.

(b) A drain shall be designated as an urban drain when:

- (1) the drain will not, without construction or reconstruction, provide proper drainage for urban land or will not properly impound water in a small lake;
- (2) it appears that after a practicable construction or reconstruction proper drainage for urban land can be provided; and
- (3) either or both of the following factors is present:
 - (A) A reasonable part of the land within the watershed has been or is being converted from rural land to urban land.
 - (B) It appears to the board that one (1) or more tracts within the watershed is or will be changing from rural land to urban land, and that change requires the drainage provided by an urban drain.

(c) A petition for a new regulated drain under section 54 of this chapter may state, or may be amended to state, that in the opinion of the petitioners the new regulated drain should be designated as an urban drain. The board shall consider that statement in referring the petition to the county surveyor for a final report.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.7.

IC 36-9-27-68**Urban drains; duties of county surveyor**

Sec. 68. The county surveyor shall perform the following duties with respect to all urban drains within his jurisdiction:

- (1) Prepare and make available to the public design standards of rainfall intensity and frequency for urban land, design standards of storm water runoff for urban land, or both. In preparing these standards, the surveyor shall consider official weather bureau information, design criteria of the Indiana department of natural resources, the published recommendations of the United States bureau of public roads, and all available local, topographical, geological, and statistical information that may affect the design standard of runoff from urban land. The surveyor may give special consideration to those weather events in which rainfall occurs under conditions when soil tends to be impervious due to frost or other natural causes.
- (2) Prepare hydraulic calculations for the channel design of the urban drain, taking into consideration hydraulic gradients, friction factors, dimensions, and other engineering variables.
- (3) Design the channel or dam required for the urban drain, including any necessary rerouting and taking into consideration the structures and structural characteristics of the soil.
- (4) Furnish design information for all new drainage structures (including local flood control dikes) that may be needed to properly drain urban land or impound water in a small lake in the most efficient and economical manner.
- (5) Keep available maps, listings, or other information showing current land use and projections of future land use in the area affected by the urban drain. In preparing this information, the surveyor shall consider recommendations of state and local planning agencies, plan commissions, zoning boards, and similar bodies.
- (6) Include in his report to the board on the construction or reconstruction of an urban drain his recommended designation of each parcel of affected land in the watershed of the urban drain as either urban land or rural land.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.8.

IC 36-9-27-69**Urban drains; preparation of schedule of assessments and determination of damages; notice and hearing**

Sec. 69. (a) After the county surveyor has filed his report on the construction or reconstruction of an urban drain, he shall consult with the board, and the board may adopt or modify the designations recommended by the surveyor. The board shall then prepare a schedule of benefits, assessments, and damages.

(b) The board shall determine and compute benefits, assessments, damages, total estimated cost, and percentage allocations in the manner provided by section 50 or section 62 of this chapter.

However, in determining benefits and assessments for an urban drain, the board shall consider the following factors:

(1) The watershed, or entire land area drained or affected by the urban drain, shall be considered to be benefited and shall be assessed.

(2) If specific parts of urban land are to be served by new drainage arms, routings, special structures, or other similar new features that are part of the total cost of the urban drain, those specific parts of urban land may be considered to have extra benefits greater than the benefits to the other affected urban land.

(3) Except for urban land that has extra benefits, all urban land within the watershed shall be considered to be equally benefited, and the benefits shall be computed in proportion to the number of acres in each tract.

(4) If a tract of urban land has been platted or subdivided into lots, and the subdivision contains streets, parkways, parks, or similar common use areas, the board may determine the per lot benefits by:

(A) ascertaining the total approximate benefits in proportion to the area of the tract before the subdividing; and

(B) apportioning the total benefits in substantially equal amounts to each lot.

Additional assessments may not be imposed on a right-of-way apportioned to the lots under this subdivision.

(5) Rights-of-way of a public highway, railroad company, pipeline company, or public utility that lie within or adjoin urban land shall be considered to be benefited and shall be assessed in the same manner as urban land.

(6) Rural land affected by an urban drain is benefited only as rural land and shall be assessed on that basis. Whenever the board finds that a drain would have drained rural land without reconstruction, the board may reduce the assessment apportioned to rural land, subject to section 84(c) of this chapter.

(c) The notice to landowners in the case of an urban drain must:

(1) state that the drain has been designated as an urban drain;

(2) describe the land of the owner to whom the notice is addressed; and

(3) state that the land described is shown by the schedule of assessments to be assessed as either rural land or urban land.

(d) Before final adjournment of the hearing, the board shall find in writing that the drain is an urban drain or that it is a rural drain and is not an urban drain. If the board finds that the drain is not an urban drain, the board shall then request the county surveyor to deny all future connections to the drain, as provided in section 17 of this chapter, and the board shall make this request and finding public.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-69.5

Drainage plans and specifications

Sec. 69.5. (a) As used in this section, "development" does not include utility infrastructure owned, controlled, installed, or constructed by a public or municipally owned utility.

(b) Unless otherwise required by an ordinance of the county, a person who lays out a:

(1) subdivision of lots or lands; or

(2) commercial, industrial, or other land development;

outside the corporate boundaries of any municipality must submit plans and specifications for the drainage of the subdivision or other development in accordance with this section. The county drainage board must approve the drainage plan before the person may proceed with the subdivision or other development.

(c) A drainage plan and specifications submitted under subsection (b) to the county drainage board must comply with this chapter. Except as provided in subsection (d), the plan must comply with the following standards:

(1) The plan must maintain the amount of drainage through the tract that existed when the tract was created. If any tiles are cut, broken down, or rendered useless during the construction activity on the tract, the landowner is responsible for the repair, replacement, or relocation of the tile.

(2) The plan may not change the locations where surface water enters the tract and exits the tract from the locations that existed when the tract was created.

(3) Water that sheds off of a new structure, especially when the new structure is elevated or near a property line, or both, must exit the tract in the same location where it did when the tract was created.

(d) The county drainage board may approve an alternate plan that does not comply with the standard set forth in subsection (c)(2).

As added by P.L.97-2001, SEC.1. Amended by P.L.125-2011, SEC.2.

IC 36-9-27-70

Drains within 300 feet of levees; approval of plans by department of natural resources

Sec. 70. (a) This section applies whenever the plans and specifications for the construction or reconstruction of any regulated drain disclose that the center line of the drain at any point will come within three hundred (300) feet of any levee that is subject to or was constructed under any statute.

(b) The county surveyor in charge of the work on the drain shall mail the plans and specifications for the drain by certified mail with return receipt requested to the Indiana department of natural resources. The department shall approve or disapprove the plans and specifications within forty-five (45) days after receiving them. If the department fails to act within the time limit, the plans and specifications are considered approved. If the department disapproves the plans and specifications, it shall issue an order stating the reasons for the disapproval, shall recommend specific changes in the plans

and specifications that would make them acceptable to the department, and shall serve a copy of the order on the surveyor.

(c) Work on the drain may not be commenced until the plans and specifications have been approved by the department, or until the board is satisfied that the county surveyor has changed the plans and specifications to conform with the department's recommendations.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-71

Drains crossing public highways and railroad rights-of-way

Sec. 71. (a) When, in the construction or reconstruction of a regulated drain, the county surveyor determines that the proposed drain will cross a public highway or the right-of-way of a railroad company at a point where:

- (1) there is no crossing; or
- (2) the crossing will not adequately handle or will be endangered by the flow of water from the drain when completed;

the county surveyor shall include in the plans the grade and cross section requirements for a new crossing, or the requirements for altering, enlarging, repairing, or replacing the crossing. The surveyor shall mail a copy of the requirements addressed to the owner of the highway or right-of-way.

(b) When requested by the owner of the highway or right-of-way, the county surveyor shall meet with the owner at a time and place to be fixed by the surveyor. The surveyor shall hear objections to the requirements, and may then change the requirements as justice may require.

(c) When the board finds that in the construction, reconstruction, or maintenance of a regulated drain it is necessary to:

- (1) alter, enlarge, repair, or replace a crossing; or
- (2) construct a new crossing where none existed before;

the cost of the work on the crossing shall be paid by the owner of the public highway. This cost may not be considered by the county surveyor or by the board in determining the cost of the work on the drain or in assessing benefits and damages. However, if it is necessary for the owner of a public highway to construct a new crossing because of a cut-off for the purpose of shortening or straightening a regulated drain, the owner of the public highway shall pay one-half (1/2) of the cost of the new crossing, and the remainder shall be included in the cost of the work on the drain.

(d) A railroad company with a right-of-way that is:

- (1) crossed by the construction of a regulated drain; or
- (2) affected by the altering or enlarging of a crossing;

shall pay one-half (1/2) of the cost of the work on the crossing and the remainder shall be included in the cost of the work on the drain.

(e) If the county surveyor is registered under IC 25-31, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced, or the construction of a new crossing for a

public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(f) If the county surveyor is registered under IC 25-21.5, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(g) Approval of the plans and hydraulic data by a person who is registered under IC 25-21.5 or IC 25-31 is required before the work can take place. However, if the county surveyor is not registered under IC 25-21.5 or IC 25-31, a registered person who is selected under section 30 of this chapter shall:

- (1) review and approve or disapprove the plans and specifications described in this subsection;
- (2) inform the county surveyor in writing of the approval or disapproval; and
- (3) submit all plans, specifications, and hydraulic data along with the approval or disapproval.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.5; P.L.76-1989, SEC.7; P.L.154-1993, SEC.7; P.L.2-1997, SEC.86; P.L.2-1998, SEC.89; P.L.241-1999, SEC.5; P.L.276-2001, SEC.15.

IC 36-9-27-72

Private crossings, control dams, or other permanent structures; removal, replacement, and maintenance

Sec. 72. (a) When, in the reconstruction or periodic maintenance of a regulated drain, the county surveyor determines that a private crossing will not adequately handle the flow of water from the drain or will be endangered by such flow, he shall in his plans call for the removal of the crossing.

(b) The replacement of a private crossing, when necessary, may be accomplished as a part of the work of the reconstruction or maintenance. The estimate by the county surveyor of the cost for the replacement shall be assessed against the land that would otherwise be deprived of ingress and egress. However, when a private crossing has been lawfully established and maintained, the board may assess any part of the cost of its replacement against all affected lands.

(c) A private crossing, control dam, or other permanent structure may not be placed over or through an open drain unless the plans and specifications for the structure are first approved by the county surveyor. The surveyor shall disapprove the plans and specifications if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(d) All maintenance of a private crossing or of a private structure

within the drain, whether privately constructed or constructed as a part of work on a drain under this chapter, is the responsibility of the owners of land served by the private crossing or structure. The owners are directly responsible for any obstruction or damage to the drain that results from the existence of the private crossing or structure, notwithstanding any other provisions of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.16.

IC 36-9-27-73

General drain improvement fund; establishment; composition; appropriations; disposition of surplus money

Sec. 73. (a) There is established in each county a general drain improvement fund, which shall be used to pay the cost of:

- (1) constructing or reconstructing a regulated drain under this chapter; and
- (2) removing obstructions from drains under IC 36-9-27.4.

In addition, if a maintenance fund has not been established for a drain, or if a maintenance fund has been established and it is insufficient, the general drain improvement fund shall be used to pay the deficiency.

(b) The general drain improvement fund consists of:

- (1) all money in any ditch or drainage fund that was not otherwise allocated by January 1, 1966, which money the county treasurer shall transfer to the general drain improvement fund by January 1, 1985;
- (2) proceeds from the sale of bonds issued to pay the costs of constructing or reconstructing a drain;
- (3) costs collected from petitioners in a drainage proceeding;
- (4) appropriations made from the general fund of the county, or taxes levied by the county fiscal body for drainage purposes;
- (5) money received from assessments upon land benefited for construction or reconstruction of a regulated drain;
- (6) interest and penalties received on collection of delinquent drain assessments and interest received for deferred payment of drain assessments;
- (7) money repaid to the general drain improvement fund out of a maintenance fund; and
- (8) money received from loans under section 97.5 of this chapter.

(c) The county fiscal body, at the request of the board and on estimates prepared by the board, shall from time to time appropriate enough money for transfer to the general drain improvement fund to maintain the fund at a level sufficient to meet the costs and expenditures to be charged against it, after allowing credit to the fund for assessments paid into it.

(d) There is no limit to the amount that the county fiscal body may appropriate and levy for the use of the general drain improvement fund in any one (1) year. However, the aggregate amount appropriated and levied for the use of the fund may not exceed the

equivalent of fifty cents (\$.50) on each one hundred dollars (\$100) of net taxable valuation on the real and personal property in the county.

(e) Whenever:

(1) the board finds that the amount of money in the general drain improvement fund exceeds the amount necessary to meet the expenses likely to be paid from the fund; and

(2) the money was raised by taxation under this section;

the board shall issue an order specifying the excess amount and directing that it shall be transferred to the general fund of the county.

The board shall serve the order on the county auditor, who shall transfer the excess amount to the general fund of the county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.371-1983, SEC.1; P.L.206-1984, SEC.6; P.L.239-1996, SEC.2; P.L.240-1996, SEC.1; P.L.2-1997, SEC.87.

IC 36-9-27-74

Certain counties; tax levy; appropriations

Sec. 74. (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Each year, the county shall levy the tax authorized by section 73 of this chapter at a rate on each one hundred dollars (\$100) of assessed valuation that will yield three hundred thousand dollars (\$300,000) per year.

(c) The county auditor shall determine a particular watershed's part of the receipts from the tax authorized by this section by multiplying the total tax receipts by a fraction determined by the county surveyor. The numerator of the fraction is the number of acres in the particular watershed, and the denominator is the total number of acres in all of the watersheds in the county. The auditor shall annually distribute these amounts to the watersheds in the county.

(d) The county legislative body shall annually appropriate, for use in the county in each of these watersheds, at least eighty percent (80%) of the watershed's part of the tax receipts.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992, SEC.187.

IC 36-9-27-75

Acceptance of grants or gifts

Sec. 75. The board may accept gifts or grants from any source for the purpose of paying all or part of the costs of constructing, reconstructing, or maintaining a drain under this chapter. The gifts or grants shall be used to reduce the costs assessed to affected owners.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-76

Cooperation with state or federal agencies

Sec. 76. The board may cooperate in joint effort with any state or federal agency in a proceeding to construct, reconstruct, or maintain a drain under this chapter. If the board is cooperating with a federal

agency, and the rules or procedures of the agency are in conflict with this chapter in respect to issuing bids, awarding contracts, and administering contracts, the board may adopt the federal rules or procedures in those areas where conflict exists, and may proceed in accordance with the requirements of the federal rules or procedures. *As added by Acts 1981, P.L.309, SEC.101.*

IC 36-9-27-77

Contracts; restrictions

Sec. 77. (a) Whenever:

- (1) the board orders the construction or reconstruction of a drain, and the order is not stayed under section 108 of this chapter; or
- (2) the board determines that maintenance work shall be let by contract;

the board may contract for the work to be done as a whole or in sections.

(b) Except as provided in subsection (c), the board may not let a contract for the construction or reconstruction of a drain if the amount of the contract is more than ten percent (10%) above:

- (1) the construction costs estimated by the county surveyor under section 61(8) of this chapter; or
- (2) the reconstruction costs estimated by the surveyor under section 49(c) of this chapter.

(c) If the board does not receive a bid that complies with subsection (b), it shall readvertise for bids. If on readvertisement the board does not receive a bid that complies with subsection (b), the board shall dismiss the proceedings unless it receives a bid that does not exceed the benefits assessed against the affected land.

(d) Whenever the benefits and construction costs estimated by the county surveyor have been filed for more than five (5) years, and the board is unable to award a contract within the limitations of subsections (b) and (c), the board shall refer the surveyor's report back to the surveyor for a supplemental report.

(e) Subject to IC 36-1-12-5, the board may perform maintenance, construction, or reconstruction by its own work force without awarding a contract.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.7.

IC 36-9-27-78

Contracts; bidding; required provisions; surety bonds

Sec. 78. (a) Whenever the board is ready to let contracts, it shall publish notice in accordance with IC 5-3-1. The notice must:

- (1) state that at a date, time, and place the board will receive bids on the work;
- (2) generally and concisely describe the nature of the work to be done and materials to be furnished;
- (3) invite sealed bids; and
- (4) state that prospective bidders may obtain plans,

specifications, and forms from the county surveyor in charge of the work.

A defect in the form of the notice does not invalidate proceedings under the notice.

(b) Each bidder shall deposit with his bid, at his option, either a certified check made payable to the board in the sum of five percent (5%) of the bid or a bid bond in the sum of five percent (5%) of the bid. If a bidder elects to deposit a bid bond, the bond must be payable to the board with sufficient sureties, and the bond must be conditioned upon the bidder's execution of a contract in accordance with his bid if accepted by the board and must provide for the forfeiture of five percent (5%) of the amount of the bid upon his failure to do so. The board shall return all checks and bonds submitted by unsuccessful bidders, and shall return a successful bidder's check or bond when he enters into a contract with the board.

(c) At the hour specified in the notice for receiving the bids, the board shall open and examine all bids. The board shall then promptly award the contract or contracts to the lowest bidder or bidders it finds to be qualified. In determining whether a bidder is qualified, the board shall consider the complexity and magnitude of the work to be performed, and the skill and experience of the bidder. Within five (5) days after the acceptance of a bid, the successful bidder shall enter into a contract with the board that complies with subsection (d). If a successful bidder fails to enter into such a contract, he forfeits to the board, as liquidated damages, the check or bond deposited under subsection (b).

(d) The contract between the board and a successful bidder must provide:

- (1) that the contractor will perform the work under the supervision of the county surveyor and in accordance with the plans, specifications, and profiles adopted by the board;
- (2) that a claim for payment under the contract will not be approved by the board until the work for which the claim is presented has been approved by the surveyor;
- (3) the time within which the work must be completed;
- (4) that fifteen percent (15%) of the contract price shall be withheld by the board for a period of sixty (60) days after the completion of the work, for the purpose of securing payment of suppliers, laborers, and subcontractors; and
- (5) for other terms that the board considers appropriate.

(e) Upon execution of the contract, the successful bidder shall give to the board a bond payable to the board, in an amount fixed by the board but not less than the amount of the bid, and with a corporate surety licensed to do business in Indiana. The bond must be conditioned on the faithful performance of the contract and the payment of all expenses and damages incurred under the contract, including payment of all suppliers, laborers, and subcontractors. However, in lieu of a corporate surety bond, the board may accept:

- (1) a cash bond;
- (2) a property bond; or

(3) a bond from a sufficiently financed private bonding company.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.82; Acts 1981, P.L.317, SEC.27; P.L.350-1983, SEC.3.

IC 36-9-27-79

Repealed

(Repealed by Acts 1981, P.L.57, SEC.45.)

IC 36-9-27-79.1

Contracts estimated to be not more than \$75,000; procedure

Sec. 79.1. Notwithstanding sections 77 and 78 of this chapter, the following provisions apply whenever the board estimates that the amount of the contracts to be let is not more than seventy-five thousand dollars (\$75,000):

(1) The board need not advertise in the manner provided by section 78 of this chapter. If the board does not advertise, it shall mail written invitations for bids to at least three (3) persons believed to be interested in bidding on the work. The invitations shall be mailed at least seven (7) days before the date the board will receive bids, and must state the nature of the contracts to be let and the date, time, and place bids will be received.

(2) The board may authorize the county surveyor to contract for the work in the name of the board.

(3) The contracts may be for a stated sum or may be for a variable sum based on per unit prices or on the hiring of labor and the purchase of material.

(4) The contracts shall be let in accordance with the statutes governing public purchase, including IC 5-22.

(5) The board may for good cause waive any requirement for the furnishing by the bidder of a bid bond or surety and the furnishing by a successful bidder of a performance bond.

As added by Acts 1981, P.L.57, SEC.42. Amended by P.L.355-1987, SEC.1; P.L.49-1997, SEC.84; P.L.241-1999, SEC.6.

IC 36-9-27-80

Subcontracts

Sec. 80. A person who enters into a contract with the board under section 78 or 79 of this chapter may not subcontract any part of the contract without the written consent of the board. The board may withhold its consent only for good cause.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-80.5

Construction contract changes in specification; change orders

Sec. 80.5. (a) If a change in the original specifications of a contract for the construction or reconstruction of a drain becomes necessary during the construction or reconstruction, the county surveyor may issue a change order to add, delete, or change an item in the contract. A change order issued under this subsection becomes

an addendum to the contract.

(b) The county surveyor may issue a change order under subsection (a) without obtaining prior approval from the board. The county surveyor shall report a change order issued under subsection (a) to the board at the next meeting of the board following the issuance of the change order.

(c) A change order issued under subsection (a) must be directly related to the drain project that is the subject of the original contract.

(d) The amount of a contract plus the amount of all change orders to the contract issued under this section may not exceed the following by more than twenty percent (20%):

(1) The construction costs estimated by the county surveyor under section 61(8) of this chapter.

(2) The reconstruction costs estimated by the county surveyor under section 49(c) of this chapter.

As added by P.L.154-1993, SEC.8.

IC 36-9-27-81

Partial or progress payments to contractors

Sec. 81. The county surveyor may, without first obtaining the approval of the board, authorize partial or progress payments to a contractor for work performed in amounts not in excess of eighty-five percent (85%) of the contract price of the work then completed. The surveyor shall report such an approval to the board at its next meeting. The surveyor may not give an approval under this section unless he has first inspected the work done.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-82

Final payment upon completion of contract; approval of work by county surveyor

Sec. 82. (a) Whenever a contract under this chapter calls for a payment to be made to the contractor on the completion of work, the county surveyor shall inspect the work done and file with the board a written report approving or disapproving the work. The board may not allow a claim for the payment until the surveyor's report shows the work to be approved.

(b) After the acceptance of the work by the county surveyor, the contractor shall file with the board a verified statement that all expenses incurred for labor and material, except for any expenditures specified in the statement, have been paid in full.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-83

Subcontractors, laborers, or other persons; claims

Sec. 83. (a) A subcontractor, laborer, or other person may file a claim with the board if:

(1) at the request of a contractor, he has performed any work or other service or has furnished any material used under the contract; and

(2) he has not been paid.

The claim must be filed within sixty (60) days after the performance of the work or service or the furnishing of the material, and must state the amount due and describe the work done or materials furnished. The board shall withhold the amount of the claim from the final payment due the contractor unless the claimant files a written withdrawal of the claim with the board.

(b) If, sixty (60) days after acceptance of the work by the surveyor, the contractor files with the board a written acknowledgement of the correctness of all claims, and if the amount withheld by the board is sufficient to pay all claims, the board shall have the claims paid out of the amount withheld from the contractor and shall pay the balance remaining to the contractor.

(c) If the contractor does not file an acknowledgement under subsection (b), or if there is not a sufficient amount withheld to pay all claims, the board shall interplead all claimants and the contractor in the circuit or superior court of the county in which the board is located and have the amount of the claims, or the amount withheld by the board, whichever is smaller, paid into court. The board is then discharged from liability.

(d) This section does not relieve the surety on the contractor's bond from liability under its obligation as set forth in the bond.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-84

Contracts; apportionment of costs to lands benefited

Sec. 84. (a) After letting a contract for the construction, reconstruction, or maintenance of a drain, the board shall determine the full cost of the construction, reconstruction, or maintenance, including the contract price, incidental expenses, damages, interest on any bonds issued under section 94 of this chapter, and attorney's fees, if any. The board shall then apportion this cost to the tracts of land assessed in proportion to the benefit percentage previously assigned to each tract. If the contract is for work on an urban drain, the board shall also designate each tract that is assessed as rural land or urban land.

(b) When determining and apportioning the full cost of construction or reconstruction under this section, the board may include for contingencies a reasonable sum not in excess of ten percent (10%) of the full cost.

(c) An improved or unimproved lot or tract of land that is benefited by the construction, reconstruction, or maintenance of a regulated drain shall be assessed each year for that construction, reconstruction, or maintenance in an amount fixed by the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.29; P.L.206-1984, SEC.8.

IC 36-9-27-85

Certification of assessments to county auditor; disposition of unexpended funds

Sec. 85. (a) The board shall certify the list of assessments apportioned under section 84 of this chapter to the auditor of each county in which there are lands to be assessed.

(b) Whenever the order of the board establishing an annual assessment for periodic maintenance becomes final, the board shall certify that annual assessment to the auditor of each county in which there are lands to be assessed. The annual assessment shall be collected each year until changed or terminated by the board.

(c) The county auditor shall extend assessments for construction and reconstruction upon a book to be known as the ditch duplicate, for the full period of payment allowed for all assessments for construction and reconstruction, with interest at ten percent (10%) per year upon all payments deferred beyond one (1) year from the date that the certification is made. However, the county auditor may not charge interest on assessments for construction or reconstruction financed through a bond issue under section 94 of this chapter.

(d) Whenever any sum is certified under this section and is not expended within two (2) years after payment of the most recently allowed claim for work on a drain, the county auditor, with the approval of the board, shall promptly transfer the unexpended sum to the periodic maintenance fund for that drain. If there is no periodic maintenance fund for the drain, the unexpended sum may be transferred to the general drain improvement fund or funds of the county or counties affected by the drain, in proportion to the original apportionment and certification of costs for the drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.30.

IC 36-9-27-86

Collection of assessments; public entities not exempt from assessments; county treasurer notice to state

Sec. 86. (a) Not later than thirty (30) days after the county auditor receives the certification of final costs for the construction or reconstruction of a drain, the auditor shall deliver a copy of the ditch duplicate to the county treasurer. The treasurer shall either:

(1) not later than fifteen (15) days after receipt of the copy of the ditch duplicate, mail to each person owning lands assessed for the construction or reconstruction a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due; or

(2) add a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due;

to the first property tax statement mailed by the county treasurer after receipt of the copy of the ditch duplicate to each person owning lands assessed for the construction or reconstruction.

The county treasurer shall designate a statement described in subdivision (2) in a manner distinct from general taxes. A statement described in subdivision (1) or (2) must state that the owner may pay the assessment in full within one (1) year or may pay only the

installment due within the current year, with deferred payments in annual installments with interest at ten percent (10%) per year (except as otherwise provided in section 85(c) of this chapter).

(b) Each year, the county treasurer shall add to the tax statements of a person owning the land affected by an assessment, designating it in a manner distinct from general taxes, the full annual assessment for periodic maintenance and all construction and reconstruction assessments due in the year the statement is sent.

(c) For purposes of the collection of any assessment, the assessments are considered taxes within the meaning of IC 6-1.1, and they shall be collected in accordance with the property tax collection provisions of IC 6-1.1, except for the following:

(1) An assessment is not the personal obligation of the owner of the land affected by the assessment, and only the land actually affected by an assessment shall be sold for delinquency.

(2) An annual assessment for periodic maintenance that is not more than twenty-five dollars (\$25) shall be paid at the first time after the assessment when general property taxes are payable.

(3) An assessment of less than five dollars (\$5) is increased to five dollars (\$5). The difference between the actual assessment and the five dollar (\$5) amount that appears on the statement is a low assessment processing charge. The low assessment processing charge is considered a part of the assessment.

(4) The exemptions under IC 6-1.1-10-2, IC 6-1.1-10-4, and IC 6-1.1-10-5 do not apply to assessments imposed under this chapter.

(d) Not later than June 1 of each year, the county treasurer shall, in the manner specified by the state land office, send to the state land office a list of all properties:

(1) for which one (1) or more assessment payments under this section are delinquent; and

(2) that are owned by:

(A) the state; or

(B) a state agency.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.31; P.L.352-1985, SEC.1; P.L.230-1991, SEC.1; P.L.37-1992, SEC.9; P.L.52-2006, SEC.2 and P.L.175-2006, SEC.26.

IC 36-9-27-87

Persons or associations owning multiple properties; single assessment bill

Sec. 87. If one (1) person or association owns two (2) or more separate pieces of property subject to assessment under this chapter, the board may issue one (1) itemized bill. The assessment must clearly show the pieces of property being assessed, the assessment for each piece of property, and the total assessment.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-88

Assessments; due date; installment payments

Sec. 88. All final assessments, other than annual assessments for periodic maintenance, are due and may be paid upon the date of certification of the final assessment to the county auditor, except that:

(1) the owners liable for the payment of the assessments may elect to pay them in equal installments of at least fifty dollars (\$50) per year, plus interest on the deferred payments, over a period of not more than five (5) years, with the yearly payments to be made semiannually at the time general taxes are payable; and

(2) when the board designates land as urban land in its certification of the list of assessments, the owners liable for the payment of assessments on the urban land may elect to pay them in equal installments of at least one hundred dollars (\$100) per year, plus interest on the deferred payments, over a period of not more than twenty (20) years, with the yearly payments to be made semiannually at the time general taxes are payable.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-89

Ditch assessment liens; attachment; termination

Sec. 89. (a) The lien of a ditch assessment attaches to the land assessed on the date of certification of the final assessment to the county auditor, and is inferior only to tax liens.

(b) The lien of a ditch assessment terminates on the date it is paid in full or on the last day of the fifth year after the last payment became due.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-90

Delinquent assessments on lands owned by municipal corporations

Sec. 90. When any ditch assessment against land owned by a municipal corporation becomes delinquent, the county auditor shall:

(1) certify the amount of the delinquency to the state board of accounts and to the person who receives semiannual distribution of taxes on behalf of the municipal corporation; and

(2) withhold the amount from the municipal corporation at the next semiannual distribution of taxes collected.

The amount withheld by the auditor shall be credited to the appropriate drainage fund.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-91

Assessments; deficiencies resulting from increases in damages or decreases in assessments

Sec. 91. (a) This section applies whenever:

(1) a court or jury acting under section 107 of this chapter:

(A) increases an award of damages; or

(B) decreases an assessment of benefits;

that was made by the board for the construction or reconstruction of a drain; and

(2) as a result of the increase or decrease, the assessments collected are not sufficient to fully repay the general drain improvement fund for money advanced to pay for the construction or reconstruction.

(b) The deficiency shall be transferred to the general drain improvement fund from the maintenance fund established for the drain by the board. However, the board may not order the transfer in amounts or at times that will result in the annual maintenance fund's being insufficient to pay the costs of periodically maintaining the drain.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-92

Transfers of property; requests for reassessment; notice and hearing; findings and final order

Sec. 92. (a) Whenever the owner of a tract of land assessed under this chapter subdivides or otherwise transfers part of the tract to another owner, he may file with the board a written request for reassessment in recognition of the transfer. The request must include the name and address of each owner of a part of the tract, together with the description of that part.

(b) The board shall promptly determine and file a proposed reassessment or amendment to the schedule of assessments to recognize the transfer, set a date for hearing the request, and mail notice to each affected owner in a five-day return envelope. The service of further notice to the addressee of any letter that is returned undelivered is the responsibility of the owner making the request. The notice, which must describe the land to be reassessed, must state:

- (1) the date, hour, and place of a hearing before the board on the proposed reassessment;
- (2) that the land of the owner is shown by the proposed reassessment to be assessed in the sum of _____ dollars; and
- (3) that failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the owner to object, on the grounds stated in subsection (c), to any final action of the board.

The notice shall be mailed at least twenty (20) days before the hearing. However, written consent of all the affected owners, or the presence of all those owners at the hearing, constitutes a waiver of any defect in notice.

(c) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration section 84(c) of this chapter.

(d) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board shall adopt the reassessment or amendment to the schedule of assessments into its findings and shall order the schedule amended. The board shall then announce its findings and order by certified mail

to each affected owner, or shall have one (1) notice of its findings and order published in a newspaper of general circulation throughout the county. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(e) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of receipt of the announcement or after the date of publication of the notice, the findings and order become conclusive.

(f) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor of each county in which there is land assessed by the reassessment, and the auditor and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-93

Periodic maintenance assessments; property transfers; reassessments; procedure

Sec. 93. (a) Whenever:

(1) the board adopts a schedule of annual assessments for the periodic maintenance of a drain or a combination of drains established under section 41 of this chapter; and

(2) a transfer of a part of any tract that is assessed by the schedule is subsequently recorded with the county recorder;

the board shall reassess that part of the tract. The reassessment may be made at one (1) or more times each year and shall be made at not less than biennial intervals. However, the reassessment is not required in any year in which the annual assessment is omitted under section 43 of this chapter.

(b) The county auditor shall provide a listing of all tracts subject to reassessment and shall, from time to time or when requested by the board, file the listing with the board. The board shall determine and file a schedule of reassessments, set a date for hearing on the schedule, and prepare a written notice. The notice, which must describe the land to be reassessed, must state:

(1) the date, hour, and place of a hearing before the board on the schedule of reassessments;

(2) that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor;

(3) that the land of the owner is shown by the schedule of reassessments to be annually assessed in the sum of _____ dollars for periodically maintaining the drain from which the land derives benefits; and

(4) that failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the owner to object, on the grounds stated in subsection (d), to any final action of the board.

Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five-day return envelope to each owner named in the schedule of reassessments.

(c) The board shall have notice published in accordance with IC 5-3-1. The notice must:

- (1) identify the drainage proceedings;
- (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered;
- (3) state that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor; and
- (4) state that a hearing will be held before the board on the schedule of reassessments, giving the date, hour, and place of the hearing.

(d) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration section 84(c) of this chapter.

(e) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of reassessments as originally filed or as modified, mark the order filed, and make public announcement of the order at the hearing. The board shall then have notice published in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the order becomes conclusive.

(g) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor of each county in which there is land assessed by the reassessment, and the auditor and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.83.

IC 36-9-27-94

Bonds; authorization; procedure; terms

Sec. 94. (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is in excess of that amount that the owners of land to be assessed may conveniently pay in installments over a five (5) year period, it shall authorize the sale of bonds to finance the construction

or reconstruction.

(b) Whenever the board resolves to sell bonds, it shall determine:

- (1) the amount of money that must be raised;
- (2) the period over which the money shall be repaid; and
- (3) the date the first series of bonds will mature as to principal and the date the first payment of interest will be made, which shall be fixed so that money will be available to meet the interest payments and to retire the first series of bonds as they become due.

(c) The bonds may be issued in denominations of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and shall be numbered in consecutive order beginning with those first maturing. Interest on the bonds is payable semiannually.

(d) The bonds shall be sold at public offering in the manner provided by statute. However, if the total issue of bonds does not exceed ten thousand dollars (\$10,000) the board may sell the bonds at private sale to any individual, corporation, financial institution, or bank in Indiana at the best rate of interest for which the board may bargain. If the bonds are sold to one (1) purchaser, the form of the bonds may be in a single installment note. Acceleration of the balance of such a note in the event of partial default is not permitted, but all remedies of a bond creditor remain as to the partial default.

(e) All bonds or installment notes must provide that they may be called by the board for refunding or for prepayment without penalty. If the bonds are called for prepayment, interest ceases to run on them upon the date stated for presentment in the call as to those persons actually receiving notice of the call by registered mail as shown by the return receipt, whether their bonds are presented for payment or not. If the bonds are called for refunding, interest continues to run from the date stated for presentment in the call whether actually presented or not, at the rate provided for with respect to the refunding issue.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-94.1

Repealed

(Repealed by Acts 1981, P.L.317, SEC.39.)

IC 36-9-27-95

Fees for the sale of bonds

Sec. 95. Neither a member of the board, the county surveyor, nor any other officer may receive any fees for the sale of bonds to finance the construction or reconstruction of a drain. However, the attorney for the board is not required to perform services under a general retainer in preparation for the sale of the bonds, and may contract separately for those services with the board.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-96

Bonds; limited obligation; collection of delinquencies

Sec. 96. (a) Bonds issued to finance the construction or reconstruction of a drain are not the general obligation of the county, the board, or any person. The bonds are a lien only upon the land assessed for benefits for the construction or reconstruction in the ratio of the assessment.

(b) If bonds issued under this chapter become in default, the officers responsible for the collection of delinquent taxes shall take the steps provided by law to collect all delinquencies, and for that purpose the officers shall cooperate with any bond holder or committee of bond holders and shall pursue any remedies available for the collection of the delinquent assessments.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-97

Bond redemption fund; establishment; composition

Sec. 97. (a) A bond redemption fund is established for each construction or reconstruction project for which the board authorizes the sale of bonds. The fund consists of all assessments paid by the owners assessed as benefited by the construction or reconstruction, and may be used only to redeem:

(1) the bonds issued to finance the construction or reconstruction; or

(2) any installment note given in lieu of bonds.

(b) The county auditor shall maintain a separate ledger sheet for all assessments to be received into each bond redemption fund.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-97.5

Construction loans; terms; deposit of proceeds; interest on loan

Sec. 97.5. (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is an amount that the owners of land to be assessed may conveniently pay in installments over a five (5) year period, it may ask the county fiscal body to:

(1) obtain a loan from a bank, trust company, savings association, or savings bank authorized to engage in business in the county; or

(2) obtain funds in the manner prescribed by IC 36-2-6-18, IC 36-2-6-19, and IC 36-2-6-20;

to finance that construction or reconstruction.

(b) A loan obtained under this section:

(1) must have a fixed or variable interest rate;

(2) must mature within six (6) years after the day it is obtained;

(3) shall be repaid from installments collected from assessments of landowners over a five (5) year period; and

(4) is not subject to the provisions of section 94 of this chapter that concern interest.

(c) The proceeds of loans obtained under this section shall be deposited in the general drain improvement fund.

(d) The board shall determine whether interest on the loan is to be

a part of the final assessment under section 84(a) of this chapter.

(e) Notwithstanding section 85(c) of this chapter, interest on the loan may be charged back to the benefited landowner at a rate that is set in accordance with subsection (b).

As added by P.L.371-1983, SEC.2. Amended by P.L.76-1989, SEC.8; P.L.79-1998, SEC.110.

IC 36-9-27-98

Payment of assessments by municipality or county

Sec. 98. (a) Whenever a regulated drain is:

(1) located wholly or partly within a municipality; and

(2) constructed, reconstructed, or maintained under this chapter; the municipal fiscal body may, on behalf of the owners assessed or to be assessed within the municipality, pay the total assessment for the construction, reconstruction, or maintenance within the municipality. The payment may be made from any appropriation provided by law, including a cumulative drainage fund established under section 99 of this chapter.

(b) Whenever a regulated drain is:

(1) located outside the corporate boundaries of any municipality within a county; and

(2) constructed, reconstructed, or maintained under this chapter; the county fiscal body may, on behalf of the owners assessed or to be assessed outside any municipality and within the county, pay all or part of the assessment for the construction, reconstruction, or maintenance outside any municipality and within the county. The payment of all or part of the assessment by the county fiscal body may be made only from a cumulative drainage fund established under section 99 of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.9.

IC 36-9-27-99

Cumulative drainage fund; establishment

Sec. 99. A municipal or county fiscal body may, by resolution, establish a cumulative drainage fund under IC 6-1.1-41 for the construction, reconstruction, or maintenance of drains under this chapter. In the case of a county, however, the fund may be established only upon the recommendation of the county executive.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.32; P.L.17-1995, SEC.39.

IC 36-9-27-100

Cumulative drainage fund; tax levy

Sec. 100. To provide money for a cumulative drainage fund established under section 99 of this chapter, the fiscal body may levy a tax in compliance with IC 6-1.1-41 not to exceed five cents (\$0.05) on each one hundred dollars (\$100) of assessed valuation of all taxable personal and real property:

(1) within the corporate boundaries, in the case of a

municipality; or

(2) within the county but outside the corporate boundaries of all municipalities, in the case of a county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.10; P.L.17-1995, SEC.40; P.L.6-1997, SEC.225.

IC 36-9-27-101

Repealed

(Repealed by P.L.17-1995, SEC.45.)

IC 36-9-27-102

Name of fund

Sec. 102. The taxes collected under section 100 of this chapter shall be held in a special fund to be known as the "(city, town, or county) cumulative drainage fund".

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.17-1995, SEC.41.

IC 36-9-27-103

Construction, reconstruction, or maintenance projects for regulated drains; hearings required

Sec. 103. Notwithstanding any other provision of this chapter, after the establishment of a cumulative drainage fund, a hearing shall be held before the board undertakes any project to construct or reconstruct a regulated drain or to maintain a regulated drain when the total cost of the maintenance project is more than twenty-five thousand dollars (\$25,000). The board shall:

(1) publish a notice of the hearing in accordance with IC 5-3-1; and

(2) mail a notice of the hearing, at least fifteen (15) days before the hearing, to the owner of each piece of property adjoining the proposed or established regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.84; P.L.206-1984, SEC.11; P.L.154-1993, SEC.9.

IC 36-9-27-104

Interstate drains; authorization; joint meetings of state officials

Sec. 104. (a) Whenever:

(1) a petition to construct a new drain is filed under sections 54 through 65 of this chapter, a board initiates proceedings to reconstruct a drain under sections 49 through 52 of this chapter, or proceedings are initiated in Illinois, Kentucky, Michigan, or Ohio to construct or reconstruct a drain; and

(2) the proposed construction or reconstruction will affect land in both Indiana and the other state;

the board may join with the proper officials of the other state in a joint effort to construct or reconstruct the drain.

(b) Whenever proceedings are instituted in Indiana under subsection (a), the board shall fix a date, time, and place for a joint meeting with the proper officials of the other state for the purpose of

forming an interstate board, and shall have a notice of the meeting served on those officials.

(c) Upon receipt by the board of an acceptance of the offer to meet, or, when the offer to meet has come from the other state, upon acceptance by the board, the board and the officials of the other state shall proceed at the specified date, time, and place to form an interstate board by electing one (1) of their number chairman and one (1) of their number clerk. The chairman and the clerk may not be residents of the same state.

(d) Without regard to the number of members of the interstate board who are present, the members from Indiana are entitled to cast one-half (1/2) of all votes on all questions, and that vote shall be represented equally by the different members from Indiana who are present.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-105

Interstate drains; cooperation of surveyors and engineers

Sec. 105. (a) The county surveyor representing a board from Indiana that is part of an interstate board shall work with the surveyor or engineer representing the officials of the other state in the performance of the duties required of him by this chapter. The interstate board may employ an engineer to work with and assist the surveyor or surveyors, but an engineer may not be permanently employed unless the interstate board has determined that the proposed construction or reconstruction is necessary for the public health, welfare, or convenience, and that the cost of the construction or reconstruction will probably be less than the benefits to the affected land.

(b) The surveyors and engineer, if one is employed, shall:

- (1) prepare all surveys, plans, specifications, and other things required by this chapter for construction or reconstruction solely within Indiana;
- (2) estimate the total cost of the construction or reconstruction for the part of the drain located in each state, together with an estimate of the total cost of location; and
- (3) in their report, make a fair and just apportionment between the two (2) states of the cost of location and construction or reconstruction.

The report shall be filed with the interstate board and, when that board adopts the report by proper resolution, a certified copy of the report shall be filed with the board in Indiana.

(c) Upon receiving the report, the board in Indiana shall assess the benefits and damages to each tract of land affected in Indiana, in accordance with this chapter as applied to a drain located solely within Indiana.

(d) All provisions of this chapter, including the giving of notices, the right to object and remonstrate, and the right to judicial review, apply to the board, the surveyor, and all affected persons.

(e) When the construction or reconstruction is finally and

conclusively established in both states, and when money is available in both states to pay for the proposed work, the interstate board shall meet and let the work contracts. Payment from funds in Indiana shall be made by voucher approved by the interstate board, countersigned by the chairman of the board in Indiana, and filed with the county auditor. The payments shall be limited to the amount apportioned to Indiana under subsection (b).

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-106

Judicial review; petition

Sec. 106. (a) Any owner of land affected by a final order or determination of a board is entitled to judicial review of that order or determination in the circuit or superior court of the county in which the board is located. The owner must file in the court a petition:

- (1) setting out the order or determination complained of; and
- (2) alleging specifically that the order or determination is arbitrary, capricious, unlawful, or not supported by substantial evidence;

and pay the fee required under IC 33-37-4-4. If the order or determination to be appealed was made by a joint board, the petition must be filed in the circuit or superior court of the county that elected the surveyor who serves as an ex officio member of the joint board.

(b) A petition for judicial review under subsection (a) must be filed within twenty (20) days after:

- (1) the date of publication of notice by the board that the order or determination has been made; or
- (2) the order or determination was served on the person seeking the judicial review, if the order was served on that person.

(c) A copy of the petition shall be served on the board within five (5) days after the petition is filed. If the order or determination arose in a proceeding initiated by petition for the construction of a new drain under section 54 of this chapter, a copy shall also be served on the attorney for the petitioner, unless the petitioner is the person seeking the judicial review. Service under this subsection:

- (1) is sufficient to bring the board and any petitioner for a new drain into court;
- (2) may be made on the board by serving a copy of the petition on the county surveyor personally or by leaving it at the surveyor's official office; and
- (3) may be made on the attorney for the petitioner by serving a copy of the petition on the attorney personally or by leaving a copy of it at the attorney's address as set forth in the petition.

(d) Within twenty (20) days after receipt of notice that any person has filed a petition for review, the board shall prepare a certified copy of the transcript of the proceedings before the board and file it with the clerk of the court. The petitioner shall pay the cost of preparing this transcript. An extension of time in which to file the transcript shall be granted by the court upon a showing of good cause.

(e) On the filing of a petition for review, the clerk of the court

shall docket the cause in the name of petitioner and against the board. The issues shall be considered closed by denial of all matters at issue without the necessity of filing any further pleadings.

(f) When the owners of less than ten percent (10%) of the affected lands petition for judicial review, issues not triable de novo do not operate to stay work unless an appeal bond is posted.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.351-1985, SEC.2; P.L.192-1986, SEC.40; P.L.305-1987, SEC.37; P.L.98-2004, SEC.163.

IC 36-9-27-107

Judicial review; procedure

Sec. 107. (a) Whenever a petition for judicial review is filed on the ground that:

(1) the board found that the petitioner's land would be benefited by the construction, reconstruction, or maintenance of a drain, and the benefits assessed were excessive; or

(2) the petitioner's lands would be damaged by the construction, reconstruction, or maintenance of a drain, and:

(A) the board failed to so find; or

(B) the amount of damages awarded was inadequate;

the court shall proceed to hear the issue of benefits or damages de novo. A change of venue may be taken from the judge and from the county, and a jury trial may be obtained, in accordance with the rules governing the trial of civil actions. An appeal may be taken in accordance with the rules governing appellate procedure.

(b) Whenever a petition for judicial review is filed on any ground other than those set forth in subsection (a), the review shall be heard by the court without the intervention of a jury. The court may not try or determine the cause de novo, but shall consider and determine the cause exclusively upon the record made before the board and filed with the court. A change of venue may be taken from the judge under the rules governing a change of venue in civil actions, but a change of venue may not be taken from the county. The proceedings shall be advanced upon the docket of the court. If the court finds from the record before it that:

(1) the person filing the petition for review has complied with all procedures required under this chapter to properly present the matters set forth in the petition for review, and has exhausted his administrative remedies; and

(2) the decision or determination of the board is arbitrary, capricious, unlawful, or not supported by substantial evidence;

the court shall order the decision or determination of the board set aside and shall remand the matter to the board for further proceedings consistent with the findings and order of the court. If the court finds otherwise, the decision of the board shall be affirmed.

(c) In affirming or setting aside a decision or determination of the board, the court shall enter its findings and order or judgment on the record.

(d) When a petition for judicial review presents issues that shall be

heard de novo and issues that may not be heard de novo, the court shall separate the issues and shall proceed to determine the issues that may not be heard de novo. When the court's judgment on the issues that may not be heard de novo becomes final, or when the appeal is decided if an appeal is taken, the board shall proceed in accordance with the final judgment or appellate decision despite the fact that the issues to be heard de novo may be undecided and pending before the court or on appeal.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-108

Judicial review; stay of proceedings ordered by board

Sec. 108. (a) Whenever:

(1) a petition for judicial review of a board's final order for construction, reconstruction, or maintenance of a drain is filed in the circuit or superior court; and

(2) the petition presents an issue or issues that may not be heard de novo by the court;

all work under the order shall be stayed pending final disposition of the issue or issues by the court, or, if an appeal is taken, then until the issue or issues are finally decided by the supreme court or the court of appeals.

(b) Whenever issues that shall be heard de novo are pending in the circuit or superior court, or on appeal, work under the order may not be stayed by the court. However, the board may, by resolution, stay all or any part of the work until the issues presented by the judicial review are finally decided or until the board revokes its resolution.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.3-1989, SEC.232.

IC 36-9-27-109

Judicial review; evidence; filing requirements

Sec. 109. (a) All petitions, evidence, requests, and other documents required to be filed with the board under this chapter, including all material and documents of every kind prepared by the county surveyor or on the surveyor's behalf, shall be filed in the office of the surveyor, who shall receive them for the board. The surveyor shall:

(1) mark each document filed, showing the date it was received; and

(2) record the fact of filing, designating the nature of the document and by whom it was filed, in a journal maintained for that purpose.

(b) The county surveyor shall maintain the documents described in subsection (a) in permanent files under the name of each regulated drain in the county. These copies shall be made available to the trial court, the supreme court, or the court of appeals in any proceedings pending under sections 106, 107, and 108 of this chapter.

(c) The county surveyor shall maintain a copy of each document described in subsection (a) for the use of the board.

(d) Whenever this chapter permits the filing of written evidence with the board, that evidence shall be subscribed to under oath by the person or persons having knowledge of the facts contained in the evidence.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.12; P.L.3-1989, SEC.233.

IC 36-9-27-110

Notice and service; requirements

Sec. 110. (a) Whenever this chapter provides for the mailing of a notice to owners of affected land, the notice shall be addressed to the owner at the owner's home address as last entered by the county auditor for property tax purposes. If the owner is a railroad company or utility and is not assessed for taxes locally, the notice shall be addressed to the department of local government finance for forwarding to the railroad company or utility. If the owner is a unit or a school corporation, the notice shall be addressed to the persons authorized by law to accept service of process in civil actions on behalf of that owner. If the owner is the state, copies of the notice shall be addressed to the department or agency, if any, charged by law with the maintenance, supervision, or control over the state owned land that is affected.

(b) Whenever sections 54 through 65 of this chapter provide for the service of any document upon the attorney for a petitioner, the service shall be made by personally handing the document to the attorney, by leaving the document at the attorney's address, or by mailing the document to the address of the attorney as set forth in the petition.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.180-1995, SEC.8; P.L.90-2002, SEC.514.

IC 36-9-27-111

Time for filing documents; extensions

Sec. 111. Whenever the last day for filing any document under this chapter falls on a legal holiday, the time for the filing shall be extended to the next day that is not a legal holiday.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-112

Determination of benefits and damages by board; factors considered

Sec. 112. (a) In determining benefits to land under sections 39, 50, and 62 of this chapter, the board may consider:

- (1) the watershed affected by the drain to be constructed, reconstructed, or maintained;
- (2) the number of acres in each tract;
- (3) the total volume of water draining into or through the drain to be constructed, reconstructed, or maintained, and the amount of water contributed by each land owner;
- (4) the land use;

- (5) the increased value accruing to each tract of land from the construction, reconstruction, or maintenance;
- (6) whether the various tracts are adjacent, upland, upstream, or downstream in relation to the main trunk of the drain;
- (7) elimination or reduction of damage from floods;
- (8) the soil type; and
- (9) any other factors affecting the construction, reconstruction, or maintenance.

(b) In determining benefits or damages to land under sections 39, 50, and 62 of this chapter, the board may examine aerial photographs and topographical or other maps, and may adjourn the hearing to the site of the construction, reconstruction, or maintenance in order to personally view the affected land.

(c) In determining percentages of benefit under sections 39, 50, and 62 of this chapter, the board may consider the percentage of the total cost that was assessed to each tract in the initial construction or in any reconstruction of the drain. However, that percentage is not binding on the board in its current determination, and the board may vary from it as justice requires.

As added by Acts 1981, P.L.309, SEC.101.

IC 36-9-27-113

Investment of funds; consolidation; credit of interest earned

Sec. 113. (a) For the purpose of investment, the county treasurer may consolidate part or all of the money in any fund established under this chapter with the money in any other fund established under this chapter or other money held by the county treasurer.

(b) Unless the invested money is from a maintenance fund established under section 44 of this chapter, the county treasurer shall credit interest from an investment of a fund created under this chapter to that fund.

(c) The county treasurer may credit interest earned from an investment of a maintenance fund established under section 44 of this chapter into the general drainage improvement fund established under section 73 of this chapter.

(d) Within an account, the county treasurer may credit interest to particular drainage accounts in any fair and rational manner.

As added by P.L.206-1984, SEC.13.

IC 36-9-27-114

Drainage board fees in certain counties for certain storm water activities

Sec. 114. (a) This section applies to a county that:

- (1) receives notification from the department of environmental management that the county will be subject to regulation under 327 IAC 15-13; and
- (2) has not adopted an ordinance to adopt the provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures,

dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established under this chapter after a public hearing with notice given under IC 5-3-1 are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board shall use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each lot, parcel of property, or building.
- (2) The amount of impervious surface on the property.
- (3) The number and size of storm water outlets on the property.
- (4) The amount, strength, or character of storm water discharged.
- (5) The existence of improvements on the property that address storm water quality and quantity issues.
- (6) The degree to which storm water discharged from the property affects water quality in the district.
- (7) Any other factors the board considers necessary.

(g) The board may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on:

- (1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations;
- (2) variations in the number of users in various locations; and
- (3) whether the property is used primarily for residential, commercial, or agricultural purposes.

As added by P.L.282-2003, SEC.40.

IC 36-9-27.4

Chapter 27.4. Removal of Obstructions in Mutual Drains and Natural Surface Watercourses

IC 36-9-27.4-1

"Drain" defined

Sec. 1. As used in this chapter, "drain" refers to a mutual drain (as defined in IC 36-9-27-2).

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-2

"Drainage board" defined

Sec. 2. As used in this chapter, "drainage board" means the following:

- (1) Except as provided in subdivision (2):
 - (A) the county board of commissioners, as provided in IC 36-9-27-5(a)(1); or
 - (B) the drainage board appointed by the board of commissioners under IC 36-9-27-5(a)(2).
- (2) In a county having a consolidated city, the board of public works of the consolidated city, as provided in IC 36-9-27-5(b).

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-3

"Natural surface watercourse" defined

Sec. 3. As used in this chapter, "natural surface watercourse" means an area of the surface of the ground over which water from falling rain or melting snow occasionally and temporarily flows in a definable direction and channel.

*As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.
Amended by P.L.276-2001, SEC.17.*

IC 36-9-27.4-4

"Obstruction" defined

Sec. 4. (a) As used in this chapter, "obstruction" means a condition that:

- (1) exists within or near a drain; and
 - (2) prevents or significantly impedes the flow of water through the drain.
- (b) The term includes the following:
- (1) The presence of:
 - (A) one (1) or more objects inside or near a drain;
 - (B) a quantity of materials inside or near a drain; or
 - (C) damage to a drain;that prevents or significantly impedes the flow of water through the drain.
 - (2) Obstructions that:
 - (A) are created intentionally; and
 - (B) occur naturally or are created unintentionally.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-5**"Owner" defined**

Sec. 5. As used in this chapter, "owner" means a person who holds a possessory legal interest in land.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-6**"Person" defined**

Sec. 6. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or any other legal entity.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-7**"Respondent" defined**

Sec. 7. As used in this chapter, "respondent" means an owner of the tract of land that is the subject of a petition seeking the removal of an obstruction under this chapter.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-8**"Tract" defined**

Sec. 8. As used in this chapter, "tract" means an area of land that is:

- (1) under common fee simple ownership;
- (2) contained within a continuous border; and
- (3) a separately identified parcel for property tax purposes.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-9**Petition for removal of obstruction**

Sec. 9. If:

- (1) a person who owns a tract of land seeks the removal of an obstruction from a drain or natural surface watercourse located outside the person's tract in order to promote better drainage of the person's tract; and
- (2) the owner of the land on which the obstruction is located, upon request, does not remove the obstruction;

the person seeking the removal of the obstruction may file a petition under this chapter asking the drainage board in the county in which the obstruction is located to remove, or authorize or order the removal of, the obstruction under this chapter.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-10**Required contents of petition**

Sec. 10. A petition filed by a person described in section 9(1) of this chapter must include the following:

- (1) A general description of the tract of land owned by the petitioner.

(2) A general explanation of the need for the removal of the obstruction.

(3) A general description of the site of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-11

Filing fee

Sec. 11. The drainage board may require, as a condition of filing a petition under this chapter, the payment of a filing fee. The drainage board may not set the filing fee at an amount greater than is reasonably necessary to defray the expenses incurred by the board in processing a petition.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-12

Investigation by county surveyor; duties of drainage board after receiving report of obstruction

Sec. 12. (a) If a petition filed under this chapter alleges the obstruction of:

(1) a drain; or

(2) a natural surface watercourse;

the county surveyor of the county in which the obstruction is alleged to exist shall promptly investigate whether the obstruction exists.

(b) If the county surveyor, upon investigation, finds an existing obstruction in a drain or natural surface watercourse in the location alleged in the petition, the county surveyor shall report the existence of the obstruction to the drainage board.

(c) Upon receiving a report from the county surveyor under subsection (b), the drainage board shall:

(1) set a date for a hearing on the petition; and

(2) serve notice of the hearing on each owner of the land on which the obstruction exists who can be identified in the records of the county recorder.

(d) The hearing must be held at least thirty (30) days but less than ninety (90) days after the date of the filing of the petition.

(e) Notice of a hearing must be mailed to each respondent with return receipt requested.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

Amended by P.L.276-2001, SEC.18.

IC 36-9-27.4-13

Postponement and rescheduling of hearing

Sec. 13. Before or on the date of a hearing held under this chapter, the drainage board may postpone and reschedule the hearing if:

(1) it appears that a respondent has not been served with notice;

or

(2) the interests of fairness otherwise compel a postponement.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-14

Findings of board

Sec. 14. (a) If, after a hearing held under this chapter, the drainage board finds that:

- (1) the obstruction of a drain or a natural surface watercourse that is alleged in the petition exists; and
- (2) the removal of the obstruction will:
 - (A) promote better drainage of the petitioner's land; and
 - (B) not cause unreasonable damage to the land of the respondents;

the drainage board shall find for the petitioner.

(b) If, after a hearing held under this chapter, the drainage board is unable to make the findings described in subsection (a), the drainage board shall deny the petition.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-15

Drainage board determining whether obstruction created intentionally

Sec. 15. If the drainage board finds for the petitioner under section 14(a) of this chapter, the board shall determine, based upon a preponderance of the evidence, whether the obstruction of the drain or natural surface watercourse was created intentionally by any of the respondents.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-16

Duty of board upon finding of intentional obstruction

Sec. 16. (a) If the drainage board finds:

- (1) for the petitioner under section 14(a) of this chapter; and
- (2) under section 15 of this chapter that the obstruction of the drain or natural surface watercourse was created intentionally by at least one (1) of the respondents;

the drainage board shall enter an order directing the respondents to remove the obstruction at their own expense, or directing the county surveyor to remove the obstruction at the expense of the respondents.

(b) A respondent against whom an order is entered under subsection (a) is subject to an action under section 22 of this chapter if the respondent fails to pay the amount for which the respondent is responsible under the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-17

Duty of board upon finding of unintentional obstruction

Sec. 17. If the drainage board:

- (1) finds for the petitioner under section 14(a) of this chapter; and
- (2) does not find under section 15 of this chapter that the obstruction of the drain or a natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under section 18 or 19 of this

chapter concerning the removal of the obstruction.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-18

Additional duties of board; natural surface watercourses

Sec. 18. (a) If:

- (1) a petition filed under this chapter concerns a natural surface watercourse; and
- (2) the drainage board:
 - (A) finds for the petitioner under section 14(a) of this chapter; and
 - (B) does not find under section 15 of this chapter that the obstruction of the natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

- (1) authorizing the petitioner to remove the obstruction; or
- (2) directing the county surveyor to remove the obstruction at the expense of the petitioner.

(c) The drainage board shall consult with the:

- (1) petitioner;
- (2) respondents; and
- (3) county surveyor;

before deciding whether to enter an order under subsection (b)(1) or (b)(2).

(d) If the drainage board enters an order under subsection (b), the order may require the petitioner to bear the expenses of removing the obstruction, including the monetary value of the harm and inconvenience that the respondents will incur as a result of the removal of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-19

Additional duties of board; drains

Sec. 19. (a) If:

- (1) a petition filed under this chapter concerns a drain; and
- (2) the drainage board:
 - (A) finds for the petitioner under section 14(a) of this chapter; but
 - (B) does not find under section 15 of this chapter that the obstruction of the drain was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

- (1) authorizing the petitioner to remove the obstruction;
- (2) authorizing the respondents to remove the obstruction;
- (3) directing the county surveyor to remove the obstruction; or
- (4) directing that the obstruction be removed through the joint

efforts of at least two (2) of the persons referred to in this subsection.

(c) If an order is issued under subsection (b), the costs of removing the obstruction must be borne by the owners of all the tracts of land that are benefited by the drain. The order of the board must do the following:

- (1) Identify all tracts of land that are benefited by the drain.
- (2) Identify the owners of the tracts of land referred to in subdivision (1):
 - (A) who are known to the drainage board; or
 - (B) whose identity can be determined through the records of the county auditor.
- (3) Apportion the costs of removing the obstruction among the tracts of land that are benefited by the drain, assigning to each tract a certain percentage of the total costs.
- (4) Order the owners of each tract of land referred to in subdivision (1) to pay an amount equal to the product of the total costs of removing the obstruction multiplied by the percentage assigned to the tract under subdivision (3).

(d) The percentage of the total costs assigned to a tract under subsection (c)(3) must correspond to the ratio of the total length of the drain to the length of the particular segment of the drain that benefits the tract.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2. Amended by P.L.276-2001, SEC.19.

IC 36-9-27.4-20

Landowners jointly and severally responsible for costs of obstruction removal

Sec. 20. (a) All the owners of a tract that is the subject of an order issued under section 19 of this chapter are jointly and severally responsible for the payment of the amount determined under section 19(c)(4) of this chapter.

(b) An owner of a tract who pays all of or a portion of the amount may bring an action to obtain contribution from an owner of the tract who did not pay an equal or a greater portion of the amount.

(c) An owner of a tract that is the subject of an order issued under section 19 of this chapter is subject to an action under section 22 of this chapter if the owner fails to pay the amount for which the owner is responsible under the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-21

Order authorizing advance on general drain improvement fund for payment of obstruction removal expenses

Sec. 21. In entering an order concerning the removal of an obstruction under this chapter, a drainage board may:

- (1) provide for the costs of the removal work to be paid directly by one (1) or more of the persons subject to the order; or
- (2) authorize an advance on the general drain improvement fund

established in the county under IC 36-9-27-73 for the payment of the costs of the removal work and provide for the amount advanced to be reimbursed by one (1) or more of the persons subject to the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-22

Recovery of unpaid amounts or expenses

Sec. 22. (a) If a person who is required by an order of a drainage board under this chapter to pay an amount or bear an expense does not comply with the requirement, the amount for which the person is responsible may be recovered by:

- (1) the drainage board, as custodian of the general drain improvement fund, if the amount was advanced from the general drain improvement fund; or
- (2) another person subject to the order who has paid the amount and is entitled to reimbursement.

(b) An amount may be recovered from a person under subsection (a) through an action in a court having jurisdiction in the same manner that a creditor may recover an amount owed under a contract. In an action brought under this subsection, the plaintiff may also be awarded costs and reasonable attorney's fees.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-23

Judicial review

Sec. 23. (a) If the drainage board finds for a petitioner after a hearing held under this chapter, a respondent may file an action in the circuit or superior court of the county in which the alleged obstruction exists seeking to have the order entered by the drainage board vacated.

(b) An action filed under subsection (a) must be based on at least one (1) of the following assertions by the respondent:

- (1) The drainage board lacked authority to act under this chapter.
- (2) The drainage board erred in making the findings described in section 14(a) of this chapter.
- (3) The respondent should have been awarded compensation for harm and inconvenience, or the amount awarded to the respondent for harm and inconvenience is insufficient.
- (4) The drainage board did not follow the procedure required by this chapter.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-24

Remedies

Sec. 24. (a) In an action filed under section 23 of this chapter, the court:

- (1) shall enter an order vacating the order of the drainage board directing the county surveyor to remove the obstruction; and

(2) may issue an injunction against the removal of the obstruction;
if the court makes a finding under subsection (b).

(b) The court is required or authorized to act under subsection (a) if the court finds that the drainage board:

- (1) was clearly in error in making its findings under section 14(a) of this chapter with respect to the alleged obstruction; or
- (2) exceeded its authority or discretion under the law in authorizing the removal of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-27.4-25

Right of entry onto land

Sec. 25. (a) For the purposes of this chapter:

- (1) a county surveyor;
- (2) a member of a drainage board; or
- (3) an authorized representative of a county surveyor or drainage board;

has a right of entry over and upon a tract of land containing a drain or natural surface watercourse that is the subject of a petition filed under this chapter.

(b) The right of entry granted by this section is limited to the land lying within seventy-five (75) feet of the drain or natural surface watercourse. The seventy-five (75) feet must be measured at right angles to:

- (1) the center line of any tiled drain; and
- (2) the top edge of each bank of an open drain; and
- (3) the edge of any natural surface watercourse;

as determined by the county surveyor.

(c) A person exercising a right of entry under this section shall, to the extent possible, use due care to avoid damage to:

- (1) crops, fences, buildings, and other structures located outside the right-of-way; and
- (2) crops and approved structures located inside the right-of-way.

(d) Before exercising a right of entry under this section, an individual must give oral or written notice of the entry on the land to the property owner of record. The notice must state the purpose for the entry.

(e) A right of entry under this section is not criminal trespass under IC 35-43-2-2, and an individual exercising a right of entry under this section may not be arrested or prosecuted for criminal trespass under IC 35-43-2-2.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

IC 36-9-28

Chapter 28. Certain Watercourse, Levee, Sewer, and Drain Improvements

IC 36-9-28-1

Application of chapter

Sec. 1. This chapter applies to all municipalities other than a consolidated city.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-2

Order to construct or improve; issuance; drawings and specifications for project

Sec. 2. A municipal works board acting under this chapter may issue an order to construct or improve a levee, change or improve a natural or artificial watercourse, drain a section of land, or construct a sewer or drain, if:

- (1) the proposed project is designed to benefit land inside and outside the corporate boundaries of the municipality; and
- (2) the works board finds that the proposed project is necessary for the welfare of all or part of the municipality.

If the works board issues such an order, it shall have the necessary drawings and specifications for the project prepared and filed in its office.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-3

Order to construct or improve; considerations; filing of record of proceedings

Sec. 3. (a) In making an order for a project under this chapter, the municipal works board shall consider whether the project will beneficially or injuriously affect any property outside the corporate boundaries of the municipality.

(b) If the works board finds that the proposed project will injuriously or beneficially affect property outside the corporate boundaries of the municipality, it shall file with the circuit court for the county a record of all the proceedings concerning the project, including:

- (1) a list of all persons whose property will be affected, as determined from the records of the county at the time the works board passes the order for the project; and
- (2) a description of the boundaries of the affected area.

The proceedings shall be docketed in the circuit court in the same manner as other civil actions, and the court shall fix a time when the proceedings shall be heard.

(c) If the works board finds that the proposed project will not affect property outside the corporate boundaries of the municipality, it may not proceed with the project under this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-4

Notice of hearing; answer; judgment

Sec. 4. (a) After the record is filed under section 3 of this chapter, the clerk of the circuit court shall give notice to all persons who are mentioned in the record or who will be affected by the proposed project. The notice must:

- (1) be published in accordance with IC 5-3-1;
- (2) name a date on which the court will hold a hearing on the proposed project; and
- (3) describe the boundaries of the area affected by the proposed project.

(b) At the hearing, which may be adjourned from time to time, persons who own property in the area affected by the proposed project may file an answer showing why the works board should not proceed with the project. The court shall hear the evidence and determine whether the works board should proceed.

(c) If the court finds that the works board should proceed with the project substantially as described in the record, it shall enter judgment accordingly. Otherwise, the court shall dismiss the proceedings.

(d) The court's judgment under this section may not be appealed. *As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.85.*

IC 36-9-28-5

Control and supervision of work; letting of contract; reporting; filing

Sec. 5. If, under section 4 of this chapter, the court finds that the municipal works board should proceed with a proposed project, the works board shall control and supervise work for the project. The works board shall:

- (1) advertise for bids for the work; and
- (2) let a contract or contracts for the work, subject to financing.

The works board shall report the letting of the contract or contracts to the court, together with an estimate of other project costs, to be filed with the proceedings concerning the project.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-6

Board of assessors; duties; appeals from assessments; hearings; roll of property owners; corrections; actions to contest; costs

Sec. 6. (a) After the letting of a contract or contracts under section 5 of this chapter, the circuit court shall appoint three (3) competent, disinterested residents of the county to serve as the board of assessors for the project. The assessors shall take an oath to honestly and faithfully perform their duties as assessors.

(b) The board of assessors shall:

- (1) inspect the line of the proposed project and the property within the area affected by the project;
- (2) estimate and assess the benefits against each piece of

property to be benefited by the project;

(3) award damages to each piece of property to be injuriously affected by the project; and

(4) prepare and file with the clerk of the circuit court an assessment roll of the assessment against each property owner.

The clerk shall then give written notice of the assessment and the right to appeal by certified mail or personal service upon each of the property owners being assessed as his name and address appears on the tax records of the county. The clerk shall make and file in his records an affidavit of the giving of the notice.

(c) Appeals from the assessments may be made to the circuit court within fifteen (15) days after the time of the filing of the clerk's affidavit of service. The appeals shall be conducted in the manner directed by the circuit court.

(d) In hearing appeals of assessments, the board of assessors shall:

(1) sit at the times and places directed by the court;

(2) administer oaths;

(3) send for persons and papers; and

(4) hear testimony concerning the question of benefits and damages to be assessed.

The hearing may be continued from day to day.

(e) After hearing any appeals, the board of assessors shall finalize the roll of property owners whose property will be benefited or injured by the project, including:

(1) a description of the property affected; and

(2) the amount of the benefits or damages to the property, listed opposite each description;

and shall file it with the circuit court.

(f) The board of assessors may correct a mistake or supply an omission in the roll at any time. Proceedings under this chapter are not defective or void because of an omission or defect in the roll, and a property owner may not object to the proceedings on the ground of any mistake in or omission of:

(1) the name of any person; or

(2) the description of any property.

The circuit court may call the board together to make any necessary additions or corrections to the roll.

(g) An action to contest the assessments and the acts of the board of assessors must be commenced within:

(1) thirty (30) days after the affidavit of service by the clerk of the circuit court; or

(2) if an appeal is taken, within thirty (30) days after the filing of the final report with the court.

(h) The circuit court shall make reasonable allowances to the board of assessors and for attorney's fees, and shall tax these allowances with the other costs of the proceedings. The allowances are payable out of money available from bond proceeds, assessments, or the municipal treasury.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-7**Application of other assessment statutes**

Sec. 7. Except as otherwise provided by this chapter, the statutes concerning street and sewer improvement assessments apply to assessments made under this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-8**Acquisition of real or personal property required for project; condemnation; purchase**

Sec. 8. If any real or personal property inside or outside the municipality is required for a project under this chapter:

(1) it may be condemned and paid for in the manner provided by law; or

(2) the municipal works board may purchase and take a conveyance for it for the use and benefit of the municipality, in the manner prescribed for other purchases by the municipality.

All further proceedings concerning a project under this chapter must be performed in accordance with the statutes governing public improvements in municipalities.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-9**Bonds; issuance; payments; financing agreement; public sale**

Sec. 9. (a) If the financing for a project under this chapter is to be provided by the federal government, one (1) or more bonds may be issued at any time after the filing of the assessment roll with the circuit court under section 6 of this chapter.

(b) Bonds issued under this section are payable solely from:

(1) the assessments made or to be made against the property benefited; or

(2) the money appropriated for that purpose by the municipality; and are not a general obligation of the municipality.

(c) Notwithstanding any other law, a financing agreement with the federal government may provide that a municipal ordinance may determine:

(1) the interest rate or rates on the bonds and the assessments;

(2) the time or times of maturities or of principal and assessment payments;

(3) the terms, if any, for redemption of the bonds;

(4) the medium and the place or places for payment of the bonds, including payment by mail to an owner of any fully registered bond; and

(5) any other necessary terms and conditions.

(d) Bonds issued under this section need not be advertised for public sale.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-10**Completion and acceptance of project; certification; benefits**

assessed

Sec. 10. (a) When the municipal works board finally accepts a project under this chapter, it shall certify the completion and acceptance of the project to the circuit court. The court shall then direct the clerk of the court to make out two (2) copies of a list showing:

- (1) the owners of the property affected by the project;
- (2) a description of each parcel of property affected by the project; and
- (3) the benefits and damages assessed upon or in favor of each parcel.

The clerk shall certify the copies under the seal of the court, and shall deliver one (1) copy to the municipal fiscal officer and one (1) copy to the county treasurer.

(b) If the works board finds that the project is necessary for the public welfare of the municipality and that the benefits assessed will fall below the amount required to pay the damages awarded and to pay for the project, the board shall order that any balance required for this purpose shall be paid by the municipality out of the general fund or out of any other available money. If the works board finds that the benefits assessed exceed the amount of financing needed, each assessment shall be reduced on a pro rata basis.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-11

Board of directors; duties; petition for appointment; notice of hearing; appearance; judgment

Sec. 11. (a) After a project is completed and approved under this chapter, the care, management, control, repair, and maintenance of the project may be placed under the jurisdiction of a board of directors appointed under this section.

(b) A petition requesting the appointment of a board of directors for the project may be filed with the clerk of the circuit court. The petition may be signed by:

- (1) the municipal works board, if all or part of the municipality is located in the area affected by the project;
- (2) the executive and legislative body of a township, if all or part of the township is located in the area affected by the project;
- (3) any twenty-five (25) landowners who reside in a municipality and whose lands are located in the area affected by the improvement; or
- (4) any twenty-five (25) landowners who do not reside in a municipality and whose lands are located in the area affected by the project.

The petition shall be docketed as a pending action, and the court shall fix a time when the petition shall be heard.

(c) After the petition is filed and docketed, the clerk of the circuit court shall give notice of the hearing by publication in accordance with IC 5-3-1. The notice shall be addressed to all persons who were

originally assessed for the construction of the project.

(d) Any person owning land located in the area affected by the project may appear at the hearing and be heard, either in person or by his attorney.

(e) If the circuit court determines that a board of directors should be appointed and assessments should be imposed for the care, management, control, repair, and maintenance of the project, the court shall enter a judgment accordingly. If the court enters such a judgment, two (2) members of the board of directors shall be appointed by the county executive and one (1) member of the board of directors shall be appointed by the municipal executive. The three (3) appointed persons must be qualified under section 12 of this chapter.

(f) If the court determines that a board of directors should not be appointed, it shall dismiss the petition.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.86; P.L.7-1983, SEC.40.

IC 36-9-28-12

Board of directors; qualifications; terms; vacancy

Sec. 12. (a) A board of directors appointed under this chapter consists of three (3) directors, who must own land assessed for the construction of the project. One (1) of the directors must be a resident of the municipality affected by the improvement, and two (2) of the directors must be residents of an unincorporated area.

(b) One (1) of the original directors shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years. After the expiration of the original terms, all directors shall be appointed for terms of three (3) years.

(c) The appointing authority shall fill any vacancy on the board of directors by appointment for the remainder of the unexpired term.

As added by Acts 1981, P.L.309, SEC.104. Amended by P.L.7-1983, SEC.41.

IC 36-9-28-13

Board of directors; compensation

Sec. 13. Each member of a board of directors appointed under this chapter is entitled to compensation, at a rate fixed by the circuit court but not to exceed thirty-five dollars (\$35) per day, for his services under this chapter. The compensation of the board shall be paid from the assessments made under section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.317, SEC.33.

IC 36-9-28-14

Board of directors; employment of assistants; compensation

Sec. 14. A board of directors appointed under this chapter may employ the assistants necessary to perform its duties under this chapter. The compensation of the assistants shall be paid from the assessments made under section 16 of this chapter.

As added by Acts, 1981, P.L.309, SEC.104.

IC 36-9-28-15

Board of directors; necessary repairs; record of proceedings and of costs and expenses of repairs

Sec. 15. (a) A board of directors appointed under this chapter shall make all repairs necessary to keep the project in its original condition. If, in making the repairs, it is necessary to change the line and location of a ditch at any point, the board may do so, but the board may not change its general line or location.

(b) The board of directors shall keep a record of its proceedings and shall note in that record all expenses incurred in making repairs. The board shall file with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due to each person. The auditor shall then draw his warrant in favor of each person for the amount due them. The amounts due shall be paid out of county revenues and shall be reimbursed to the county from the assessments made under section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-16

Assessments; considerations; quotient; negligence of owner or occupant of land; assessment date; certification of assessment; lien

Sec. 16. (a) The money necessary to pay costs incurred by a board of directors in the management and maintenance of a project, including money to be reimbursed to a county under section 15 of this chapter, shall be derived from assessments made under this section.

(b) The board of directors shall determine:

- (1) the total number of acres of land benefited by the project and located outside the municipality;
- (2) the total number of lots benefited by the project and located outside the municipality; and
- (3) the total number of lots benefited by the project and located inside the municipality.

Each lot, whether it is located inside or outside the municipality, shall be counted as one-half (1/2) acre of land, and each major fraction of an acre shall be counted as one (1) full acre.

(c) When the board of directors has determined the total number of acres subject to assessment and the total amount of money required for the next year, the board shall divide the total amount required by the total number of acres assessed. The quotient obtained is the amount per acre to be assessed for the next calendar year.

(d) If repairs have been rendered necessary by the act or negligence of the owner or occupant of any lands, or of his employee or agent, the cost of the repairs shall be assessed against only his lands.

(e) All assessments shall be made before August 2 of each year.

(f) The board of directors shall certify the total amount assessed against lots located inside the municipality to the municipal fiscal

officer. This amount shall be included in the municipal budget, appropriated by the municipal legislative body, and paid out of the municipal general fund.

(g) The board of directors shall make out a certified copy of the assessments made on land outside the municipality, and shall file the copy with the auditor of the county in which the lands and lots are located. The auditor shall place the assessments against the land upon the next tax duplicate. The assessment is a lien from the time the certified copy of the assessments is filed, and shall be collected as other state and county taxes are collected. All the laws regulating the payment and collection of state and county taxes, the assessment of penalties and interest, and the sale of property for delinquent taxes apply to the payment and collection of assessments placed upon tax duplicates under this subsection.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-17

Bonds; issuance when cost of maintaining project exceeds amount that can be raised

Sec. 17. If a board of directors finds that the cost of maintaining a project exceeds the amount that can be raised in any year, the board may issue bonds in the manner in which bonds are issued for construction of levees. However, the bonds and the interest on the bonds shall be paid by assessments made in the manner prescribed by section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-18

Standing water; removal; costs

Sec. 18. The board of directors in charge of a project may pump out or remove from lands drained by a ditch any standing water that has no means of outlet. The board may purchase pumps or adopt other suitable means for the removal of the water, and the costs necessarily incurred on account of any work done under this section shall be assessed against the lands benefited by the removal of the water. The costs shall be paid, assessed against the lands benefited, and collected in the manner prescribed by section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28.5

Chapter 28.5. Management of Stormwater Runoff From Developed Real Property

IC 36-9-28.5-1

Application

Sec. 1. This chapter applies to counties and municipalities.

As added by P.L.168-1999, SEC.2.

IC 36-9-28.5-2

"Policy" defined

Sec. 2. As used in this chapter, "policy" refers to a policy adopted under this chapter for the management of stormwater runoff from developed real property.

As added by P.L.168-1999, SEC.2.

IC 36-9-28.5-3

Policy established

Sec. 3. By January 1, 2001, the legislative body of a unit shall establish a policy of the unit for the management of stormwater runoff from developed real property in the unit. The legislative body may establish the policy by resolution or ordinance.

As added by P.L.168-1999, SEC.2.

IC 36-9-28.5-4

Provisions for actual management of stormwater runoff

Sec. 4. The policy may, but is not required to, provide for the actual management of stormwater runoff from developed real property.

As added by P.L.168-1999, SEC.2.

IC 36-9-28.5-5

Geographic scope of policy

Sec. 5. (a) If the unit is a city, the geographic scope of the city's policy must include all territory located within the city.

(b) If the unit is a town, the geographic scope of the town's policy must include all territory located within the town unless the legislative body of the town specifies by resolution that the territory of the town be included in the policy of the county where the town is located.

(c) If the unit is a county, the geographic scope of the county's policy must include:

(1) all territory of the county that is not located within a municipality; and

(2) all territory of a town located in the county that has adopted a resolution under subsection (b).

As added by P.L.168-1999, SEC.2.

IC 36-9-28.7

Chapter 28.7. Storm Water Nuisances

IC 36-9-28.7-1

"Artificial conveyance"

Sec. 1. (a) As used in this chapter, "artificial conveyance" means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.

(b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-2

"Channel"

Sec. 2. As used in this chapter, "channel" means a part of a natural watercourse or artificial conveyance that:

- (1) periodically or continuously contains moving water; and
- (2) has a defined bed and banks that serve to confine the water.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-3

"Runoff"

Sec. 3. As used in this chapter, "runoff" means the part of precipitation that flows from a drainage area on the land surface, in open channels, or in storm water conveyance systems.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-4

"Storm water conveyance system"

Sec. 4. As used in this chapter, "storm water conveyance system" means all methods, natural or manmade, used for conducting storm water to, through, or from a drainage area to any of the following:

- (1) Conduits and appurtenant features.
- (2) Canals.
- (3) Channels.
- (4) Ditches.
- (5) Storage facilities.
- (6) Swales.
- (7) Streams.
- (8) Culverts.
- (9) Roadways.
- (10) Pumping stations.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-5

"Storm water nuisance"

Sec. 5. As used in this chapter, "storm water nuisance" means a condition:

- (1) that arises out of or is related to storm water that is

transferred through runoff or an artificial conveyance that:

- (A) is directed to the property of another person;
 - (B) discharges storm water at or near the property line of another person; or
 - (C) accelerates or increases the flow of storm water onto another person's property; and
- (2) to which one (1) or both of the following apply:
- (A) The condition is injurious to health.
 - (B) The condition substantially obstructs the free use of property.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-6

"Swale"

Sec. 6. As used in this chapter, "swale" means an elongated depression in the land surface that:

- (1) is at least seasonally wet;
- (2) is usually vegetated;
- (3) is a conduit for storm water flow; and
- (4) conducts storm water into primary drainage channels.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-7

"Unit of government"

Sec. 7. As used in this chapter, "unit of government" means:

- (1) the town council or its designee if the storm water nuisance is located within the boundaries of a town;
- (2) the city board of works or its designee if the storm water nuisance is located within the boundaries of a city; or
- (3) the county surveyor or its designee if the storm water nuisance is located within the boundaries of an unincorporated part of a county.

As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-8

Request to investigate storm water nuisance

Sec. 8. (a) If:

- (1) a person who owns a tract of land seeks the removal of a storm water nuisance; and
 - (2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request;
- the person seeking the removal may file a request under this chapter asking the unit of government to investigate the storm water nuisance.

(b) The request must be filed on a form published by the unit of government that includes:

- (1) a general description of the tract of land owned by the person making the request;
- (2) a general description of the site of the nuisance; and
- (3) a general explanation of the need for the removal of the

nuisance.
As added by P.L.125-2011, SEC.3.

IC 36-9-28.7-9

Investigation fee; assessment of nuisance; investigation report; limitations

Sec. 9. (a) An ordinance may be adopted to allow for the payment of a fee to the unit of government as a condition of filing a request under this chapter. The fee may not be an amount greater than is reasonably necessary to defray the expenses incurred in processing the request, conducting the investigation, and completing the assessment under this section.

(b) A unit of government shall investigate and make a visual assessment limited to the following:

- (1) Determine whether the storm water nuisance exists.
- (2) Assess whether the removal of the storm water nuisance will:
 - (A) remove the negative effect of the storm water nuisance from the land of a person making the request; and
 - (B) cause unreasonable damage to the land on which the storm water nuisance is located.
- (3) Make any other observations that may be useful in solving an alleged storm water nuisance problem.

(c) A unit of government, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 8 of this chapter:

- (1) An oral or written report that may include:
 - (A) a general description of the investigation and its findings;
 - (B) whether the storm water nuisance exists;
 - (C) the need for the removal of the storm water nuisance;
 - (D) whether the removal of the storm water nuisance will:
 - (i) remove the negative effect of the storm water nuisance from the land of a person that filed the request under section 8 of this chapter; and
 - (ii) cause unreasonable damage to the land on which the storm water nuisance is located; and
 - (E) any other considerations that may be useful in solving the storm water nuisance.
- (2) Information concerning alternative dispute resolution options.

(d) A unit of government is not required to use funds to meet the requirements under this chapter.

(e) Except under subpoena, a unit of government may not be compelled to testify in a legal proceeding related to its functions under this chapter.

(f) For purposes of this chapter, the unit of government has a right of entry as provided by IC 36-9-27.4-25.

(g) An artificial conveyance or runoff that was constructed and that operates in compliance with a permit issued by a political

subdivision is not subject to this chapter.
As added by P.L.125-2011, SEC.3.

IC 36-9-29

Chapter 29. Flood Control Districts in Certain Cities

IC 36-9-29-1

Application of chapter

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.44, SEC.60.

IC 36-9-29-2

Construction or installation of flood control works; construction or elevation of highways and bridges

Sec. 2. A city acting under this chapter may:

- (1) construct or install the flood control works necessary to exclude, divert, remove, reduce, or prevent flood waters caused by the overflowing of watercourses or by storm or surface waters in or about a flood control district established under this chapter; and
- (2) construct or elevate highways and bridges necessary to provide reasonable traffic facilities through or over any structures constructed as part of the flood control works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-3

Declaratory resolution; adoption; contents

Sec. 3. (a) Whenever a city works board determines that:

- (1) it is necessary for the general welfare, safety, and security of the city and its inhabitants to carry out any project for the protection of the city and its inhabitants from floods;
- (2) the project cannot be carried out in the best or most economical manner without beneficially or injuriously affecting land or other property located outside the corporate boundaries of the city; and
- (3) the required flood control works can best be provided for and maintained by the establishment of a special taxing district for that purpose;

it may adopt the declaratory resolution described in subsection (b).

(b) The declaratory resolution must include the following items:

- (1) The necessity for providing flood protection for all or part of the city and for all or part of the contiguous territory within four (4) miles outside the corporate boundaries of the city, including all or part of any town within the four (4) mile limit. The necessity must be based upon floods that have occurred in the city and the contiguous territory in the preceding ten (10) years.
- (2) The general character of the flood control works that the works board considers necessary to afford proper protection, and the general location and route of the levees, dikes, retaining walls, and other structures that the board considers necessary as part of those works.

(3) A general description of the boundaries of the territory that will be beneficially affected by the construction of the proposed works.

(4) A general estimate of the cost of the property that must be acquired for the construction of the proposed works, including the estimated amounts of damages to property injuriously affected but not acquired.

(5) A general estimate of the cost of construction and installation of the proposed works, based on the available information.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-4

Petition to establish district; procedure

Sec. 4. (a) Upon the adoption of a declaratory resolution under section 3 of this chapter, the city works board shall file with the circuit court for the county in which the city is located a petition requesting the establishment of a flood control district to include the territory described in the resolution. A copy of the resolution shall be attached to the petition. The petition shall be docketed in the court as a pending cause, and shall be entitled "In the matter of the city of _____, petition for the establishment of flood control district".

(b) Upon the filing of the petition, the circuit court shall fix a time when the petition shall be heard, which may not be less than fifteen (15) nor more than thirty (30) days after the filing. The clerk of the court shall publish a notice of the hearing in accordance with IC 5-3-1. The notice must:

- (1) contain a brief summary of the petition;
 - (2) set out the description of the boundaries of the proposed district, as set out in the resolution attached to the petition;
 - (3) state the time and place fixed for the hearing on the petition;
- and
- (4) advise all interested parties that they may appear and be heard.

(c) The clerk of the circuit court shall certify and send to the attorney general, by registered mail, a copy of the petition, together with a copy of the resolution attached to the petition and a copy of the notice of hearing.

(d) After the publication and mailing of the notice, all persons having any interest in property or highways located in the petitioning city, or within four (4) miles outside the corporate boundaries of the city, are conclusively presumed to have notice of the pendency of the petition and all subsequent proceedings had under the petition.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.87.

IC 36-9-29-5

Court hearing; objections; judgment; dismissal; interlocutory order on boundaries; continued hearing

Sec. 5. (a) The circuit court shall hear a petition filed under section 4 of this chapter without a jury. The hearing may be continued and adjourned from time to time as the court may direct. There may be a change of judge as in civil cases, but no change of venue from the county.

(b) All persons affected by the establishment of the proposed flood control district or the construction of the proposed flood control district or the construction of the proposed flood control works may file objections showing any reason why:

- (1) the district should not be established;
- (2) the works should not be constructed; or
- (3) their property should or should not be included in the proposed district.

The court shall hear evidence and determine the facts upon these issues. All objections shall be filed at least two (2) days before the date fixed for the hearing.

(c) If the court finds that a necessity exists for the establishment of a flood control district and the construction and installation of flood control works as requested by the petition, the court shall render judgment accordingly and shall enter a decree establishing the district, describing it in such a manner that the property included in it may be sufficiently identified and segregated to permit the levy and collection of the special taxes provided for by this chapter. There is no appeal from such a judgment, and, after the entry of such a decree, the establishment of the district may not be questioned in any action or proceeding, except as otherwise provided by this chapter.

(d) If the court finds that no necessity exists for the establishment of the flood control district, the proceedings shall be dismissed at the cost of the petitioning city.

(e) If it appears to the court that the boundaries of the flood control district as described in the declaratory resolution should be changed, or that changes in the flood control works as described in the declaratory resolution should be made, and that such changes will beneficially or injuriously affect property that would not have been so affected by the district and works proposed in the declaratory resolution, then the court may enter an interlocutory order to that effect and fix a time for further hearing on the petition.

(f) The date for a hearing under subsection (e) may not be less than ten (10) nor more than fifteen (15) days after the order. The court shall direct the clerk of the court to publish a notice of the hearing that sets out a brief summary of the order, including a brief description of the changes the court proposes to make in respect to the boundaries or works. The notice shall be published in accordance with IC 5-3-1. The notice must state the time and place for the continuation of the hearing on the petition, and advise all parties affected by the proposed changes that they may appear and be heard. Objections may be filed in the manner prescribed by subsection (a), but must be filed at least two (2) days before the time fixed for the continuation of the hearing and must be based solely on the changes proposed to be made. If, at the conclusion of the continued hearing,

the court finds that all or part of the proposed changes should be made, or that the district should be established and the works constructed as provided for in the declaratory resolution, the court shall render judgment accordingly and enter a decree as provided under subsection (c).

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.88.

IC 36-9-29-6

Special benefit district; territory included

Sec. 6. (a) If twenty-five percent (25%) or more of the territory included within the corporate boundaries of the city petitioning for the establishment of a flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the corporate boundaries of the city is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation from floods and will not be included within or protected by the proposed flood control works.

(b) If twenty-five percent (25%) or more of the territory within the corporate boundaries of any town included in whole or in part in the flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the town is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation and will not be included within or protected by the proposed flood control works.

(c) Territory that:

(1) is outside the corporate boundaries of a municipality; and

(2) lies at an elevation higher than three (3) feet above the highest flood stage during the preceding ten (10) years;

may be included in a flood control district only if it will be included within or protected by the proposed flood control works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-7

Special taxing district for flood control purposes; special benefit tax

Sec. 7. Upon the entry of a decree under section 5 of this chapter, a flood control district constitutes a special taxing district for flood control purposes. All property in the district is subject to a special benefit tax for the purpose of providing money to pay the cost of constructing and maintaining the flood control works. The special benefit tax, which shall be levied in the manner prescribed by this chapter, constitutes the amount of special benefits accruing to property in the district on account of the construction and maintenance of the works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-8

Board of commissioners; membership; oath; removal and

appointment; compensation; meeting; quorum; powers and duties; conflict of interest

Sec. 8. (a) If a flood control district is established under this chapter, the construction of the flood control works shall be carried out under the control of a flood control board, to be known as "Board of Commissioners, _____ Flood Control District" (designating the name of the city instituting the proceedings for the establishment of the district).

(b) The flood control board consists of:

- (1) the members of the works board of the city petitioning for the establishment of the flood control district; and
- (2) the executive of each town or township included in whole or in part in the district.

(c) Before entering upon his duties, each commissioner of the flood control board shall take and subscribe the usual oath of office, and shall file it with the clerk of the circuit court.

(d) If any commissioner of the flood control board fails or refuses to qualify, or after qualifying fails or refuses to take part in the proceedings of the board, then the board, by a majority vote, may petition the circuit court for the appointment of a new commissioner. After a hearing and a showing of cause, the court may remove the offending commissioner. If the court removes a commissioner, the executive of the city shall appoint a new commissioner. The new commissioner must be a freeholder residing in the part of the district previously represented by the commissioner removed.

(e) Each commissioner of a flood control board is entitled to a salary fixed by the board, subject to the approval of the legislative body of the city petitioning for the establishment of the flood control district.

(f) Within ten (10) days after the entry of the decree establishing the flood control district, the commissioners of the flood control board shall meet at the office of the works board of the city petitioning for the establishment of the district, and shall organize by electing one (1) of their number president and one (1) vice president. These officers shall perform the duties usually pertaining to their offices, and shall serve for a period of one (1) year or until their successors are elected and qualified. The board shall also appoint a secretary pro tempore to keep the records of the proceedings until the board appoints a permanent secretary. The minutes of the board shall be kept in a permanent minute book, and the first entry in the book must be a copy of the decree establishing the district and fixing its boundaries.

(g) A majority of the commissioners of the flood control board constitutes a quorum for the transaction of any business. If the board consists of an even number of commissioners and there is a tie vote on any question, the vote of the president on the question is controlling.

(h) The flood control board may:

- (1) sue and be sued;
- (2) exercise the power of eminent domain;

(3) adopt rules governing the holding of regular meetings, the calling of special meetings, methods of procedure, and similar matters; and

(4) perform all acts necessary and proper for carrying out the purposes of the flood control district.

(i) The office of the flood control board shall be maintained at the office of the works board of the city petitioning for the establishment of the district, or at another place furnished by the city. All records of the board shall be kept at the office and are public records, open to inspection by the public during business hours.

(j) A commissioner, appointee, or employee of the flood control board may not have any direct or indirect interest in any contract let by the board, or in the furnishing of supplies or materials to the board.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.34; P.L.7-1983, SEC.42.

IC 36-9-29-9

Executive secretary; compensation; bond; duties

Sec. 9. (a) The flood control board shall appoint an executive secretary. The executive secretary may not be a commissioner of the board before the completion of the flood control works, but may be after their completion.

(b) The salary of the executive secretary shall be fixed by the flood control board.

(c) The executive secretary may be required to furnish bond in the amount the flood control board finds necessary. The cost of the bond may be borne by the district.

(d) The executive secretary:

(1) is the custodian of the records of the district;

(2) shall assist the board in the performance of its duties, as directed by the board; and

(3) shall certify copies of the official records and files of the district that may be required of him by this chapter, or by any person ordering copies and paying the reasonable cost of transcription.

Certification of a record by the executive secretary is prima facie evidence of the record's accuracy.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.35.

IC 36-9-29-10

District engineer; duties; compensation

Sec. 10. (a) The flood control board shall appoint a district engineer, who shall perform the duties assigned by the board.

(b) The engineer's compensation shall be fixed by the flood control board. However, when the engineering services are performed by the engineer of the city, the city engineer may receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981,

P.L.317, SEC.36.

IC 36-9-29-11

Attorney; duties; compensation

Sec. 11. (a) The flood control board shall appoint one (1) or more attorneys, who shall perform the duties assigned by the board.

(b) The compensation of the attorney or attorneys shall be fixed by the board. However, when the legal services are performed by an attorney of the city legal department, that attorney is entitled to receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.37.

IC 36-9-29-12

Employees; compensation; duties

Sec. 12. The flood control board may employ and fix the compensation of all the employees necessary to enable it to perform its duties under this chapter without undue delay.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-13

Employees; term of employment

Sec. 13. All the employees of a flood control district, including the executive secretary, engineer, and attorneys, serve at the pleasure of the flood control board.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-14

County treasurer; duties

Sec. 14. (a) The county treasurer shall act as treasurer of the flood control board and the flood control district. The county treasurer shall make all collections of the special benefit taxes levied by the board, without any additional compensation other than that allowable in the case of the collection of general taxes by the treasurer.

(b) The county treasurer shall give bond in the amount and with the surety prescribed by the flood control board. The cost of the bond shall be paid out of the revenues of the district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-15

County auditor; duties

Sec. 15. The county auditor shall include on the tax duplicates for the county the special benefit taxes levied for the flood control district and shall perform the same duties in connection with the levy and collection of these taxes as are performed for general taxes levied by any political subdivision in the county.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.38.

IC 36-9-29-16

Federal aid; acceptance; conditions

Sec. 16. (a) The flood control board may, on behalf of the flood control district, accept any legal, engineering, financial, construction, or other aid from the federal government or any other source.

(b) If the federal government agrees to construct or furnish and install all or part of the flood control works required by the flood control district, and to furnish the necessary plans and specifications, the flood control board shall accept the offer and adopt the plans and specifications as its own, unless they do not conform to the decree establishing the district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-17

Use of territory in connection with construction of flood control works; authorization

Sec. 17. (a) If the state or a political subdivision has territory that will be affected in whole or in part by flood control works, it may grant to the flood control district the use of any property in which it has an interest, including its rights in public ways, for use in connection with the construction of the flood control works, upon the terms agreed upon. Such a grant must be authorized by:

- (1) the governor and the state agency having jurisdiction of the property, for the state; or
- (2) the fiscal body, for a political subdivision.

(b) Grants under this section shall be made in the form of a deed or other written instrument that may be recorded. The grant may provide that when property is no longer needed for the purposes of the flood control district, the property reverts to the state, or the political subdivision, making the grant.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-18

Plans and specifications; preparation, adoption, and filing; objections; hearing; judgment or decree

Sec. 18. (a) After its organization, the flood control board shall prepare and adopt:

- (1) plans and specifications for the flood control works to be constructed or installed by or for the flood control district;
- (2) estimates of the cost of that part of the works to be contracted for or constructed at the expense of the district;
- (3) maps and plats showing the general scope of the works and the boundaries of all lands considered necessary to be acquired for the works or that will be injuriously affected in connection with the construction of the works; and
- (4) an acquisition and damage roll showing the separate descriptions of all land and other property to be acquired or injuriously affected by the construction and installation of the works, and an estimate of the total cost of the acquisition or damages.

It is not necessary to prepare, adopt, and file the plans, specifications,

and other items required by this section at one (1) time.

(b) In adopting plans under this section, the flood control board, with the approval of the circuit court, may deviate from the general plans approved at the time of the establishment of the district if the board finds that:

- (1) it is not practicable to construct or install the works in accordance with that plan; or
- (2) the deviation will provide greater protection.

(c) Upon adoption of the plans, specifications, and other items, one (1) copy shall be placed on file at the flood control board's office, and one (1) copy shall be filed in the office of the clerk of the circuit court. These copies are open to inspection by the public. The board shall have notice of the filing published in accordance with IC 5-3-1. The board shall file proofs of publication of the notice with the clerk of the court. The notice must refer to the title and number of the cause in which the district was established and state that the plans, specifications, estimates, maps, plats, and roll required by this section are on file at the offices of the board and clerk of the court, and may be inspected by all interested parties.

(d) Any person owning property injuriously affected by the construction or installation of the proposed flood control works may file separate objections with the circuit court within fifteen (15) days after the first publication of notice under subsection (c). The sole ground of objection is that, due to an unnecessary deviation from the general plan approved at the time of the establishment of the district, the property of the objectors will be injuriously affected or should not be included in the district. The court shall set the objections for hearing without delay, hear evidence, and determine the facts. However, the filing of objections does not delay or interfere with the letting of contracts or the construction of the flood control works, except to the extent that the court may direct by temporary order before the hearing or by judgment after the hearing.

(e) If, after a hearing under subsection (d), the court finds that there has been an unnecessary deviation from the general plan approved at the time of the establishment of the district, or that any of the property included in the district as originally established should be eliminated from the district, the court shall:

- (1) render judgment accordingly; and
- (2) enter a decree:
 - (A) setting out the deviation to be corrected; and
 - (B) describing, by metes and bounds, the property eliminated.

A copy of the decree shall be entered in the records of the board, and the plans shall be changed to meet the requirements of the decree.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.89.

IC 36-9-29-19

Acquisition of property; purchase, contract, or eminent domain

Sec. 19. After the flood control board has published notice of the filing of the acquisition and damage roll under section 18(c) of this

chapter, it may acquire the property described in the roll by purchase, by contract, or by the exercise of the power of eminent domain under IC 32-24.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.2-2002, SEC.125.

IC 36-9-29-20

Contracts; letting procedure

Sec. 20. (a) All contracts of the flood control district for the construction of flood control works shall be let by the flood control board under the statutes concerning the letting of contracts for public improvements by the works board of the city. The flood control board may let one (1) contract for the entire works or separate contracts for parts of the works.

(b) All contracts shall be awarded to the lowest and best bidder. However, a contract may not be let at a bid higher than the cost of the work, as shown by the estimates previously adopted and filed, unless approved by the circuit court on petition of the flood control board.

(c) All contracts must be in writing and signed by the flood control board's president or vice president and by its executive secretary.

(d) The validity of a contract may be questioned only in an action to enjoin the execution of the contract, filed within ten (10) days after the date of its execution.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-21

Federal labor, material, machinery, and equipment; acceptance of offer; additional labor, material, machinery, and equipment

Sec. 21. If the federal government or another source agrees to furnish all or part of the labor, material, machinery, and equipment required for any construction or installation, the flood control board may accept the offer. The board may supply the necessary additional labor, material, machinery, and equipment to carry out the agreement.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-22

Loans for preliminary expenses; sale of warrants; advancement of funds

Sec. 22. (a) To facilitate the carrying out of preliminary proceedings and provide money for the payment of expenses before the issuance of bonds under this chapter, the flood control board may, by resolution, authorize the making of loans in amounts approved by the circuit court. The loans shall be evidenced by callable warrants payable out of the proceeds of bonds, when available, and the warrants may bear interest at any rate. If the amount of warrants to be issued at any one (1) time exceeds five thousand dollars (\$5,000), they shall be sold at public sale after notice given in accordance with IC 5-3-1. The warrants shall be sold to the bidder offering to purchase them at the lowest actual interest cost to the district, and shall be executed in the name of the district by the board's president

or vice president and by its executive secretary.

(b) Any unit having territory included within the flood control district may advance money to the district. The advances must be authorized by the fiscal body of the unit. The advances may be made without appropriation, and warrants evidencing the advances shall be issued by the district, bearing the rate of interest provided for in the resolution or other action authorizing the advances.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.90.

IC 36-9-29-23

Bonds; issuance; amount; sale procedure

Sec. 23. (a) The flood control board shall, by resolution, direct that bonds be issued in the name of the flood control district:

(1) for the purpose of procuring money to pay the cost of acquisition of property, the cost of construction or installation of flood control works, or both; and

(2) in anticipation of the collection of the special benefit taxes to be levied under this chapter.

(b) The amount of the bonds may not exceed:

(1) the total cost of property to be acquired and the total amount of damages to be awarded on account of property injuriously affected but not acquired, as shown by the acquisition and damage roll previously adopted and filed by the flood control board or as determined by court action;

(2) the contract price of the works contracted for, or the estimated cost of additional labor, materials, machinery, and equipment when the federal government or others have agreed to supply a part of those items for use on the construction of any part of the works and no construction contract is to be let;

(3) an amount sufficient to pay the cost of supervision and inspection during the period of construction;

(4) all other general, administrative, legal, engineering, and incidental expenses previously incurred on account of or in connection with the establishment of the district, the administration of its affairs, the acquisition of property, and the construction of the works, together with the expenses to be incurred in connection with the issuance and sale of bonds; and

(5) an amount sufficient to pay any outstanding warrants issued for the purpose of obtaining money for expenses before the issuance of bonds.

(c) If different parcels of land are to be acquired or more than one (1) contract for work is let by the flood control board at approximately the same time, the board may provide for the total cost of the land or work in one (1) issue of bonds. If the cost of acquiring property or the amount required for the payment of damages to property not acquired exceeds the board's estimate of the amount required for that purpose, additional bonds may be issued to supply the deficiency.

(d) The bonds shall be issued in any denomination not exceeding

one thousand dollars (\$1,000), and in not less than twenty (20) nor more than sixty (60) series, which must be as nearly equal as possible considering the amount of the issue, the number of serial maturities, and the denominations to be used.

(e) The bonds are payable one (1) series each six (6) months. The first payment shall be made on January 1 in the second year following the date of their issue, if a tax levy to meet the requirements of the bonds is made in the year in which the bonds are issued. Otherwise, the first series of bonds is payable on January 1 of the third year following the date of their issue.

(f) The bonds are negotiable instruments.

(g) The bonds may bear interest at any rate, with the exact rate to be determined by bidding. The interest is payable semiannually on January 1 and July 1 of each year, with the first interest payable on July 1 preceding the maturity date of the first series of bonds.

(h) The bonds shall be signed by the president or vice president of the flood control board, and attested by the executive secretary of the board. The interest coupons shall be executed by placing on them the facsimile signature of the president or vice president whose signature appears on the bonds.

(i) The flood control board may not issue any bonds of the flood control district payable out of special benefit taxes when the total amount outstanding for that purpose, including the bonds issued and to be issued, is in excess of five percent (5%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not a corporate obligation or indebtedness of any unit having territory included in the district, but are an indebtedness of the flood control district as a special taxing district. The bonds are payable solely out of the special benefit taxes levied under this chapter. The bonds must state these facts upon their face, together with the purpose for which they are issued.

(k) The bonds of any issue may be sold in parcels or as a whole. Notice of the sale must be given by publication in accordance with IC 5-3-1.

(l) The bonds shall be sold to the highest qualified bidder, but may not be sold for less than their par value. The highest bidder is the person who offers the lowest net interest cost to the district, as determined by computing the total interest on all of the bonds to their maturities and then deducting the premium bid, if any.

(m) When the flood control board sells the bonds, the executive secretary of the board shall have the bonds prepared and executed, and shall deliver them to the county treasurer, together with a certificate showing the amount to be paid by the purchaser. Upon the payment of the purchase price the treasurer shall deliver the bonds to the purchaser. The executive secretary shall furnish the successful bidder a transcript of the proceedings relating to the authorization and issuance of the bonds, together with the other documents necessary to establish the validity of the bonds. The transcript and other

documents are presumptive evidence of the validity of the bonds, and shall be accepted in evidence in any litigation relating to or affecting the bonds.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.91; P.L.6-1997, SEC.226.

IC 36-9-29-24

Bonds for replacement, enlargement, extension, or construction of additional works; costs exceeding amount available

Sec. 24. If the flood control board finds that:

- (1) it is necessary to replace, enlarge, or extend any part of the flood control works or construct additional works in order to protect the district properly; and
- (2) the cost of the replacement, enlargement, extension, or construction will exceed the amount then available out of current maintenance and repair funds;

the board may issue bonds under section 23 of this chapter for that purpose. However, the board must first comply with sections 18, 19, and 20 of this chapter.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-25

Refunding bonds; issuance; payment

Sec. 25. If the flood control district is unable to pay any bonds or the interest on them at the times fixed for payment, refunding bonds may be issued and sold under section 23 of this chapter to obtain money for that purpose. The refunding bonds are payable within the period fixed by the flood control board, which may not exceed ten (10) years.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-26

Bonds issued and their interest exempt from taxation

Sec. 26. All bonds issued under this chapter, together with the interest on them, are exempt from taxation.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-27

Validity of bonds issued

Sec. 27. An action to question the validity of any of the bonds issued under this chapter, or to prevent their issuance, must be brought by the time fixed in the bond sale notice for the receiving of bids. After that time, the bonds may not be contested for any cause.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-28

Flood control district construction fund

Sec. 28. (a) The county treasurer shall keep all proceeds from the sale of bonds under this chapter in a separate fund designated as the " _____ flood control district construction fund". The fund shall

be used only to pay the costs listed in section 23(b) of this chapter. Any money remaining out of the proceeds of the bonds after all of the costs are paid shall be paid into the district bond fund established under section 30 of this chapter.

(b) The flood control board shall approve and order all payments made from the flood control district construction fund, and shall determine the amounts and times of the payments. However, a payment to a contractor may not exceed eighty percent (80%) of the district engineer's estimate of work done by the contractor, and the whole amount of a contract may not be paid until all work to be done under the contract has been accepted by the board as fully completed in accordance with the plans and specifications.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-29

Acquisition of property; payment of costs according to terms of purchase or contract; payment of damages in condemnation; title

Sec. 29. (a) If property is acquired by purchase or contract, payment of costs shall be made according to the terms of the purchase or contract.

(b) If property is condemned, the amount of damages assessed shall be paid as soon as the proceeds from the sale of bonds are available. Upon the payment of the damages, the title of the property paid for is fixed and vested in the flood control district in the manner, to the extent, for the purpose, and subject to the limitations provided by this chapter.

(c) Title to all property acquired shall be taken in the name of the flood control district. Within sixty (60) days after any conveyance or grant of any interest in real property is received by the flood control board, the board shall have recorded the deed or other instrument of conveyance or grant, signed by the grantor, in the recorder's office in the county in which the property is located. In case of condemnation, a copy of the decree, certified by the clerk of the circuit court and showing the amount paid to the clerk on account of the damages awarded, shall be recorded.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-30

Special benefit tax levy to pay for bonds; flood control district bond fund

Sec. 30. (a) For the purpose of obtaining money to pay the bonds and the interest on them, the flood control board shall levy a special benefit tax each year upon all of the property in the flood control district. The tax shall be levied in the amount necessary to pay the principal of the bonds as they mature, together with the interest accruing on them.

(b) The flood control board shall cause the tax levied to be certified to the auditor of the county in which the property subject to the tax is located, before October 2 of each year. The tax levied and certified shall be estimated and entered upon the tax duplicates by the

county auditor, and shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(c) As the tax is collected by the county treasurer, it shall be accumulated in a separate fund to be known as the " _____ flood control district bond fund", and shall be applied only to the payment of the bonds and the interest on them.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-31

Special benefit tax levy to pay for cost of operation, maintenance, and repair of flood control works; presumption; flood control district maintenance fund; temporary loans

Sec. 31. (a) The flood control board may levy a special benefit tax each year for the purpose of providing for the cost of operation, maintenance, and repair of the flood control works after the completion of the works, including the general expenses of the board, such as salary and wages, that the board finds are not properly chargeable to the proceeds of bonds issued under this chapter. The tax may not exceed eleven and sixty-seven hundredths cents (\$0.1167) on each hundred dollars (\$100) of taxable property in the district, as it appears on the tax duplicates.

(b) The property within the flood control district is conclusively presumed to be benefited to the extent of the annual tax by the maintenance of the district and the maintenance, operation, and repair of the flood control works.

(c) The county auditor shall estimate the tax and enter it upon the tax duplicates, and the county treasurer shall collect and enforce the tax in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(d) The county treasurer charged with the duty of collecting the taxes shall, between the first and tenth days of each month, notify the flood control board of the amount of the tax collected during the preceding month. Upon the date of notification, the treasurer shall credit the amount collected to a fund designated as " _____ flood control district maintenance fund", which may be used only for the purposes stated in this section.

(e) The flood control board has complete and exclusive authority to expend, on behalf of the flood control district, all revenues realized under this section.

(f) The flood control board may, by resolution, authorize and make temporary loans in anticipation of the collection of the special benefit taxes actually levied and in course of collection under this section. The loans mature and shall be paid within the year in which they are made, and may bear interest at any rate payable at the maturity of the loan. The temporary loans shall be evidenced by warrants, and, if the amount of warrants to be issued exceeds five thousand dollars (\$5,000), they shall be sold at public sale in the same manner as the bonds of the district.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.6-1997,

SEC.227.

IC 36-9-29-32

Emergency flood control district fund

Sec. 32. (a) The flood control board may establish an "emergency flood control district fund", which may not exceed at any time one hundred thousand dollars (\$100,000). The emergency fund shall be established out of money transferred from the flood control district maintenance fund.

(b) Whenever the emergency fund is reduced below one hundred thousand dollars (\$100,000), the flood control board may transfer from the maintenance fund the sum it considers necessary for the purpose of replenishing the emergency fund.

(c) The county treasurer shall keep the emergency fund separate from the other funds of the flood control district. Any unexpended sum in the fund shall be retained from year to year to meet flood emergencies as they arise.

(d) The sum in the emergency fund may not be considered in making up the budget of the flood control district, except for the purpose of determining the amount to be levied in order to replenish the fund.

(e) All withdrawals from the emergency fund shall be used solely for emergency purposes, and shall be made upon order of the flood control board in the same manner as withdrawals from other funds of the flood control district.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.356-1987, SEC.1.

IC 36-9-29-33

Deposit of funds of flood control district

Sec. 33. The money in the funds of the flood control district shall be deposited and held in the same manner as other public funds under IC 5-13.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.3-1990, SEC.138.

IC 36-9-29-34

Warrants drawn for items approved by board; payments on bonds and interest coupons

Sec. 34. (a) Except as provided in subsection (b), revenues raised under this chapter may be expended only upon a warrant drawn by the executive secretary of the flood control board for items approved by the board, with the date of approval indicated on the warrant over the signature of the president or vice president of the board.

(b) The county treasurer may pay bonds and interest coupons:

(1) issued by the flood control board; and

(2) presented at or after their maturity;

out of the bond fund established under section 30 of this chapter, without the issuance of warrants or other orders of the board.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-35**Pending actions for filing further petitions and for making further orders**

Sec. 35. After the docketing of the petition for the establishment of the flood control district, and until the flood control works have been completed and accepted, the cause remains on the docket of the circuit court as a pending action for the filing of the further petitions and the making of the further orders that are authorized by this chapter or found necessary to facilitate the completion of the works.
As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-36**Jurisdiction of court**

Sec. 36. All court proceedings relating to the establishment or maintenance of the flood control district, or the performance of any act under this chapter, must be brought and determined only in and by the circuit court establishing the district. The jurisdiction of the court in all such matters is conclusive and its judgment is final, except as otherwise provided in this chapter. All proceedings had under this chapter shall be heard by the court without the intervention of a jury, except as otherwise provided in this chapter. Laws with respect to change of venue from the county do not apply to proceedings under this chapter, but changes of venue from the judge may be had as in other civil cases.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-37**Supplementary proceedings to cure defects or irregularities; objections**

Sec. 37. (a) If any defects or irregularities occur in any of the proceedings had under this chapter, the defects or irregularities may be cured by supplementary proceedings of the same general nature as those provided for by this chapter. Only those parties whose interests or property are directly and adversely affected by the defects or irregularities may object to them.

(b) It is not necessary to delay the general course of the proceedings while defects or irregularities are being corrected or supplied.

(c) If an objection is filed with the circuit court and the objection is overruled or decided adversely to the objecting party, the court costs incurred in the filing, hearing, and determination of the objection shall be taxed to the objecting party. If the objection is sustained or determined in favor of the objecting party, then the costs shall be taxed to the flood control district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-38**Required proceedings and notices under this chapter**

Sec. 38. Only the proceedings and notices prescribed by this chapter are required for acts performed under this chapter,

notwithstanding any other statute to the contrary.
As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29.1

Chapter 29.1. Flood Control District in Marion County

IC 36-9-29.1-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-2

"Board"

Sec. 2. As used in this chapter, "board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-3

Special taxing district

Sec. 3. The flood control district referred to in IC 36-3-1-6 constitutes a special taxing district for the purpose of protecting the county and its residents from floods and flood hazards.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-4

Powers and duties of board

Sec. 4. (a) To carry out this chapter, the board has jurisdiction to authorize projects of flood control and prevention over all watercourses, and property affected by these projects, within the flood control district and in or along any watercourse in any adjacent county that is a tributary to any watercourse in the district.

(b) In carrying out such a project, the board has the following powers:

- (1) To construct and maintain levees, dikes, retaining walls, dams, reservoirs, drains, and all other improvements in or along any watercourse designed to prevent damage and injury through floods and to conserve water resources.
- (2) To provide for the disposal of excess water from any reservoir on such terms as the board considers best, so long as this does not impair the function of flood prevention provided by the improvements.
- (3) To construct, reconstruct, repair, relocate, widen, or resurface any public way connected with such a project.
- (4) To remove obstructions in, to dredge or control, to straighten, or to change the channel of any watercourse.
- (5) To reconstruct any new public structure, or any new public bridge or bridges; or to alter, relocate, remove or require the removal of, repair, lengthen, widen, or reconstruct any public structure, or any public bridge or bridges, designed or used for vehicular or pedestrian traffic, and already built and located, whether originally built by a municipal corporation or any other person, across any watercourse.

(6) To regulate and establish channel, bank, and harbor lines on watercourses; to remove or to require to be removed any obstruction or encroachment in, beneath, above, along, or beyond channel, bank, and harbor lines; and to prevent any future obstructions or encroachments beyond these lines by dumping or filling with any material or in any other manner.

(7) To regulate the manner in which all sewers, drains, conduits, viaducts, aqueducts, cables, power lines, and pipelines of any description crossing the bed of any watercourse, or along its banks, or carried across, over, or under it on any bridge, trestle, support, or other structure, shall be located or relocated, replaced, altered, repaired, constructed, reconstructed, lengthened, widened, or removed, whether already constructed or proposed to be constructed or reconstructed by a municipal corporation or any other person.

(8) To regulate the general manner of construction of all temporary or permanent bridges, dikes, moorings, landings, dams, and spillways over, along, or in any watercourses proposed to be constructed or reconstructed by a municipal corporation or any other person.

(9) To regulate the removal by any persons of sand and gravel from watercourses and to establish the distance from bridges and other structures crossing them, and also the uniform grade lines to which sand and gravel may be excavated by any persons.

(10) To regulate the depth, waterway, height, alignment, location, and general manner of construction, reconstruction, and repair of any railroad bridge and of any person crossing over any watercourses or affected by carrying out of projects.

(11) To regulate the general manner of locating, relocating, constructing, reconstructing, altering, repairing, lengthening, widening, raising, and aligning any private bridge, including all its piers, abutments, and supports.

(12) To regulate and order that any of the matters described in this subsection shall be done by the person owning or controlling them, in carrying out projects, all subject to supervision and approval by the board.

(13) To cooperate with any department or agency of the federal government, and with any department or agency of the state, that is established for the purpose of developing a comprehensive plan or program for the protection of life and property from floods or flood hazards.

(c) A project for flood control may not be carried out until it is submitted to and approved by the department of natural resources of the state.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-5

Adoption of resolution

Sec. 5. Whenever the board determines that it is necessary for the

general welfare, safety, or security of the flood control district to undertake and carry out any project to protect the district and its residents from floods or flood hazards, the board shall adopt a resolution declaring this necessity and its purpose to proceed with the project.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-6

Adoption of general plans and specifications

Sec. 6. (a) The board, as a part of the resolution, shall adopt the general plans then proposed for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. An appraisal is not required for those estimates.

(b) The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any parts of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.6.

IC 36-9-29.1-7

Filing and notice; resolution, plans, and specifications

Sec. 7. (a) The resolutions and plans, plat, descriptions, and estimates and specifications, if any, shall be filed and opened to inspection by the public at the board's office.

(b) The board shall then give notice in accordance with IC 5-3-1 of the adoption and general purport of the resolution and of the fact that the resolution, plans, plat, descriptions, and estimates and specifications, if any, have been prepared, are on file in the office of the board, and can be inspected. The notice must name a date on which the board will receive and hear objections from any person interested in or who will be affected by the resolution.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-8

Hearing and final decision concerning project

Sec. 8. (a) At or before the time fixed for the hearing, any person interested in or who will be affected by the proposed project may file with the board a written remonstrance against the proposed project, in whole or in part.

(b) At the hearing, which may be adjourned from time to time, the board shall hear all persons who are interested in the proceedings and shall finally determine whether or not the proposed project, in whole or in part, is necessary for the general welfare, safety, and security of

the flood control district, in order to provide flood prevention and control. The board may then confirm, modify and confirm as modified, or rescind the resolution.

(c) The final decision shall be entered in the records of the board and is final, binding, and conclusive upon all persons.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-9

Special tax on property within flood control district

Sec. 9. Upon final action of the board confirming the resolution in its original or any modified form, all property, real and personal, located within the flood control district is subject to a special tax for the purpose of providing money to pay the total cost of the construction of the project or projects, and of acquiring all necessary lands or rights-of-way, as described and provided in the resolution, including all necessary incidental expenses. This special tax is declared to constitute the amount of benefits resulting to all the property from the proceedings and shall be levied as provided in this chapter.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-10

Condemnation proceedings

Sec. 10. If the board has finally confirmed any resolution for all or any part of any project of flood prevention and control, and any property is required to be condemned, appropriated, or purchased, or is damaged or injuriously affected by the carrying out of the flood prevention project and work, the board shall proceed with reference to this property and awards of damages in all respects, whenever necessary, in accordance with IC 32-24. Any part of the appropriation proceedings as to any property may be included in either the original resolution or any subsequent resolutions.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.2-2002, SEC.126.

IC 36-9-29.1-11

Award of contract for project

Sec. 11. If the board finally confirms the resolution, it shall then proceed to award a contract for the project in accordance with IC 36-1-12.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-12

Flood control district bonds

Sec. 12. (a) For the purpose of raising money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in section 14 of this chapter, the board may cause to be issued, in the name of the consolidated city, the bonds of the flood control district, not to exceed the amount of the estimated total cost of all lands, rights-of-way, and other property so to be

acquired and the estimated cost of all work or construction as provided for in the resolution, and including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction of the work.

(b) The expenses to be covered in the amount of the bond issue must include all expenses of every kind actually incurred preliminary to the acquiring of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses necessary to be incurred before and in connection with the acquiring of the property, the amending of the contract, and the sale of bonds.

(c) In case different parcels of land are to be acquired, or more than one (1) contract for work is amended, at approximately the same time, whether under one (1) or more resolutions, the board may provide for the estimated total cost of these items in one (1) issue of bonds.

(d) The bonds shall be issued in accordance with IC 36-3-5-8.

(e) The bonds are negotiable instruments and bear interest payable semiannually, on the first days of January and July of each year, with the first interest to be payable on July 1 preceding the maturity of the first series of the bonds.

(f) On adopting a resolution ordering the bonds, the board shall certify a copy of it to the fiscal officer of the consolidated city, who shall prepare the bonds. The bonds shall be executed by the city executive and attested by the fiscal officer.

(g) The bonds are exempt from taxation as provided by IC 6-8-5.

(h) All bonds issued by the board shall be sold by the city fiscal officer in accordance with IC 5-1-11.

(i) Bonds of the flood control district payable by special taxation may not be issued when the total issue for that purpose, including the bonds already issued and to be issued, exceeds two percent (2%) of the adjusted value of the taxable property within the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the flood control district as a special taxing district, and the bonds and interest on them are payable only out of a special tax levy upon all the property of the district. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(k) An action to question the validity of any bonds issued for the flood control district or to prevent their issue must be brought before the date set for the sale of the bonds, and all bonds, from and after that date, are incontestable for any reason.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.7; P.L.6-1997, SEC.228.

IC 36-9-29.1-13

Fund for deposit of bond proceeds

Sec. 13. (a) All proceeds from the sale of bonds under section 12 of this chapter shall be kept as a separate and specific fund, to pay the cost of land, rights-of-way, and other property acquired and of construction of the work under the resolution, and all costs and expenses incurred in connection with these things, and no part of the proceeds may be used for any other purpose.

(b) The fund shall be deposited at interest with the depository or depositories of other public funds in the consolidated city, and all interest collected on it belongs to the fund.

(c) Any surplus remaining out of the proceeds of the bonds, after all of the costs and expenses are fully paid, shall be paid into and becomes a part of the flood control district bond fund.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-14

Tax levy; flood control district bond fund

Sec. 14. (a) For the purpose of raising money to pay all bonds issued under section 12 of this chapter and the interest on them, the city-county legislative body shall levy each year a special tax upon all the property of the flood control district, in such manner as to meet and pay the principal of the bonds as they severally mature, together with all accruing interest. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county before August 2 in each year.

(b) The tax levied and certified shall be estimated and entered upon the tax duplicate by the county auditor, and shall be collected and enforced by the county treasurer, in the same manner as state and county taxes are estimated, entered, collected, and enforced. As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the "flood control district bond fund," and shall be applied to the payment of the flood control district bonds and interest as they severally mature and to no other purpose. All accumulations before their use for the payment of bonds and interest shall be deposited, at interest, with the depository or depositories of other funds in the consolidated city, and all interest collected on them belongs to the fund.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-15

Additional tax levy; flood control maintenance and general expense fund; temporary loans; insufficient funds

Sec. 15. (a) For the purpose of:

- (1) providing for the payment of all general expenses of the board, including salaries of officers and employees and other items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of the board for which flood control district bonds are issued; and
- (2) providing for the operation, maintenance, and repair of any levees, dikes, retaining walls, reservoirs, drains, and other works and improvements in or along any watercourse designed to

prevent damage and injury through floods, and other permanent works constructed, including the repair and maintenance of equipment or the performance of any duty imposed by this chapter;

a tax of not exceeding one and thirty-three hundredths cents (\$0.0133) on each one hundred dollars (\$100) of taxable property in the district as it appears on the tax duplicates, in addition to all other taxes, shall be levied annually by the city-county legislative body for flood control purposes. The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes, in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) The county treasurer shall, between the first and tenth days of each month, notify the board of the amount of such taxes collected for flood control purposes during the preceding month, and upon the date of notification the county treasurer shall credit an account to be known as the "flood control maintenance and general expense fund" with such amount of taxes for flood control purposes as may have been collected at that time. The fund shall be used and expended only for the purposes prescribed by this chapter. The board may expend on behalf of the district all sums of money thus realized. Warrants for these expenditures shall be drawn by the fiscal officer of the consolidated city upon the vouchers of the board.

(c) The board may by resolution authorize and make temporary loans in anticipation of revenues actually levied under this section, which loans mature and shall be paid within one (1) year from the date of the making of the loan, with interest payable at the maturity of the loan. The warrants or other evidence of these loans shall be sold for not less than par, and before the making of the loan, notice of the time, place, amount, and terms of making of the loan shall be given by publication in accordance with IC 5-3-1. The warrants import no personal obligation for their payment and are payable only out of the tax so levied.

(d) All money remaining in any of the funds to the credit of the board at the end of the calendar year continues to belong to these funds respectively, to be used by the board for the respective purposes for which the funds are created. All funds raised under this section shall be deposited at interest with the depository or depositories of other public funds of the consolidated city, and all interest collected on them belongs to them.

(e) In the event that the revenues in the "flood control maintenance and general expense fund" of the district are at any time insufficient, the consolidated city may appropriate money out of its general fund for the use and benefit of the district, which amount so appropriated and used shall be returned and repaid to the city out of the first available funds by the board.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.6-1997, SEC.229.

Payments for property or work; damages assessed; title vested in consolidated city

Sec. 16. (a) From the separate and specific fund derived from sale of the bonds as provided in this chapter, and from no other source, the board shall pay to the parties entitled to it the amounts respectively due them for any lands, rights-of-way, or other property taken or purchased, or for work done by contract or otherwise.

(b) In case the lands, rights-of-way, or other property is secured by purchase or contract, the payment shall be made according to the terms of the contract. In case of any such property taken by condemnation as provided in this chapter, the amount of damages assessed shall be paid or tendered as provided in this chapter, within ninety (90) days after the final determination of the condemnation proceedings, or as soon after that as the fund arising from the bonds is available. The title to the lands, rights-of-way, or other property, or that part so paid for or otherwise acquired then becomes vested in the consolidated city, in the manner, to the extent, for the purpose, and subject to the limitations provided in this chapter.

(c) The board shall order payments from the fund to be made to contractors in accordance with IC 36-1-12.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-17

Filing and recording; description of land and statement of purpose

Sec. 17. Within sixty (60) days after any land or right in it is paid for and acquired under this chapter, the board shall file and cause to be recorded in the recorder's office of the county in which the land is situated, a description sufficiently accurate for its identification, with a statement of the purpose for which it is acquired or taken, which shall be signed by a majority of the board.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-29.1-18

Expending funds raised under chapter; appropriation

Sec. 18. No part of any of the funds raised under this chapter may be expended except upon warrants drawn by the fiscal officer of the consolidated city, upon vouchers of the board. No appropriation in any form is necessary, but all funds arising under this chapter are considered appropriated to the respective purposes named in this chapter, and are under the control of the board, which has complete and exclusive authority to expend these funds for these purposes.

As added by Acts 1982, P.L.77, SEC.24.

IC 36-9-30

Chapter 30. Solid Waste Collection and Disposal

IC 36-9-30-1

Application of chapter

Sec. 1. This chapter applies to all units except townships.
As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-2

Definitions

Sec. 2. As used in this chapter:

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal, and solid commercial, industrial, and institutional wastes.

"Solid waste disposal facility" means a sanitary landfill, an incinerator, a composting facility, a garbage grinding facility, or any other facility that is suitable for solid waste disposal and is constructed and approved under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-3

Facilities for collection and disposal; revenue bonds to pay costs

Sec. 3. A unit may establish, acquire, construct, install, operate, and maintain facilities for the collection and disposal of solid waste in order to secure the collection and disposal of solid waste accumulated inside or outside the corporate boundaries of the unit. The unit may issue revenue bonds to pay all or part of the costs of the facilities.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-4

Methods for disposal

Sec. 4. A unit acting under this chapter must obtain approval from the department of environmental management, according to rules adopted by the environmental rules board, for any method or methods used for the disposal of solid waste before obtaining land or facilities.

One (1) or more of the methods listed below may be used:

(1) A unit may use a sanitary landfill. If a sanitary landfill is to be used, information necessary to evaluate the project shall be submitted to the department of environmental management for review and approval before the purchase of land or equipment.

(2) A unit may use incineration. If incineration is to be used, the plans and specifications of each incinerating plant or other facility, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction of the facilities. The plans must include an approved method for the disposal of noncombustible solid waste and incinerator residue.

(3) A unit may use composting. If composting is to be used, the

plans and specifications of composting facilities, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction of the facilities. The plans must provide for the proper disposal of all solid waste that is not suitable for composting.

(4) A unit may use a garbage grinding system involving the separate collection and disposal of garbage into a community sewerage system through commercial-type grinders or community-wide installation of individual grinders. As used in this subdivision, "garbage" means all decayable solid and semisolid wastes resulting from the processing, preparation, cooking, serving, or consumption of food or food materials. The plans and specifications for the garbage grinding facilities, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction or installation of the facilities. The plans must provide for the proper disposal of all solid waste that is not suitable for grinding.

(5) A unit may use any other suitable methods or facilities for the disposal of solid waste, if the plans and specifications, along with other information necessary to evaluate the project, are submitted to the department of environmental management for review and approval before the acquisition, construction, installation, or operation of the method or facility.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.143-1985, SEC.203; P.L.113-2014, SEC.127.

IC 36-9-30-5

Contracts for collection or disposal; requirements

Sec. 5. (a) A unit may contract with persons for the collection or disposal of solid waste. The contract may provide that persons contracted with have the exclusive right to collect or dispose of solid waste under section 4 of this chapter.

(b) A unit may contract with any business or institution for the collection and disposal of industrial, commercial, or institutional solid waste. All fees collected by the unit shall be deposited in the treasury of the unit for the administration, operation, and maintenance of the solid waste collection and disposal project.

(c) A unit may contract for the use of privately owned solid waste disposal facilities.

(d) If a contract executed under subsection (a) or (b) will yield a gross revenue to a contractor (other than a governmental entity) of at least twenty-five thousand dollars (\$25,000) during the time it is in effect, then the unit must comply with IC 36-1-12-4 in awarding the contract. The unit shall require the bidder to submit a financial statement, a statement of experience, the bidder's proposed plan or plans for performing the contract, and the equipment that the bidder has available for the performance of the contract. The statement shall

be submitted on forms prescribed by the state board of accounts. IC 36-1-12-4(b)(6) does not apply to this subsection.

(e) A unit may contract with private persons that operate facilities that combine significant elements of recycling or production of refuse derived fuel.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.329-1985, SEC.25; P.L.19-1990, SEC.39.

IC 36-9-30-5.5

Contracts for incineration of waste

Sec. 5.5. (a) As used in this section, "waste" includes solid waste and waste disposed of in conjunction with the disposal of solid waste, as well as liquid waste (consisting of sludge from air and water pollution control facilities or water supply treatment facilities) when disposed of in conjunction with the disposal of solid waste.

(b) A unit may contract for twenty (20) years or less for the incineration of waste.

As added by P.L.353-1985, SEC.1.

IC 36-9-30-6

Appropriations for acquisition, establishment, operation, and maintenance of premises, facilities, and services

Sec. 6. The fiscal body of a unit acting under this chapter may make appropriations for the acquisition, establishment, operation, and maintenance of premises, facilities, and services for the collection and disposal of solid waste. Appropriations under this section may include amounts for employees, vehicles, and equipment necessary or incidental to the collection or disposal of solid waste.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-7

Supervision and control of functions by works board

Sec. 7. (a) Except as provided in subsection (b), the:

(1) construction, acquisition, improvement, equipment, custody, administration, operation, and maintenance of any facilities for the collection and disposal of solid waste; and

(2) collection of revenues for the use and services of the facilities;

are under the supervision and control of the works board of the unit.

(b) The legislative body of a municipality may provide by ordinance that the functions described by subsection (a) are under the supervision and control of the sanitary board or utility service board of the municipality.

(c) As used in the following sections of this chapter, "board" means the works board or other board performing the functions described by subsection (a).

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-8

Contracts or agreements necessary to performance of board's

duties

Sec. 8. The board may take all steps and proceedings and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. However, any contract relating to the financing of the acquisition, construction, or purchase of facilities for the collection and disposal of solid waste must be approved by the fiscal body of the unit before it is effective.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-9**Personnel necessary in execution of board's powers and duties**

Sec. 9. The board may employ, fix the compensation of, and assign the duties of engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees it considers necessary in the execution of its powers and duties.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-10**Expenses**

Sec. 10. All expenses incurred by the board in carrying out this chapter shall be paid solely from money provided under this chapter. The board may not bind itself or the unit beyond the extent to which money has been or may be provided under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-11**Operation, management, and control of facilities**

Sec. 11. After the:

- (1) construction, installation, and completion; or
- (2) acquisition;

of facilities for the collection and disposal of solid waste, the board shall operate, manage, and control the facilities. The board may extend and improve the facilities, if money is available for that purpose under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-12**Adoption of rules**

Sec. 12. The board shall adopt rules for the use and operation of facilities constructed or acquired under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-13**Operation of facilities**

Sec. 13. The board shall do all things necessary or expedient for the successful operation of facilities constructed or acquired under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-14**Contracts with other units desiring use of facility; cost and expenses; term**

Sec. 14. A unit constructing, acquiring, or maintaining facilities for the collection and disposal of solid waste may contract with a unit that wants to use the facilities for the payment of all or part of the cost and expenses of the facilities, for any term not exceeding twenty-five (25) years. A contract under this section must be executed in accordance with IC 36-1-7.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-15**Methods of financing of facilities and land**

Sec. 15. The acquisition, establishment, construction, installation, operation, and maintenance of facilities and land for the collection and disposal of solid waste may be financed through general taxation, service fees, or a combination of these methods.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-16**Preliminary expenses; payment; procedure; reimbursement of fund**

Sec. 16. (a) All or part of the necessary preliminary expenses that are incurred by a board and must be paid before the issuance and delivery of revenue bonds under this chapter may be paid in the manner provided by this section.

(b) The board may certify the items of expense to the fiscal officer of the unit, who shall immediately draw a warrant or warrants to be paid out of the unappropriated part of the general fund of the unit, without a special appropriation being made. If the unit has no unappropriated money in its general fund, the fiscal officer shall recommend to the fiscal body of the unit:

- (1) the temporary transfer from other funds of a sufficient amount to meet the items of expense; or
- (2) the making of a temporary loan for that purpose.

The fiscal body shall immediately make the transfer or authorize the temporary loan.

(c) The fund or funds from which the payments are made shall be fully reimbursed and repaid out of the first proceeds of the sale of revenue bonds, and before any other disbursements are made from those proceeds. The amount advanced to pay preliminary expenses is a first charge against the proceeds resulting from the sale of the revenue bonds until it has been repaid.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-17**Revenue bonds; issuance; interest rates; terms and conditions; nature of bonds; sale**

Sec. 17. (a) The unit may issue revenue bonds to provide all or part of the money necessary to pay the costs of facilities acquired or

constructed under this chapter. The bonds, which are payable solely from the fund established under section 18 of this chapter, must be authorized by an ordinance of the fiscal body of the unit, setting forth the terms and conditions of the bonds.

(b) The bonds may bear interest at any rate determined by the ordinance, payable semiannually, and mature serially, either annually or semiannually and beginning at the time and extending over the period of years determined by the ordinance.

(c) The ordinance may include the terms and conditions considered necessary and proper to protect the bondholders.

(d) The bonds shall be issued in the name of the unit, but they are not a corporate indebtedness of the unit. The bonds must contain a statement on their face that the unit is not obligated to pay them or the interest on them, except from the fund established under section 18 of this chapter.

(e) The bonds are negotiable instruments.

(f) The bonds and the interest on them are exempt from all state, county, and municipal taxation.

(g) The bonds shall be executed in the same manner as other bonds issued by the unit are executed, and shall be sold in accordance with IC 5-1-11 or at a negotiated sale.

(h) Bonds issued by a lessor corporation under this chapter shall be sold in accordance with IC 5-1-11 or at a negotiated sale.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.35-1990, SEC.71.

IC 36-9-30-18

Revenue bonds; ordinance authorizing bond

Sec. 18. The ordinance authorizing the revenue bonds must also:

(1) establish a sinking fund for the payment of the bonds, the interest on the bonds, and the charges of banks or trust companies for making payment of the bonds or interest; and

(2) pledge the revenues of the facilities, after the payment of the reasonable expense of operation, repair, and maintenance, into the sinking fund at intervals to be determined by the ordinance, for:

(A) the payment of interest on the bonds as it falls due;

(B) the payment of the bonds as they fall due; and

(C) the accumulation of reasonable reserves in the sinking fund as a margin for safety and a protection against default, and for the payment of premiums upon bonds retired by call or purchase.

The required payments constitute a first charge upon the revenues of the facilities, after the payment of the reasonable expense of operation, repair, and maintenance.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-19

Revenue bonds; application of proceeds; costs of facility

Sec. 19. (a) All money received from any revenue bonds issued

under this chapter, after reimbursements for preliminary expenses under section 16 of this chapter, shall be applied solely to the payment of the costs of the facilities acquired or constructed under this chapter. Any surplus of bond proceeds above that amount shall be paid into the fund established under section 18 of this chapter. The holders of the bonds have a lien on the money until it is applied in the manner prescribed by this section.

(b) For purposes of this section, costs of the facilities include:

- (1) the cost of all property and rights considered necessary or convenient for installing, constructing, and equipping the facilities;
- (2) interest on bonds before and during the acquisition, installation, construction, and equipment of the facilities, and for six (6) months after the start of collection of fees under this chapter;
- (3) engineering and legal expenses;
- (4) expenses for estimates of cost and revenues;
- (5) expenses for surveys and plans;
- (6) other expenses necessary or incidental to determining the feasibility or practicability of the method or methods to be used for the disposal of solid waste;
- (7) administrative expenses; and
- (8) other expenses necessary or incidental to financing under this chapter.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-20

Revenue bonds; action to question validity and to protect and enforce bondholders' rights

Sec. 20. (a) An action to question the validity of the revenue bonds or to prevent their issuance may not be brought after the date fixed for their sale.

(b) Any holder of any of the revenue bonds or the coupons attached to them may bring any action necessary to:

- (1) protect and enforce his rights under this chapter or the ordinance authorizing the bonds; and
- (2) enforce and compel performance of all duties required by this chapter or the ordinance authorizing the bonds, including the making and collecting of reasonable and sufficient fees for the use of and services rendered by the facilities for the disposal of solid waste.

However, the unit may not be compelled to pay fees on behalf of other users or owners.

(c) If there is a failure to pay the principal or interest of any of the bonds on the date named for payment, any court having jurisdiction of the action may appoint a receiver to administer the facilities on behalf of the unit and the bondholders. The receiver may:

- (1) charge and collect from all users or owners fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance;

- (2) pay any bonds and interest outstanding; and
- (3) apply the revenues in conformity with this chapter and the ordinance authorizing the bonds.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-21

Fees for use of and service rendered by facilities

Sec. 21. (a) Except as provided in subsection (l), the fiscal body of the unit owning, operating, and maintaining facilities for the collection or disposal of solid waste may, by ordinance, establish and maintain just and equitable fees for the use of and the service rendered by the facilities.

(b) Except as provided in subsection (m), if the fiscal body of a unit has authorized the issuance of revenue bonds under this chapter, it shall, as long as the bonds are outstanding, establish and maintain fees with respect to the facilities for which the bonds are issued.

(c) The aggregate amount of the required fees must be sufficient to pay the cost of operation, repair, depreciation, and maintenance of the facilities, and to pay the sums required to be paid into the bond fund under this chapter.

(d) The ordinance may provide that the fees are payable:

- (1) by either the users of the facilities, the owners of the property served by the facilities, or the unit; or
- (2) by the users, owners, and the unit in the proportions fixed by the ordinance.

(e) Revenues collected under this section are considered revenues of the facilities.

(f) The fees may not be established until after a public hearing at which the users of the facilities, the owners of property served or to be served by the facilities, and other interested parties have an opportunity to be heard concerning the proposed fees and the provisions concerning payment of the fees.

(g) After introduction of the ordinance fixing the fees and providing for their payment, and before the ordinance is finally adopted, notice of the hearing, setting forth the proposed schedule of fees and the provisions concerning payment, shall be published in accordance with IC 5-3-1.

(h) After the hearing, which may be adjourned from time to time, the ordinance, as originally introduced or as amended, shall be passed and put into effect. A copy of the schedule of fees established shall be kept on file in the office of the board and in the office of the fiscal officer of the unit. The fee schedule is a public record.

(i) The fees or the provisions for their payment may be changed or readjusted in the manner by which they were originally established. However, if the change or readjustment is made substantially pro rata as to all classes of use or service, no hearing or notice is required.

(j) If:

- (1) a user of the facilities; or
- (2) an owner of property served by the facilities;

does not pay a fee within thirty (30) days after it is due, the amount of the fee, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the unit in a civil action in the name of the unit.

(k) The unit is subject to the fees established under this chapter. The unit shall pay the fees when due. The payments are considered part of the revenues of the facilities.

(l) This subsection applies to a county having a population of more than fifty-seven thousand (57,000) but less than sixty thousand (60,000). The county executive owning, operating, and maintaining facilities for the collection or disposal of solid waste may, by ordinance, establish and maintain just and equitable fees for the use of and the service rendered by the facilities.

(m) If the fiscal body of a county that is subject to subsection (l) has authorized the issuance of revenue bonds under this chapter, the county executive shall, as long as the bonds are outstanding, establish and maintain fees with respect to the facilities for which the bonds are issued.

As added by Acts 1981, P.L.309, SEC.106. Amended by Acts 1981, P.L.45, SEC.92; P.L.102-1987, SEC.2; P.L.12-1992, SEC.188; P.L.170-2002, SEC.171; P.L.119-2012, SEC.234.

IC 36-9-30-22

Solid waste disposal nonreverting capital fund

Sec. 22. (a) At the request of the board, the fiscal body of the unit may, by ordinance, establish a solid waste disposal nonreverting capital fund.

(b) Capital for the fund consists of:

- (1) deposits by the board of the revenues of its facilities that remain after payment of expenses, in an amount determined by the fiscal body upon the recommendation of the board; and
- (2) appropriations of money derived from user fees, in an amount determined by the fiscal body.

(c) After an appropriation by the fiscal body, the board may use the fund for:

- (1) acquisition of property and other rights;
- (2) installing, constructing, equipping, expanding, modifying, or remodeling new or existing facilities; or
- (3) engineering, legal, surveying, estimating, appraising, planning, designing, and other expenses necessary to determine the feasibility of implementing solid waste disposal methods.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-23

Garbage grinders

Sec. 23. (a) A garbage grinder may not be installed on any private property under this chapter unless the property owner and the tenant, if any, files a written request for garbage disposal service and the installation of a garbage grinder.

(b) The users of garbage grinders may discontinue the service at

any time by filing a written request for the discontinuance of the service with the board.

(c) All property rights in the garbage grinders remain in the unit. The unit may remove a garbage grinder upon the discontinuance of the service by the user or if any fees are not paid within thirty (30) days after they are due.

(d) The users of garbage grinders are responsible for any damages to the grinders, except for ordinary wear and tear.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-24

Lease with option to purchase facilities; terms and conditions

Sec. 24. (a) A unit may enter into a lease with option to purchase of solid waste disposal facilities inside or outside the corporate boundaries of the unit. However, a lease with an option to purchase may not be entered into for a term of more than thirty (30) years unless:

- (1) the lessor is a corporation organized under Indiana law or admitted to do business in Indiana;
- (2) a petition for the lease, signed by fifty (50) or more resident taxpayers of the unit, has been filed with the board; and
- (3) the board has, after investigation, determined that there is a need for the facilities.

The terms and conditions of the option to purchase must be specified in the lease.

(b) A lease under this section may provide that as a part of the lease rental for the solid waste disposal facilities, the unit agrees to:

- (1) pay all taxes and assessments levied against or on account of the leased property;
- (2) maintain insurance on the leased property for the benefit of the lessor corporation; and
- (3) assume all responsibilities for repair and alterations of the leased property during the term of the lease.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-25

Lease with option to purchase facilities; hearing; notice; authorization to execute lease

Sec. 25. (a) After the lessor corporation and the unit have agreed upon the terms and conditions of a lease under section 24 of this chapter, and before the final execution of the lease, notice of a hearing to be held before the board shall be given to all interested persons. The hearing may not be earlier than ten (10) days after the publication of notice.

(b) The notice of hearing shall be published one (1) time in the manner prescribed by IC 5-3-1. The notice must name the day, place, and hour of the hearing and set forth a brief summary of the principal terms of the lease, including the location and name of the proposed lessor corporation, the character of the property to be leased, the rental to be paid, the term of the lease, and a summary of the terms of

purchase under the option. The cost of publication shall be paid by the lessor corporation.

(c) The proposed lease, drawings, plans, specifications, and estimates for the solid waste disposal facilities shall be kept available for inspection by the public during the ten (10) day period and at the meeting.

(d) At the hearing, which may be adjourned from time to time, all interested persons are entitled to be heard upon the necessity for the execution of the lease and upon the fairness and reasonableness of the rental and purchase price provided for in the lease.

(e) After the hearing, the board may authorize the execution of the lease as originally agreed upon or make the modifications in the lease that are agreed upon with the lessor corporation. However, the lease rental or purchase price as set out in the published notice may not be increased.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-26

Lease with option to purchase facilities; notice of date of execution of lease

Sec. 26. When the execution of a lease is authorized under section 25 of this chapter, the board shall give at least ten (10) days' notice of the date upon which the lease will be executed. The notice shall be published one (1) time in the manner prescribed by IC 5-3-1. An action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease may not be brought after the execution of the lease.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.169-2006, SEC.81.

IC 36-9-30-27

Lease with option to purchase facilities; lessor corporation; payment

Sec. 27. In anticipation of the acquisition of a site and the construction and erection of solid waste disposal facilities, including the necessary equipment and appurtenances, a unit may enter into a lease with option to purchase with a lessor corporation, subject to the approval of the department of local government finance. Such a lease may not provide for the payment of any lease rental by the lessee until the facilities are completed and ready for solid waste disposal. The lessor corporation shall agree in the lease to furnish a bond satisfactory to the lessee and conditioned upon final completion of the facilities within the period specified in the lease, except for unavoidable delays.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.90-2002, SEC.515.

IC 36-9-30-28

Lease with option to purchase facilities; erection of facility on land owned by unit

Sec. 28. A unit that wants to have solid waste disposal facilities erected on land owned or to be acquired by the unit may:

- (1) sell that land to the lessor; or
- (2) lease that land to the lessor for a nominal rental for the same period of years that the unit leases the facilities, and grant an option to the lessor to purchase the land within six (6) months after the termination of the lease of the facilities if the unit defaults under the terms of the lease and the lease is terminated.

If the option price on the land is not fixed in the original lease, the circuit court for the county shall appoint three (3) appraisers who reside in the unit to determine the price to be paid for the land under the option.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-29

Lease with option to purchase facilities; submission of plans, specifications, and estimates; preliminary engineering design work

Sec. 29. (a) A lessor corporation proposing to build solid waste disposal facilities, including the necessary equipment and appurtenances, shall, after the execution of the lease, submit to the unit plans, specifications, and estimates for the facilities. The plans and specifications shall be submitted to the state department of health and must be approved in writing by the state department and by the unit before the execution of the lease.

(b) This section does not prohibit the unit from contracting for the preliminary engineering design work necessary to initiate the planning and engineering of the solid waste disposal facilities, and making provisions for payment for these services.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.2-1992, SEC.895.

IC 36-9-30-30

Lease with option to purchase facilities; annual tax levy; review of levy

Sec. 30. A unit that wants to lease solid waste disposal facilities under this chapter shall annually levy a tax sufficient to produce the money required to pay the rental stipulated in the lease. The levy may be reviewed by other bodies vested by law with that authority, in order to ascertain that the levy is sufficient to raise the amount required under the lease.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-31

Lease with option to purchase facilities; tax exemption

Sec. 31. A solid waste disposal facility leased by a lessor corporation to a unit under this chapter is exempt from all state, county, and other taxes, including all sales and use taxes applicable to tangible personal property incorporated or to be incorporated in the facility. However, the rental paid to a lessor corporation under the terms of such a lease is subject to all applicable taxes.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-32

Lease with option to purchase facilities; exercise of option; nonexercise of option; extension of lease

Sec. 32. (a) If a unit exercises an option to purchase contained in a lease under section 24 of this chapter, it may pay the purchase price of the facilities purchased with money obtained from bonds issued and sold under the statutes governing the issue and sale of bonds of the unit.

(b) If the unit does not exercise the option to purchase at the expiration of the lease, the solid waste disposal facilities covered by the lease become the absolute property of the unit upon the unit's full discharge and performance of its obligations under the lease. The lessor corporation shall execute proper instruments conveying to the unit good and merchantable title to the facilities.

(c) If the unit does not exercise the option to purchase, then the board, subject to the approval of the fiscal body of the unit, may extend the lease of the solid waste disposal facility for the term, not to exceed a period equal to the term of the original lease, and for the consideration agreed to by the parties to the original lease or their assignees. At the end of the extension period, the facility covered by the lease becomes the absolute property of the unit, and the lessor corporation shall execute all proper instruments to convey the facility to the unit.

As added by Acts 1981, P.L.309, SEC.106.

IC 36-9-30-33

Adoption of rules

Sec. 33. The environmental rules board may adopt rules under IC 4-22-2 to carry out this chapter.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.143-1985, SEC.204; P.L.113-2014, SEC.128.

IC 36-9-30-34

Statutes, ordinances, or rules

Sec. 34. Action taken by the department of environmental management under this chapter does not limit the powers of other governmental entities to make or enforce other statutes, ordinances, or rules for the storage, collection, removal, or disposal of solid waste, if they do not conflict with this chapter. For purposes of this section, the provisions of this chapter shall be construed as cumulative or alternative.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.143-1985, SEC.205.

IC 36-9-30-35

Methods of disposal; necessity of compliance with laws and rules; operation of nuisance inimical to human health; Class C infraction; injunctive or mandatory relief

Sec. 35. (a) Solid waste may be disposed of on land only through use of sanitary landfills, incineration, composting, garbage grinding, or other acceptable methods approved by the department of environmental management in accordance with rules adopted by the environmental rules board. A person may not operate or maintain an open dump.

(b) A person may not operate or maintain facilities for the collection and disposal of solid waste, except as set out in section 4 of this chapter or under rules adopted by the environmental rules board.

(c) Failure to comply with this section constitutes the operation of a nuisance inimical to human health. A prosecuting attorney who receives a report of such a failure from the department of environmental management, a solid waste management district, or a local health officer shall cause appropriate court proceedings to be instituted.

(d) A person who fails to comply with this section commits a Class C infraction. If the violation is of a continuing nature, each day of failure to comply constitutes a separate infraction.

(e) The department of environmental management may bring proceedings for injunctive or mandatory relief through the attorney general against any person (including any agency of the state or federal government) for failure to comply with this section.

As added by Acts 1981, P.L.309, SEC.106. Amended by P.L.143-1985, SEC.206; P.L.33-1992, SEC.22; P.L.113-2014, SEC.129.

IC 36-9-30-36

Repealed

(Repealed by P.L.40-1999, SEC.3.)

IC 36-9-31

Chapter 31. Collection and Disposal of Waste in Indianapolis

IC 36-9-31-1

Application of chapter

Sec. 1. This chapter applies to each consolidated city.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.

"Byproduct" means energy and materials from wastes in a form that will allow their reuse.

"Byproduct recovery facility" means a facility for the systematic separation and recovery of energy and recyclable material from waste.

"Cost" as applied to a facility, or any part of a facility, includes the cost of construction, modification, or acquisition of the facility, or any part of it, financing charges, interest before and during construction and for one (1) year after commencement of operation of the facility, cost of funding any reserves to secure the payment of principal and interest on the bonds, cost of funding any operation and maintenance reserve fund, cost of funding any major repair or replacement fund, legal and underwriting expenses, plans, specifications, surveys, estimates of costs and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the facility, administrative expense, and such other expenses as may be necessary or incident to the construction, modification, or acquisition of the facility, the financing of the construction, modification, or acquisition, and the placing of the facility in operation.

"Developer" means any person that proposes to enter into or has entered into a financing agreement with the consolidated city for financing a facility and that proposes to enter into or has entered into a separate agreement with some other person for the use and operation of the facility so financed.

"Disposal" includes the treatment of as well as the placing, processing, confining, compacting, storing, or covering of waste.

"Facility" means any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture, or other real or personal property that is to be used, occupied, or employed for the storage, processing, or disposal of waste or the recovery and marketing by any means of any byproduct, such as recycling centers, transfer stations, trucks, bailing facilities, rail haul or barge haul facilities, processing systems, byproduct recovery facilities or other facilities for reducing waste volume, sanitary landfills, plants and facilities for compacting, composting, or pyrolyzation of wastes, incinerators, and other waste disposal, reduction, or conversion

facilities or any combination thereof. The term excludes any energy generating facility that does not rely on waste as its primary fuel source and any facility regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Financing agreement" includes an agreement between the consolidated city and a developer or between a developer or user, or both, concerning the financing of, the title to, or possession of facilities, or both, and payments to the city in respect thereof.

"Grant" means money to be received from the federal government or any of its agencies, or the state or any of its agencies, intended to be used for the construction, modification, or acquisition of waste disposal facilities. The term also includes federal revenue-sharing money to which the consolidated city is entitled.

"Net revenues" means the amount of revenues received by the consolidated city from the operation and ownership of facilities less the reasonable expenses of the operation, repair, and maintenance of these facilities.

"Processing" means an operation for the purpose of modifying the characteristics or properties of waste to facilitate transportation of, disposal of, or the recovery of byproducts from waste.

"Proposal" means a written response to a request for proposals.

"Proposer" means any person that has submitted a proposal in response to a request for proposals issued to the person by the board.

"Public notice" means a notice published in accordance with IC 5-3-1.

"Put or pay contract" means a contract entered into by the consolidated city with any person whereby the city guarantees the provision of a specified amount of waste to the person and the city is obligated to pay the person a specified amount for waste that is not so provided.

"Request for proposals" means an invitation to submit a proposal to the consolidated city for the construction, modification, acquisition, operation, or combination of any of these, of the facility under section 4 of this chapter.

"Request for qualifications" means an invitation by the consolidated city to any person to submit qualifications in order to qualify to submit a proposal.

"Revenue bonds" means bonds issued under section 10 of this chapter.

"Revenues" means the amounts received by the consolidated city from the operation or ownership of facilities, including amounts received from the collection of fees under section 8 of this chapter, amounts received under financing agreements under section 11 of this chapter, tipping fees, lease rentals, and amounts received from the sale or other disposition of byproducts, but not including any amounts derived from the levy of taxes.

"Service district" means the solid waste collection special service district created by IC 36-3-1-6.

"Solid waste" has the meaning set forth in IC 36-9-30-2, except that the term excludes sewage and other highly diluted water-carried

materials or substances and those in gaseous forms, excludes waste when the waste is to be reused or reclaimed as salvage, and excludes waste regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Tipping fees" means the charge by any person for the disposal of waste at a facility.

"User", for purposes of section 11 of this chapter only, means a person that has entered into a financing agreement with the consolidated city, or with a developer, in contemplation of the user's use and operation of the facilities referred to in the agreement.

"Waste" includes solid waste and water disposed of in conjunction with the disposal of solid waste, as well as liquid waste (consisting of sludge from air or water pollution control facilities or water supply treatment facilities), when disposed of in conjunction with the disposal of solid waste.

"Waste disposal development bonds" means bonds issued under section 11 of this chapter.

"Waste disposal district" means the waste disposal special taxing district referred to in IC 36-3-1-6.

"Waste disposal district bonds" means bonds issued under section 9 of this chapter.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.1-1996, SEC.95.

IC 36-9-31-3

Powers and duties of board

Sec. 3. In order to provide for the collection and disposal of waste in the consolidated city and for the management, operation, acquisition, and financing of facilities for waste disposal, the board may exercise the following powers on behalf of the city, in addition to the powers specifically set forth elsewhere in this chapter:

- (1) To sue and be sued.
- (2) To exercise the power of eminent domain as provided in IC 32-24 within the corporate boundaries of the city; however, the power of eminent domain may not be exercised to acquire the property of any public utility used for the production or distribution of energy.
- (3) To provide for the collection of waste accumulated within the service district and to provide for disposal of waste accumulated within the waste disposal district, including contracting with persons for collection, disposal, or waste storage, and the recovery of byproducts from waste, and granting these persons the right to collect and dispose of any such wastes and store and recover byproducts from them.
- (4) To plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for waste disposal.
- (5) To enter into all contracts or agreements necessary or incidental to the collection, disposal, or recovery of byproducts from waste, such as put or pay contracts, contracts and agreements for the design, construction, operation, financing,

ownership, or maintenance of facilities or the processing or disposal of waste or the sale or other disposition of any products generated by a facility. Notwithstanding any other statute, any such contract or agreement may be for a period not to exceed forty (40) years.

(6) To enter into agreements for the leasing of facilities in accordance with IC 36-1-10; however, any such agreement having an original term of five (5) or more years is subject to approval by the department of local government finance under IC 6-3.5. Such an agreement may be executed before approval, but if the department of local government finance does not approve the agreement, it is void.

(7) To purchase, lease, or otherwise acquire real or personal property.

(8) To contract for architectural, engineering, legal, or other professional services.

(9) To exclusively control, within the city, the collection, transportation, storage, and disposal of waste and, subject to the provisions of sections 6 and 8 of this chapter, to fix fees in connection with these matters.

(10) To determine exclusively the location and character of any facility, subject to local zoning ordinances and environmental management laws (as defined in IC 13-11-2-71).

(11) To sell or lease to any person any facility or part of it.

(12) To make and contract for plans, surveys, studies, and investigations.

(13) To enter upon property to make surveys, soundings, borings, and examinations.

(14) To accept gifts, grants, or loans of money, other property, or services from any source, public or private, and to comply with their terms.

(15) To issue from time to time waste disposal district bonds to finance the cost of facilities as provided in section 9 of this chapter.

(16) To issue from time to time revenue bonds to finance the cost of facilities as provided in section 10 of this chapter.

(17) To issue from time to time waste disposal development bonds to finance the cost of facilities as provided in section 11 of this chapter.

(18) To issue from time to time notes in anticipation of grants or in anticipation of the issuance of bonds to finance the cost of facilities as provided in section 13 of this chapter.

(19) To establish fees for the collection and disposal of waste, subject to the provisions of sections 6 and 8 of this chapter.

(20) To levy a tax within the service district to pay costs of operation in connection with waste collection, waste disposal, mowing services, and animal control, subject to regular budget and tax levy procedures. For purposes of this subdivision, "mowing services" refers only to mowing services for rights-of-way or on vacant property.

(21) To levy a tax within the waste disposal district to pay costs of operation in connection with waste disposal, subject to regular budget and tax levy procedures.

(22) To borrow in anticipation of taxes.

(23) To employ staff engineers, clerks, secretaries, and other employees in accordance with an approved budget.

(24) To issue requests for proposals and requests for qualifications as provided in section 4 of this chapter.

(25) To require all persons located within the service district or waste disposal district to deposit waste at sites designated by the board.

(26) To otherwise do all things necessary for the collection and disposal of waste and the recovery of byproducts from it.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.38-1984, SEC.5; P.L.85-1995, SEC.42; P.L.1-1996, SEC.96; P.L.67-1999, SEC.1; P.L.2-2002, SEC.127.

IC 36-9-31-4

Contracts or agreements with board; competitive bidding; proposal procedure; action to contest validity of award; negotiated contracts; insurance

Sec. 4. (a) Notwithstanding any statute relating to the length, duration, and terms of contracts and agreements, the board on behalf of the consolidated city may enter into any contract or agreement with any person upon such terms and conditions as may be agreed upon, for the design, construction, operation, financing, ownership, or maintenance of a facility for waste disposal in accordance with the requirements and conditions of this section. Before or after the expiration or termination of the term or duration of any contract or agreement entered into or granted under this section, the board, in accordance with the requirements and conditions of this section, may from time to time enter into amended, extended, supplemental, new, or further contracts or agreements with the same or any other person for any purpose referred to in this section.

(b) Overall cost, including construction costs, tipping fees, and reductions in costs resulting from the sale of byproducts, should in all cases be a major criterion in the selection of contractors for award of contracts under this section. The board shall consider the highly complex and innovative nature of byproduct recovery technology, the variety of waste disposal technology available, the desirability of flexibility for the development of these complex facilities, and the economic and technical utility of contracts for byproduct recovery projects that include in their scope various combinations of design, construction, operations, management, or maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the consolidated city to award a contract on the basis of factors other than cost alone, for example, facility design, system reliability, energy efficiency, compatibility with source separation and other recycling systems and environmental protection. Accordingly, and notwithstanding any

other statute, a contract entered into between the board on behalf of the city and any person under this section may be awarded by the board by following either of the following procedures:

(1) Public bidding in compliance with IC 36-1-12.

(2) Compliance with subsection (c).

(c) The board may issue a request for qualifications and request for proposals prepared by or for the consolidated city in accordance with the following provisions:

(1) All persons may be required to prequalify as a proposer by submitting information relating to the experience of the proposer, the basis on which the proposer purports to be qualified to carry out all work required by a proposed contract, and the financial condition of the proposer. Minimum requirements may be set by the board as to these minimum qualifications in a request for qualifications issued before that.

(2) Before the issuance of a request for proposals under this section, the board shall adopt a proposed request for proposals and shall publish a public notice that may contain a request for qualifications, if a prequalification process has been adopted under subdivision (1), including the criteria on which proposers may be selected. The public notice must include the intent to issue a request for proposals, and must further designate times and places where the proposed request for proposals may be viewed by the general public. Comments may be addressed to the scope or contents of the proposed request for proposals. The board shall allow not less than a thirty (30) day period for the submission of qualifications and comments on the proposed request for proposals, following which the board shall select a proposer and adopt a request for proposals. After that, the board shall notify each proposer that is selected of the selection, inform each proposer of the date and place proposals are to be submitted, and deliver to each proposer a copy of the request for proposal.

(3) Requests for proposals must include a clear identification and specification of all elements of cost that would become charges to the city, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for proposals for the full lifetime of a proposed contract, including such appropriate matters as proposals for project staffing, implementation of all work tasks, carrying out of all responsibility required by the proposed contract, the cost of planning, design, construction, operation, management, or maintenance of any facility, or the cost of processing or disposal of solid waste, and a clear identification and specification of any revenues that would accrue to the city from the sale of any byproducts or from any other source, and such other information as the board may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section. However, the board may prescribe the form and content of proposals and, in any event, the

proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the board of the proposal. In addition, the board in the request for proposals may set such maximum allowable cost limits as it determines to be appropriate.

(4) Proposals may not be received by the board before thirty (30) days following notification to the proposers of their selection.

(5) Proposals received under this section shall be evaluated by the board as to net cost or revenues and, in the manner consistent with provisions set forth in the requests for proposals, may be evaluated on the basis of additional factors such as the technical evaluation of facility design, net energy efficiency, environmental protection, overall system reliability, and financial condition of the proposer.

(6) The board, on behalf of the city, may negotiate with the proposer and may make a contract award to any responsible proposer. The board shall give public notice of a public hearing, which notice must designate the time and place of a public hearing at which hearing the board shall hear comments upon the contract to be awarded. Following the public hearing, the board shall make a contract award to any responsible proposer selected under this section based on a determination by the board that the selected proposal is the most responsive to the needs of the city. The award must be in the form of a resolution and must include particularized findings relative to factors evaluated under this section, indicating that the city's needs are met by the award and that the action is in the public interest.

(d) An action to contest the validity of the contract awarded or the procedure by which it was awarded must be brought within thirty (30) days following the award of the contract. After that date, the contract is incontestable for any cause.

(e) Notwithstanding any other statute, any contract entered into by the board with any person on behalf of the consolidated city for the collection of solid waste may be awarded by negotiation or by competitive bids. The board shall consider the following factors in awarding a negotiated contract:

- (1) Price quoted by the proposed contractor.
- (2) Prior experience of the proposed contractor.
- (3) Financial status of the proposed contractor.
- (4) Number of vehicles and other equipment to be used by the proposed contractor.
- (5) Any other factors related to the proposed contractor's ability to perform under the contract.

If a contract is awarded by negotiation, the reason for using negotiation as the method to award the contract must be stated in writing by the board at the time that the contract is awarded. A copy of this statement must be kept available for public inspection.

(f) The board shall award competitive bid contracts to the lowest responsible and responsive bidder after advertising for bids.

However, if a contract is not awarded to the lowest bidder, the factors used to justify that award must be stated in the minutes or memoranda at the time the award is made, and a copy of the minutes or memoranda must be kept available for public inspection. The procedures for granting a collection contract by competitive bidding shall be prescribed in an ordinance adopted by the city-county legislative body or, in the absence of such an ordinance, by IC 36-1-12-4.

(g) The board may contract with multiple parties for solid waste collection and may award separate contracts for separate geographical areas within the consolidated city.

(h) This subsection applies to contracts of less than three hundred thousand dollars (\$300,000) a year for the collection of solid waste. The board may require a waste collector under a contract to carry insurance coverage in a form which protects against losses in excess of the amount covered by other liability insurance policies. The board may not require a waste collector to carry such umbrella insurance coverage in excess of one million dollars (\$1,000,000). A waste collector under a contract must provide one (1) of the following as determined by the board:

(1) A performance bond or an irrevocable letter of credit equal to ten percent (10%) of the annual contract price.

(2) An agreement that ten percent (10%) of the annual contract price may be withheld by the board as security for performance of the contract.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.357-1987, SEC.1; P.L.175-1990, SEC.1.

IC 36-9-31-5

Put or pay contract procedure; action to contest validity; tax levy

Sec. 5. (a) Any put or pay contract may provide for payments to be made by the consolidated city under the contract from:

(1) the levy of taxes;

(2) revenues;

(3) any other available funds of the consolidated city; or

(4) any combination of the foregoing.

(b) A put or pay contract may further provide that payments by the consolidated city to the other person to the contract are required only to the extent and only for the period or periods that person is able to accept and dispose of waste in accordance with the contract had such waste been delivered to the person.

(c) A put or pay contract may be entered into by the consolidated city extending for a period of five (5) years or more only after a public hearing by the board, at which all interested persons shall be heard. After the public hearing, the board may adopt a resolution authorizing the execution of the contract on behalf of the city if it finds that the estimated amount of waste to be provided throughout the term of the contract will not be less than the specified amount of waste required to be provided by the contract.

(d) A put or pay contract providing for payments by the

consolidated city in whole or in part from the levy of taxes is not valid unless approved by ordinance of the city-county legislative body. Upon execution of such a contract and approval by the legislative body, the board shall cause notice of the execution of the contract and its approval to be given by public notice. Fifty (50) or more taxpayers residing in the city who will be affected by the contract and who may be of the opinion that no necessity exists for the execution of the contract or that the payments provided for in the contract are not fair and reasonable may file a petition in the office of the county auditor within thirty (30) days after the publication of the notice of execution and approval, setting forth their names, addresses, and objections to the contract and the facts showing that the execution of the contract is unnecessary or unwise or that the payments provided for in the contract are not fair and reasonable, as the case may be. Upon the filing of the petition, the county auditor shall immediately certify a copy of it, together with such other data as may be necessary in order to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and information, the department of local government finance shall fix a time and place for the hearing of the matter, which must be not less than five (5) nor more than thirty (30) days thereafter in the city. Notice of the hearing shall be given by the department of local government finance to the members of the board and to the first fifty (50) taxpayer-petitioners upon the petition by a letter signed by the commissioner or deputy commissioner of the department of local government finance and enclosed with fully prepaid postage sent to those persons at their usual place of residence, at least five (5) days before the date of the hearing. The decision of the department of local government finance on the appeal, upon the necessity for the execution of the contract, and as to whether the payments under it are fair and reasonable, is final.

(e) An action to contest the validity of the contract or to enjoin the performance of any of its terms and conditions must be brought within thirty (30) days after the publication of notice of the execution and approval of the contract, or if an appeal has been taken to the department of local government finance, then within thirty (30) days after the decision of the department.

(f) After the consolidated city has entered into a put or pay contract under this section, the city-county legislative body shall annually levy a tax sufficient to produce each year the necessary amount, with other amounts available, if any, that is sufficient to pay the amounts that the contract provides are to be paid from the levy of taxes. The tax levies provided for in this chapter are reviewable by other bodies vested by law with authority to ascertain that the levies are sufficient to raise the amount that, with other amounts available, is sufficient to meet the payments under the contract payable from the levy of taxes.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.90-2002, SEC.516.

IC 36-9-31-6

Taxing units; ad valorem tax levies; user fee

Sec. 6. For purposes of IC 6-3.5-1.1, the service district and the waste disposal district constitute civil taxing units, and they may impose ad valorem property tax levies for the purpose of paying for waste collection, or waste disposal. However, notwithstanding any other provision of this chapter, if a property tax is levied for waste collection, a user fee may not also be charged for waste collection or animal control.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.73-1983, SEC.22; P.L.38-1984, SEC.6; P.L.85-1995, SEC.43.

IC 36-9-31-7

Creation and purpose of service district

Sec. 7. The service district is created for the purpose of providing persons within its territory with solid waste collection service.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-8

Fees for waste collection and disposal

Sec. 8. (a) The board may establish fees for waste collection and disposal. The board shall establish fees for waste disposal when necessary to pay principal or interest on any bonds issued under section 10 of this chapter. Fees established under this subsection shall apply to all persons owning real property benefited by waste collection, a facility for waste disposal, or both. The board may change and readjust fees from time to time.

(b) The board may fix the fees for waste collection on the basis of a schedule of charges for each classification of residence or building in use in the solid waste collection service district, and may fix the fees for waste disposal on the basis of a schedule of charges for each classification of residence or building in use in the waste disposal district. These classifications of residences and buildings shall be based on:

- (1) weight or volume of the refuse received;
- (2) the average number of containers or bags of refuse received;
- (3) the relative difficulty associated with the disposal of the waste received; or
- (4) any combination of these criteria or any other criteria the board determines to be logically related to the service.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) If the fees are not paid when due (by the affected property owner), a lien is created upon the property benefited by the collection and disposal of waste. When the property is sold at a tax sale under the procedures provided by statute, the amount of the purchase price attributable to the waste charge lien reverts to the consolidated city.

(e) The board may exercise reasonable discretion in adopting

differing schedules of fees, based upon variations in the cost of furnishing the services included within this chapter to various classes of owners of property, the distance of the property benefited from the facility, or any other variations the board determines to be logically related to the cost of the service.

(f) Fees shall be established only after a public hearing before the board at which all persons using facilities or owning property benefited by waste collection and disposal, and others interested, have had opportunity to be heard by the board concerning the proposed fees. After adoption of the resolution fixing fees and before the resolution takes effect, public notice of the hearing, setting forth the schedule of fees, shall be given. The hearing may be adjourned from time to time. After the hearing, the resolution establishing fees, either as originally passed or as amended, shall be passed and put into effect. A copy of the schedule of fees so established shall be kept on file in the office of the board and shall be kept open to inspection by all persons interested. The fees established shall be extended to cover any additional territory later served that falls within the same class, without the necessity of any hearing or notice. Any change or readjustment of fees may be made in the same manner as they were originally established.

(g) An action to contest the validity of the fees adopted or the procedure by which they were adopted must be brought within thirty (30) days following the adoption of the fees.

(h) Fees imposed under this chapter may be used, together with any other revenues, to pay the cost of facilities for waste disposal, waste collection, the operation and maintenance of facilities, cost incurred under put or pay contracts, charges that may be pledged to the payment of principal of and interest on waste disposal district or revenue bonds, or amounts required by put or pay contracts.

(i) Before any fee established by the board for waste collection or disposal may take effect, the city-county legislative body must by ordinance approve, reject, or modify the fee.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.38-1984, SEC.7.

IC 36-9-31-9

Special benefit tax; waste disposal district bonds; bids or proposals; resolution; waste disposal district bond fund

Sec. 9. (a) The waste disposal district constitutes a special taxing district for the purpose of levying a special benefit tax for the purpose of providing the disposal of waste and the recovery of byproducts from waste.

(b) Whenever, upon investigation, the board determines that a facility or facilities for waste disposal is necessary for the public health and welfare, and that the construction, modification, or acquisition of the facility or facilities will be of public utility and benefit, the board may, upon approval of the city-county legislative body, issue waste disposal district bonds under this section for the payment of the cost of the facility.

(c) Before authorizing the waste disposal district bonds the board may either accept public bids for the facility or adopt a resolution approving a request for proposals all as provided in section 4 of this chapter.

(d) When plans and specifications have been prepared according to the public bidding requirements of IC 36-1-12, or a resolution adopted by the board approving a request for proposals, the board shall adopt a resolution declaring that, upon investigation, it has been found that it is necessary for the public health and welfare and will be of public utility and benefit to construct, modify, or acquire (and maintain where constructed) the facility or facilities and to acquire the property described for that purpose. The resolution shall be kept open to inspection by all persons interested in or affected by the acquisition of the property or the construction of the facility. Upon adoption of the resolution, the board shall give public notice of the adoption and its purpose, which notice must name a date not less than ten (10) days after the date of the last publication on which the board will receive or hear remonstrances from persons interested in or affected by the facility or facilities and will determine their public utility and benefit.

(e) At the time fixed for the hearing, or at any time before that, any person owning real or personal property within the waste disposal district may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances filed. After considering the remonstrances, the board shall take final action determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution, which final action shall be duly recorded. This action is final and conclusive upon all persons, except that any person who has remonstrated in writing and who is aggrieved by the decision of the board may take an appeal as provided in subsection (f).

(f) Any person who has filed a written remonstrance with the board as provided in subsection (e), in case the board takes final action confirming the resolution in its original or any modified form, is entitled to appeal to the superior court of the county. Within ten (10) days after the final action of the board, the remonstrator must file in the office of the clerk of the court a copy of the resolution of the board and his remonstrance, together with a surety bond conditioned to pay the costs of the appeal should the appeal be determined against him. The only ground of remonstrance of which the court has jurisdiction on appeal is the question of whether it will be of public utility and benefit to construct, modify, or acquire the proposed facility, and the burden of proof is upon the remonstrator. The cause shall be summarily tried by the court without a jury. All remonstrances upon which an appeal are taken shall be consolidated and heard as one (1) cause of action by the court, and the cause shall be heard and determined by the court within thirty (30) days after the time of filing the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall confirm the

final action of the board on the resolution or sustain the remonstrance.

(g) Upon final action of the board, or court, confirming the resolution in its original or any modified form, all real or personal property located within the waste disposal district is subject to a special tax for the purpose of providing money to pay all or a part of the total cost of the acquisition, modification, or construction of the facility, which special tax is declared to constitute the amount of benefits resulting to all of the property in the district.

(h) For the purpose of raising money to pay the cost of the facility, and in anticipation of the special tax to be levied, the board shall, upon the approval of the legislative body, cause to be issued waste disposal district bonds in the name of the consolidated city in accordance with IC 36-3-5-8.

(i) On adopting a resolution ordering the issuance of waste disposal district bonds, the board, with legislative body approval, shall then certify a copy of the resolution and a copy of the approval to the fiscal officer of the consolidated city, who shall then prepare the bonds.

(j) The waste disposal district bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the waste disposal district. The waste disposal district bonds, and interest on them, issued under this section are payable out of a special tax levied upon all of the property of the waste disposal district and any other revenues made available for that purpose under this chapter. The waste disposal district bonds must so recite these terms upon their face, together with the purpose for which they are issued.

(k) All proceeds from the sale of waste disposal district bonds shall be kept as a separate and specific fund, to pay the cost of the facility, and no part of the proceeds may be used for any other purpose. Any surplus remaining out of the proceeds of the waste disposal district bonds, after all of the cost is fully paid, shall be paid into and becomes a part of the waste disposal district bond fund; however, money derived from sources other than the waste disposal district bond proceeds, such as state or federal grants or other contributions, are not so restricted as to application regardless of whether the contribution arises for a project financed from waste disposal district bond proceeds.

(l) For the purpose of raising money to pay the waste disposal district bonds issued under this section, the city-county legislative body shall levy each year a special tax upon all the property of the waste disposal district in such amount and manner as to meet and pay the principal of the waste disposal district bonds as they severally mature, together with all accruing interest on them. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county. The tax so levied and certified shall be estimated and entered upon the tax duplicate by the county auditor and shall be collected and enforced by the county treasurer in the same manner as county taxes are estimated, entered, collected and enforced. As the

tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the waste disposal district bond fund, and shall be applied to the payment of the principal of and interest on the waste disposal district bonds as they become due and to no other purpose. In fixing the amount of the necessary levy the legislative body shall consider the amount of net revenues, if any, to be derived from the collection of fees under section 8 of this chapter or any other net revenues collected under this chapter above the amount of revenues necessary to be applied upon or reserved by or for the city for the operation, maintenance, and administrative expenses of the facilities. The board shall annually, in lieu of making the levy or to reduce the amount of the levy, set aside by resolution the amount of the net revenues to be collected before maturity of the principal and interest of the waste disposal district bonds payable in the following calendar year. If the board adopts this resolution, then it is unlawful for the board to use any part of the amount so set aside out of the net revenues for any purpose other than the payment of waste disposal district bonds and the interest on them. A proportionate payment of this amount shall be made to the waste disposal district bond fund monthly.

(m) The board may not issue waste disposal district bonds under this section, payable by special taxation for that purpose in a total amount, including outstanding bonds already issued, in an amount exceeding six percent (6%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All waste disposal district bonds issued in violation of this subsection are void. *As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.6-1997, SEC.230.*

IC 36-9-31-10

Revenue bonds of consolidated city

Sec. 10. (a) The board may recommend to the city-county legislative body that it finance the cost of facilities for waste disposal by borrowing money and issuing revenue bonds from time to time under this section.

(b) The issuance of revenue bonds must be authorized by ordinance of the legislative body.

(c) The revenue bonds are special obligations of the consolidated city and are payable solely from and secured by a lien upon the revenues of all or part of the facilities whether or not the facilities are being financed with revenue bonds under this section, as shall be more fully described in the ordinance authorizing the issuance of the revenue bonds. The ordinance may pledge and assign for the security of the revenue bonds all or part of the revenues or net revenues of the facilities.

(d) The revenue bonds, and interest on them, are not a debt of the consolidated city or the board, nor a charge, lien, or encumbrance, legal or equitable, upon property of the board or the city, or upon the revenues of the board other than those revenues of the facilities that have been pledged to the payment of the revenue bonds. Every

revenue bond must recite in substance that the revenue bond, including interest, is payable solely from the revenues pledged to its payment, and that neither the board nor the city is under any obligation to pay it, except from those revenues.

(e) In order that the payment of the revenue bonds and the interest on them be adequately secured, the consolidated city and its officers, agents, and employees shall provide for such covenants and do such other acts and things that may be necessary, convenient, or desirable in order to secure the revenue bonds or that may tend to make the revenue bonds more marketable.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-11

Agreements and contracts requested by board; waste disposal development bonds; financing agreements; advancement of bond expenses; exemption from property taxes on facilities; approvals and permits

Sec. 11. (a) The consolidated city may, upon request of the board:

- (1) enter into agreements concerning, and acquire by any lawful means, real property or interests in real and personal property needed for the purposes of this section;
- (2) enter into financing agreements to purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve facilities for waste disposal;
- (3) lease facilities to users or developers with or without an option to purchase;
- (4) sell facilities to users or developers for consideration, which may be paid in installments or otherwise;
- (5) make direct loans to users or developers for the cost of acquisition, construction, or installation of facilities, including land, machinery, or equipment, in which event the bonds shall be secured by the pledge of one (1) or more bonds or other secured or unsecured debt obligations of the users or developers;
- (6) enter into agreements with users or developers to allow the users or developers to wholly or partially acquire, construct, or modify facilities to be acquired by the city; and
- (7) issue waste disposal development bonds under this section to accomplish the purposes of this section and to secure payment of the bonds as provided in this section.

(b) This section does not authorize the financing of facilities for a developer unless any agreement that may exist between a developer and a user is fully disclosed to, and approved by, the board.

(c) The board may, from time to time, enter into negotiations with any one (1) or more persons concerning the terms and conditions of financing facilities. Preliminary expenses in connection with negotiations may be paid from money furnished by the proposed user or developer, or from grant money, or from funds of the board.

(d) The board shall hold a public hearing on the proposed financing of the facilities after giving public notice. Upon findings by

the board that the proposed financing will be of benefit to the health or welfare of the consolidated city and that the proposed financing complies with the purposes and provisions of this chapter, the board shall, by resolution, approve the financing, including the form and terms of the financing agreement, the waste disposal development bonds, and the trust indenture, if any. The resolution of the board shall be transmitted by the secretary of the board to the legislative body.

(e) If the legislative body finds that the proposed financing will be of benefit to the health or welfare of the consolidated city and complies with the purposes and provisions of this section, it may adopt an ordinance approving the proposed financing. The ordinance may also authorize the issuance of waste disposal development bonds payable solely from revenues and receipts derived from a financing agreement or from payments made under a guaranty agreement by a developer, user, or any other person. The waste disposal development bonds are not in any respect a general obligation of the consolidated city.

(f) Any financing agreement must provide for payments in an amount not less than an amount sufficient to pay the principal of, premium, if any, and interest on the waste disposal development bonds authorized for the financing of the facilities. The term of any financing agreement may not exceed forty (40) years from the date of any waste disposal development bonds issued under the agreement. However, a financing agreement does not terminate after forty (40) years if a default under it remains uncured, unless the termination is authorized by and according to the terms of the financing agreement. If the consolidated city retains an interest in the facilities, the financing agreement must require the user or developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the facilities, so that the city will not incur any expenses on account of the facilities that are not covered by the payments provided for in the financing agreement.

(g) The consolidated city may advance all expenses, premiums, and commissions that it considers necessary or advantageous in connection with the issuance.

(h) The consolidated city is exempt from all property taxes on facilities. Developers and users are liable for property taxes on facilities as provided by law. This section does not deny any tax exemption a developer or user may have under other laws because of the nature of the facilities or the user.

(i) The user or developer is responsible for obtaining and maintaining all approvals and permits required for the construction of the facilities under this section.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-12

Refunding bonds

Sec. 12. If the legislative body finds that a refunding of

outstanding bonds would be of benefit to the health and welfare of the consolidated city and would comply with the purposes and provisions of this chapter, it may authorize the issuance of bonds under IC 5-1-5 to refund outstanding bonds issued in accordance with this chapter. A saving to the issuing body as provided in IC 5-1-5-2 is not required for the issuance of refunding bonds.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-13

Borrowing limitations pending receipt of grant to city

Sec. 13. (a) The consolidated city, pending receipt of any grant may, but within the limitation set forth in this section, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer of the consolidated city and containing such terms and provisions as may be prescribed by the board. The city may, in anticipation of the issuance of bonds issued under section 9, 10, or 11 of this chapter, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer and containing such terms and provisions as may be prescribed by the board.

(b) Any note or notes issued under this section or any renewal of them must mature not more than five (5) years from the date of issuance of the original note and must pledge for the payment of the principal and interest the proceeds of the grant or bonds.

(c) The board shall apply the proceeds of any note or notes issued under this section to the cost of the facility for which the grant is to be made or bonds issued, but no purchaser of any obligations is liable for the proper application of the proceeds.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-14

Bonds issued

Sec. 14. (a) All bonds issued under this chapter may:

- (1) be issued as serial bonds or as term bonds or a combination of both types;
- (2) be executed and delivered by the consolidated city at any time and from time to time;
- (3) bear such date or dates;
- (4) bear interest at such rate or rates;
- (5) be redeemable before their stated maturities on such terms and conditions and at premiums as necessary or advisable;
- (6) be issued in any denomination or denominations of not less than five thousand dollars (\$5,000);
- (7) be in a form, either coupon or registered or a combination of both types;
- (8) carry registration conversion privileges;
- (9) be payable in a medium of payment and at a place or places, which may be at any one (1) or more banks or trust companies within or without Indiana;
- (10) provide for the replacement of mutilated, destroyed, stolen,

or lost bonds;

(11) be authenticated in a manner and upon compliance with conditions;

(12) establish reserves from the proceeds of the sale of bonds or from other funds, or both, to secure the payment of the principal and interest on the bonds issued under this chapter;

(13) establish reserves, from the proceeds of the sale of bonds or from other funds or both, for extensions, enlargements, additions, replacements, renovations, and improvements to or for the facilities; and

(14) contain other terms and covenants;

all as provided in the ordinance of the legislative body or the resolution of the board authorizing the bonds.

(b) The bonds issued under this chapter may mature at such time or times not to exceed forty (40) years.

(c) The bonds issued under this chapter may bear either the impressed or facsimile seal of the consolidated city and shall be executed by the manual or facsimile signature of the city executive and attested by the manual or facsimile signature of the city fiscal officer, so long as one (1) of these signatures is manual.

(d) The coupons appertaining to the bonds issued under this chapter shall be executed by the facsimile signature of the city fiscal officer.

(e) The bonds and the interest coupons appertaining to them, if any, issued under this chapter are valid and binding obligations of the consolidated city for all purposes in accordance with the terms of this chapter, notwithstanding that before delivery of them any of the persons whose signatures appear on them have ceased to be officers of the city, as if the persons had continued to be officers of the city until after delivery.

(f) The bonds issued under this chapter may be sold at public or private sale for such price or prices as may be provided in the ordinance authorizing their issuance.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-15

Trust indenture, resolution, or ordinance; bonds issued

Sec. 15. The bonds issued under this chapter may be secured by a trust indenture by and between the consolidated city and a corporate trustee, which may be any national or state bank having its principal office in Indiana and having trust powers. The trust indenture or resolution or ordinance under which the bonds are issued may:

(1) mortgage the land, any interest in land, or the facilities on account of which the bonds are issued;

(2) pledge the revenues or any other funds, or any part of them, to be received by the consolidated city;

(3) contain such provisions for protecting and enforcing the rights and remedies of the bondholders or lenders as may be considered reasonable, including covenants setting forth the duties of the city and board in relation to the construction of the

facilities and the custody, safeguarding, application, and investment of all money received or to be received by the city on account of the facilities financed by the issuance of the bonds;

(4) provide for the establishment of reserve funds from the bond proceeds or from other sources to the extent authorized;

(5) set forth the rights and remedies of the bondholders and trustee, and provisions restricting the individual right or actions of bondholders;

(6) contain provisions regarding investment of funds, sales, exchange or disposal of property, and manner of authorizing and making of payments without regard to any general statute relating to these matters;

(7) provide for the payment of the proceeds of the sale of bonds to such trustee, officer, bank, or depository as it may determine for their custody, and for the method of their disbursement, with such safeguards and restrictions as it may determine;

(8) provide for the appointment of a receiver by the superior court of the county under terms and conditions as are considered reasonable; and

(9) contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-16

Securities registration exemption

Sec. 16. Any security issued in connection with a financing under this chapter the interest on which is excludable from adjusted gross income tax is exempt from the registration requirements of IC 23-19 or any other securities registration law.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.192-2002(ss), SEC.189; P.L.27-2007, SEC.36.

IC 36-9-31-17

Tax exemption; bonds and grant and bond anticipation notes

Sec. 17. All bonds, as well as grant and bond anticipation notes, issued under this chapter and the interest on them are exempt from taxation in accordance with IC 6-8-5.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-18

Tax exemption; city revenues

Sec. 18. All revenues received by the consolidated city under this chapter are exempt from all taxation.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-19

Facilities financing methods

Sec. 19. The facilities, or any part of them, to be financed under this chapter, may be financed by any one (1) or more or any

combination of one (1) or more of the methods provided for in this chapter.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-20

Limitation of actions; contesting bonds

Sec. 20. An action to contest the validity of the bonds or to prevent their issuance must be brought within thirty (30) days following the adoption of the ordinance or resolution authorizing the bonds.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-21

Effect of chapter; issuance of bonds; acts authorized; powers conferred

Sec. 21. This chapter constitutes full authority for the issuance of bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things, by a board, officer, commission, department, agency, or instrumentality of the state is required to issue bonds or to do any act or perform anything under this chapter except as prescribed by this chapter. The powers conferred by this chapter are in addition to, and not in substitution for, and the limitations imposed by this chapter do not affect, the powers conferred by any other statute.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-22

Exemption of facilities from public utilities regulations

Sec. 22. A facility owned, operated, or financed under this chapter and the sale of byproducts from it are exempt from regulation under IC 8-1-2. IC 8-1-11.1 does not apply to such a facility or its operation or financing.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-23

Nondiscriminatory acceptance of waste; fees

Sec. 23. (a) Subject to subsection (b), any facility:

- (1) owned;
- (2) operated; or
- (3) financed after December 2, 2008;

under this chapter shall accept waste accumulated within the waste disposal district without discrimination as to whether or not the waste is collected by the consolidated city. The fees made by any such facility for any services rendered or to be rendered, either directly or in connection with them, must be nondiscriminatory, but they may vary based upon the volume, weight, hazardousness, or difficulty of disposal of the waste disposed of or processed by the facility.

(b) If a person enters into a contract with the consolidated city to accept the consolidated city's waste at a facility, the person may not be considered to be operating the facility for purposes of this section.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.131-2006, SEC.13.

IC 36-9-31-24

Energy byproduct sales

Sec. 24. An energy byproduct of a facility may not be sold to a person already being served the same type of energy by a public utility subject to regulation by the utility regulatory commission; however, an energy byproduct of a facility may be sold to a person who:

- (1) after the in-service date of the facility is not receiving the same type energy from the public utility; or
- (2) constructs a new facility that is not served the same type energy by the public utility.

In the case of a new facility that is not served the same type energy by the public utility, the energy byproduct must first be offered to the public utility upon the same terms and conditions agreed to in good faith, by the person who constructs the new facility. If the public utility fails to accept, in writing, the purchase of the energy byproduct upon those terms and conditions within forty-five (45) days after the date the offer is made to the public utility, then the energy byproduct may be sold directly to the person by the facility.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.23-1988, SEC.130.

IC 36-9-31-25

Effect of chapter; compliance with other laws

Sec. 25. This chapter is supplemental to all other statutes covering the acquisition, construction, modification, use, and maintenance of facilities for waste disposal by a consolidated city. As to facilities acquired, constructed, modified, operated, or leased under this chapter, and the collection of wastes under this chapter, it is not necessary to comply with other statutes concerning the acquisition, construction, modification, use, and maintenance of facilities or the collection of waste by cities, except as specifically required by this chapter.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-26

Repealed

(Repealed by P.L.2-2005, SEC.131.)

IC 36-9-32

Chapter 32. Financing of Public Improvements in Municipalities

IC 36-9-32-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-2

Legislative findings and declaration

Sec. 2. It is found and declared that municipalities in Indiana have a need to finance public improvements to provide for industrial and commercial growth and for general public use. Therefore, the general assembly finds it necessary and proper to provide an alternative method for municipalities to finance public improvements, to provide for industrial and commercial growth, to provide employment opportunities, diversification of industry and commerce, and to provide general public access to those public improvements. It is declared that the financing of public improvements for use by the general public, including industrial and commercial enterprises, is a public purpose.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-3

Definitions

Sec. 3. As used in this chapter:

"Public improvements" means:

- (1) any improvement, as defined in this article;
- (2) any improvement, including the construction, equipping, remodeling, extension, repair, and betterment of any municipally owned utility, as defined in IC 8-1-2-1; or
- (3) any acquisition or improvement of real estate upon which such an improvement is to be located or that will itself constitute a public improvement.

"System" means any sewage works or municipally owned utility, as defined in IC 8-1-2-1.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-4

Loan agreements; loan of grant proceeds; pledge of revenues to secure bonds

Sec. 4. A municipality may enter into a loan agreement with any person and loan the proceeds of any grant received by the municipality to that person with the repayment of the loan to be secured by the pledge of a note or other secured or unsecured debt obligation of that person. The municipality may pledge the revenues from the note or other secured or unsecured debt obligation of that person or of any entity organized for economic development purposes to the payment of bonds issued under this chapter. In no

event may a municipality pledge revenues other than from the sources authorized in this chapter as security for the bonds issued under this chapter. A municipality may not issue bonds under this chapter if principal and interest payments on those bonds would exceed revenues to be derived by the municipality from the notes or other secured or unsecured debt obligations of any person that has entered into a loan agreement with the municipality under this chapter, or from other sources of principal and interest payments under this chapter. Any municipality may issue bonds under this chapter whether the revenues pledged to secure the bonds are to be derived from a loan agreement entered into before or after March 1, 1984. The validity of any bonds issued under this chapter is not dependent on or affected by the validity of the loan agreement at the time it was executed and delivered. All loan agreements between municipalities and persons borrowing grant proceeds entered into before March 1, 1984, are fully legalized and declared valid.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-5

Public improvements connected to an existing system; payment of bonds; letting of contracts; ownership or operation of improvements

Sec. 5. (a) If a public improvement financed under this chapter is connected to a system, the public improvement becomes a part of the existing system. Any person entering into a loan agreement with a municipality under this chapter shall pay rates and charges or fees for the use of that system in the same manner any other member of the general public is required to pay such rates and charges or fees. The municipality may not establish rates and charges or fees for the use of that system that include a revenue requirement for payment of principal and interest on bonds issued under this chapter. Bonds issued under this chapter are payable solely from revenues derived from notes or other secured or unsecured obligations of any person entering into a loan agreement with a municipality under this chapter, or from other sources of principal and interest payments under this chapter, and not from revenues of the system.

(b) Contracts for public improvements under this chapter shall be let in accordance with statutes relating to public works and public purchases.

(c) Public improvements may be financed under this chapter even if the municipality building or acquiring those improvements will not own or operate those improvements, so long as the public improvements will be owned or operated by a political subdivision.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-6

Ordinances approving issuance of bonds

Sec. 6. If the legislative body finds that the issuance of bonds under this chapter will be of benefit to the health or welfare of the municipality and serves the public purpose set forth in section 2 of

this chapter, it may adopt an ordinance approving the issuance of bonds under this chapter. The municipality may publish a notice of a hearing regarding the public purpose of the issuance of the bonds and any other matter and, if the notice is published, it shall be published in accordance with IC 5-3-1.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-7

Bonds; issuance and sale; payment; ordinances; amount; validity; taxation; refunding bonds; security registration

Sec. 7. (a) The municipality may issue and sell bonds to provide money for any public improvement under this chapter.

(b) The bonds and interest on them are payable only out of a special fund, to be established as provided in this chapter. The bonds do not constitute an indebtedness of the municipality within the meaning of any constitutional limitation. Each bond must state plainly on its face that it is payable only from a special fund and that it does not constitute an indebtedness of the municipality within the meaning of any constitutional debt limitation. Neither the faith and credit nor the taxing power of the municipality is or may be pledged for the payment of the principal of, premium (if any) on, or interest on bonds issued under this chapter. An owner of bonds issued under this chapter is not entitled to compel the exercise of the taxing power by the municipality or the forfeiture of any of its property in connection with any default on bonds issued under this chapter.

(c) Bonds issued under this chapter may be sold at public or private sale for the price, in the manner, and at the time determined by the legislative body.

(d) The ordinance of the legislative body authorizing the bonds must provide, either in the body of the ordinance or by incorporating another document by reference:

- (1) the manner of their execution;
- (2) their term or terms, which may not exceed forty (40) years;
- (3) their interest rate;
- (4) their denominations;
- (5) their form;
- (6) the medium of their payments;
- (7) the place and manner of their payment;
- (8) the terms of their redemption, if any; and
- (9) any other provisions not inconsistent with this chapter.

(e) The bonds may be issued in an amount sufficient to pay all or any part of the cost of any public improvement authorized by this chapter including the funding of interest in an amount to be determined by the legislative body, the establishment of reserves to secure payment of such bonds, and the payment of all other costs or expenses incident to and necessary or convenient to carry out the purposes and powers authorized by this chapter.

(f) The bonds and their authorization, issuance, sale, and delivery are not subject to any general statute concerning bonds.

(g) An action to contest the validity of bonds issued under this

chapter may not be commenced more than fifteen (15) days after publication of notice of the adoption of the ordinance approving them. The bonds are conclusively presumed to be valid after that period has passed.

(h) Any bonds issued under this chapter are exempt from taxation as provided in IC 6-8-5.

(i) If the legislative body finds that a refunding of outstanding bonds issued under this chapter would be of benefit to the municipality, it may authorize the issuance of refunding bonds payable solely from revenues derived from notes or other secured or unsecured obligations of any person that has entered into a loan agreement with a municipality under this chapter, or from escrowed bond proceeds or other sources of principal and interest payments under this chapter. Refunding bonds shall be issued in the same manner as bonds issued under this chapter and are payable only from sources set forth in this chapter.

(j) Any bond issued under this chapter is exempt from any security registration requirements provided for in Indiana statutes.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-8

Trust indentures to secure bonds

Sec. 8. The legislative body may secure bonds issued under this chapter by a trust indenture between the municipality and a corporate trustee. The corporate trustee may be any trust company, national bank, or state bank that is in Indiana and has trust powers. A trust indenture entered into under this section may contain any provisions agreed upon by the municipality and the trustee that are not inconsistent with this chapter.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-9

Enforcement by owner of bonds or trustee

Sec. 9. Any owner of bonds issued under this chapter, and the trustee under any trust agreement entered into under this chapter, except to the extent that the trustee's rights are restricted by the trust agreement, may:

(1) either at law or in equity, by suit, action, or other proceeding, protect and enforce any and all rights of such owner of bonds or trustee under state law, or, to the extent permitted by law, under the trust agreement, or under any loan agreement entered into under this chapter; and

(2) enforce and compel the performance of all duties required by this chapter or by any trust agreement or loan agreement entered into under this chapter to be performed by any municipality or by any officer of any municipality.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-10

Impairment of rights and remedies of owners of bonds

Sec. 10. The state covenants and agrees with the owners of any bonds issued under this chapter that so long as any bonds of a municipality issued under this chapter are outstanding or unpaid, the state will not in any way impair the rights and remedies of the owners of the bonds, until the bonds, together with interest on them, interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the owners, are fully paid, met, and discharged.

As added by P.L.23-1984, SEC.18.

IC 36-9-32-11

Liability for property and special taxing district taxes

Sec. 11. Any person entering into a loan agreement with a municipality under this chapter is liable for property taxes, and special taxing district taxes for any public improvements, if special benefits are provided to that person together with other persons residing in the special taxing district. This section does not deny any tax exemption that such a person may have under other statutes because of the nature of that person's property or that person.

As added by P.L.23-1984, SEC.18.

IC 36-9-33

Chapter 33. Collection and Disposal of Waste Generally

IC 36-9-33-1

Application of chapter

Sec. 1. This chapter applies to all units (except townships and counties having a consolidated city) that adopt ordinances under section 3 of this chapter after March 31, 1987.

As added by P.L.353-1985, SEC.2.

IC 36-9-33-2

"Solid waste" defined

Sec. 2. As used in this chapter, "solid waste" has the meaning set forth in IC 36-9-30-2, except that the term does not include the following:

- (1) Sludge, sewage, and other highly diluted water-carried materials or substances and those in gaseous forms.
- (2) Metal, glass, paper, paperboard, or corrugated material that is stored, collected, or recovered for recycling.
- (3) Waste regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.
- (4) Waste generated by any person that disposes of the person's own waste in:
 - (A) a fully permitted sanitary landfill owned or leased by the person; or
 - (B) a resource recovery facility owned by the person; at the date of adoption of the ordinance by the unit.
- (5) Waste generated by any agricultural activity.
- (6) Waste generated by a new manufacturing or a commercial enterprise or by the expansion of an existing manufacturing or commercial enterprise.
- (7) Other waste described in an ordinance adopted by the unit's legislative body.

As added by P.L.353-1985, SEC.2. Amended by P.L.1-1996, SEC.98.

IC 36-9-33-3

Power to provide for collection and disposal of solid waste

Sec. 3. A unit may by ordinance provide for and exclusively control the collection and disposal of solid waste under this chapter within the unit. However, a unit may exercise this power only upon the completion of construction or the acquisition of a facility for the processing or disposal of solid waste by incineration or similar methods.

As added by P.L.353-1985, SEC.2.

IC 36-9-33-4

Territorial limitations for municipalities

Sec. 4. (a) A municipality may not exercise a power granted by this chapter inside the boundaries of another municipality without the consent of that municipality's legislative body.

(b) A municipality may not exercise a power granted by this chapter in unincorporated territory without the consent of the executive of the county in which that territory is located.

As added by P.L.353-1985, SEC.2.

IC 36-9-33-5

Territorial limitation for counties

Sec. 5. A county may not exercise a power granted by this chapter inside the boundaries of any municipality in that county without the consent of that municipality's legislative body.

As added by P.L.353-1985, SEC.2.

IC 36-9-33-6

Joint exercise of power

Sec. 6. Notwithstanding sections 3 and 4 of this chapter, units may jointly exercise a power granted by this chapter in the manner provided by IC 36-1-7.

As added by P.L.353-1985, SEC.2.

IC 36-9-35

Chapter 35. Water Departments in Certain Cities

IC 36-9-35-1

Application of chapter

Sec. 1. This chapter applies to each city in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), in which the legislative body has, by ordinance, established a water department as a municipal utility or a department of waterworks.

As added by P.L.320-1989, SEC.3. Amended by P.L.12-1992, SEC.189.

IC 36-9-35-2

Boards of trustees; political affiliation of appointees

Sec. 2. Notwithstanding IC 36-1-8-10, whenever the city's ordinance establishing a water department requires that an appointment to the board of trustees of the water department be conditioned upon the political affiliation of the appointee, or that the membership of the board not exceed a stated number of members from the same political party, at the time of an appointment the appointee must:

- (1) have voted in the two (2) most recent primary elections held by the party with which the appointee claims affiliation; or
- (2) if the appointee did not vote in the two (2) most recent primary elections or only voted in one (1) of those elections, be certified as a member of the party with which the appointee claims affiliation by that party's county chairman for the county in which the appointee resides.

As added by P.L.320-1989, SEC.3.

IC 36-9-35-3

Boards of trustees; vacancies

Sec. 3. Notwithstanding IC 8-1.5, IC 36-9-23, IC 36-9-24, IC 36-9-25, or any other law, if a vacancy occurs on the board of trustees, the vacancy must be filled within thirty (30) days after the vacancy occurs.

As added by P.L.320-1989, SEC.3.

IC 36-9-35-4

Boards of trustees; removal from office; appeals

Sec. 4. (a) Notwithstanding IC 8-1.5, IC 36-9-23, IC 36-9-24, IC 36-9-25, or any other law, a board member may not be removed from office except upon charges preferred before the city executive and a hearing held on them. The only permissible reasons for removal are neglect of duty and incompetence. The board member must be given at least ten (10) days notice of the time and place of the hearing and the opportunity to produce evidence and examine and cross-examine witnesses. All testimony shall be given under oath. The city executive shall prepare written findings and file them with

the city clerk.

(b) If the charges are sustained and the board member removed, the board member may appeal the findings within ten (10) days after the date they are filed with the clerk to the circuit or superior court of the county in which the city is located. The board member must file the appeal against the executive stating the charges preferred and the findings made. The court shall hear the appeal de novo without a jury within thirty (30) days after the appeal is filed and shall either ratify or reverse the findings of the executive. The judgment of the court is final and an appeal may not be taken.

As added by P.L.320-1989, SEC.3.

IC 36-9-36

Chapter 36. Barrett Law Funding for Counties and Municipalities

IC 36-9-36-1

Application of chapter

Sec. 1. This chapter applies to all units except townships.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-2

Authorized improvements

Sec. 2. (a) The following improvements may be made under this chapter by a county:

- (1) Sanitary sewers and sanitary sewer tap-ins.
- (2) Sidewalks.
- (3) Curbs.
- (4) Streets.
- (5) Storm sewers.
- (6) Lighting.
- (7) Emergency warning systems.
- (8) Any other structures necessary or useful for the collection, treatment, purification, and sanitary disposal of the liquid waste, sewage, storm drainage, and other drainage of a municipality.

(b) The following improvements may be made under this chapter by a municipality:

- (1) Sidewalks.
- (2) Curbs.
- (3) Streets.
- (4) Alleys.
- (5) Paved public places.
- (6) Lighting.
- (7) A water main extension for a municipality that owns and operates a water utility.
- (8) Emergency warning systems.

As added by P.L.98-1993, SEC.7. Amended by P.L.31-2004, SEC.1; P.L.42-2006, SEC.1.

IC 36-9-36-3

Limitations on authorized improvements; location of improvement; water main extensions

Sec. 3. (a) The following apply to improvements made under this chapter by a county:

- (1) An improvement may be made only in unincorporated areas that contain residential or business buildings.
- (2) An improvement may not be made on a tract of land that:
 - (A) consists of at least ten (10) acres and contains only one
 - (1) building that is used for residential purposes; or
 - (B) is used solely for agricultural purposes.

(b) A water main extension made under this chapter by a municipality may be made only within the corporate boundaries of

the municipality.
As added by P.L.98-1993, SEC.7.

IC 36-9-36-4

Preliminary resolutions; cross-sections, plans, and specifications

Sec. 4. (a) If the works board of a unit wants to make an improvement under this chapter, the works board must first do the following:

- (1) Adopt a preliminary resolution for the improvement.
- (2) Adopt and place on file cross-sections, general plans, and specifications for the work at the time the preliminary resolution is adopted.

(b) This subsection does not apply to a county. The cross-sections, plans, and specifications filed under subsection (a) must conform to any paving standards adopted by the works board, unless engineering practice justifies a different design.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-5

Estimate of costs; incidental, inspection, and engineering costs

Sec. 5. (a) If an improvement is to be paid for in whole or in part by special assessments levied against the property to be benefited by the improvement, the works board must adopt and file an estimate of the cost of the public improvement.

(b) The estimate may include all incidental, inspection, and engineering costs caused by the proposed improvement. However, the estimate of the costs to be paid by special assessment may not include the following:

- (1) Salaries and expenses of the necessary and regularly employed personnel of the engineering department of the unit.
- (2) Ordinary operating costs of the department.

(c) If the works board finds that it is necessary to employ additional engineering services for a particular improvement, the cost of the additional service actually performed in connection with the improvement may be included in the estimate.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-6

Incidental, inspection, and engineering costs; inclusion on assessment roll

Sec. 6. (a) The incidental, inspection, and engineering costs that are authorized by the preliminary resolution and included in the estimate may be added to the cost of an improvement and included in the assessment roll in the aggregate amount to be apportioned and assessed against the benefited property.

(b) The amount of incidental, inspection, and engineering costs included in the assessment roll may not exceed the amount of the incidental, inspection, and engineering costs included in the estimate.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-7**Incidental, inspection, and engineering costs; inclusion in contracts; subrogation rights of contractor**

Sec. 7. The following applies if the preliminary resolution provides for the inclusion and assessment of incidental, inspection, and engineering costs:

(1) The works board shall include in a contract for an improvement a provision that requires all incidental, inspection, and engineering costs to be advanced and paid by the contractor or to the board, upon the final acceptance of the improvement, for payment by the board to persons entitled to the incidental, inspection, and engineering costs.

(2) The contractor is then subrogated to all rights of the unit and those persons to all the incidental, inspection, and engineering costs subsequently included in and assessed upon the assessment roll.

(3) The costs belong to the contractor as a part of the assessments.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-8**Notice of hearing on preliminary resolution; publication; mailing to property owners**

Sec. 8. (a) Notice of a hearing on the preliminary resolution shall be published in accordance with IC 5-3-1. The notice must state that the works board has adopted the preliminary resolution and the time and place at which the works board will do the following:

(1) Hear all interested persons.

(2) Decide whether the benefits to the property liable to be assessed for the improvement will equal the estimated cost of the improvement.

(b) A notice containing the information required under subsection (a) shall be sent to each property owner affected by the proposed improvement. The mailing of the notice complies with this subsection if the mailing is to owners as the owners appear in the records of the assessor of the county in which the property is located.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-9**Estimate of maximum cost**

Sec. 9. (a) At least ten (10) days before the date fixed for a hearing under section 8 of this chapter, the engineer of the unit shall file with the works board an estimate of the maximum cost of the improvement proposed by the works board.

(b) The estimate must include the following:

(1) The cost of the guarantee under section 25 of this chapter.

(2) The cost of the maintenance of the improvements for at least three (3) years.

(c) A unit may not enter into a contract under the preliminary resolution if the contract exceeds the engineer's estimate filed under

subsection (a).

As added by P.L.98-1993, SEC.7.

IC 36-9-36-9.5

Assessments; installment payments

Sec. 9.5. (a) With respect to assessments imposed after June 30, 2001, the works board shall establish a procedure to permit owners of real property in the unit to elect whether to pay assessments in:

- (1) ten (10), twenty (20), or thirty (30) annual installments; or
- (2) a number of monthly installments that corresponds to ten (10), twenty (20), or thirty (30) annual installments.

(b) The works board shall establish the timing of the election under subsection (a) to permit the works board to structure the maturities of the principal of the bonds in a number of annual series that is consistent with the installment periods elected by owners of real property under subsection (a).

(c) A person who elects to pay the person's assessment in installments under this section must, when directed by the works board, enter into a written agreement stating that in consideration of that privilege the person:

- (1) will not make an objection to an illegality or irregularity regarding the assessment against the person's property; and
- (2) will pay the assessment as required by law with specified interest.

(d) The agreement under subsection (c) shall be filed in the office of the disbursing officer.

(e) The interest rate specified for the installments of the assessment may be equal to or greater than the interest rate on bonds issued under section 44 of this chapter.

(f) An assessment of less than one hundred dollars (\$100) may not be paid in installments.

As added by P.L.62-2001, SEC.1.

IC 36-9-36-10

Hearing on preliminary resolution; determination of special benefits accruing to property

Sec. 10. (a) At the hearing specified in the notice under section 8 of this chapter, the works board shall do the following:

- (1) Hear interested persons.
- (2) Decide whether the benefits that will accrue to the property liable to be assessed for the improvement will equal the maximum estimated cost of the improvement.

(b) If the works board finds that the benefits will not equal the maximum estimated cost of the improvement, the board shall determine the aggregate amount of special benefits that will accrue to the property liable to be assessed for the improvement.

(c) Except as provided in sections 13 and 14 of this chapter, the works board's determination concerning the aggregate amount of special benefits that will accrue to the property liable to be assessed for the improvement is final and conclusive.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-11

Levy of special assessments; improvement cost as maximum amount of assessment; improvement cost payable by unit

Sec. 11. (a) The works board shall levy special assessments for the amount determined under section 10 of this chapter if:

- (1) the contract for the improvement is executed; and
- (2) the improvement is made.

(b) The special assessments levied under this section may not exceed the cost of the improvement.

(c) If the amount determined under section 10 of this chapter is less than the contract price, the remainder of the cost of the improvement is payable by the unit.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-12

Allowances against assessment and contract price

Sec. 12. (a) The works board shall make an allowance to the owner of any property if:

- (1) an improvement exists in front of the property before the improvement is ordered; and
- (2) the improvement conforms to the general plan.

(b) An allowance under subsection (a) shall be made from the owner's assessment and from the total amount of the contract price.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-13

Confirmation, modification, or rescission of preliminary resolution

Sec. 13. (a) After the works board determines the amount of special benefits that will accrue to the property liable to be assessed for the improvement, the works board may do any of the following:

- (1) Confirm the preliminary resolution.
- (2) Modify the preliminary resolution.
- (3) Rescind the preliminary resolution.

(b) Except as provided in section 14 of this chapter, the preliminary resolution is final and conclusive on all parties if:

- (1) the preliminary resolution is modified or confirmed under this section; and
- (2) the improvement is ordered.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-14

Remonstrances and appeals

Sec. 14. (a) A majority of the persons who own the property to be assessed for the improvement may remonstrate against the improvement or take an appeal. The remonstrance or appeal must be made not later than ten (10) days after the hearing under section 10 of this chapter.

(b) If there is a remonstrance, the improvement may not be made

unless specifically ordered by an ordinance passed by a two-thirds (2/3) vote of the unit's legislative body. An ordinance under this subsection must be passed not later than sixty (60) days after the remonstrance is made.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-15

Objections to final resolution; filing; bond; prior assessments

Sec. 15. (a) If the works board finally orders an improvement, forty percent (40%) of the persons who own property abutting the improvement and who are subject to assessment may file written objections with the board. The written objections must:

(1) state at least one (1) of the following:

(A) The improvement is not needed by the public.

(B) The cost of the proposed improvement would be excessive considering the character and value of the property to be assessed.

(C) The cost of the proposed improvement will exceed the benefits to the property to be assessed.

(D) The works board does not have the legal authority to order the improvement.

(2) be filed not later than five (5) days after the making of the final order.

(b) If the works board does not abandon the proposed improvement, the following shall, not later than five (5) days after the filing of the objections with the works board, file with the clerk of the circuit or superior court of the county a copy of the order of improvement and the objections:

(1) The auditor, in the case of a county.

(2) The clerk, in the case of a municipality.

(c) Objectors must file with their objections a bond with security to the satisfaction of the court. The following apply to a bond filed under this subsection:

(1) The bond shall be in a sum fixed by the court.

(2) The bond must be conditioned on the objectors paying all or any part of the costs of the hearing as the court may order.

(d) In considering an objection described in subsection (a)(1)(A), the court may at the hearing under section 16 of this chapter consider the amount of the assessments made against the property for public improvement during the preceding five (5) years.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-16

Court hearing on objections to final resolution

Sec. 16. (a) The court shall set a hearing as early as possible, but not later than twenty (20) days after the filing of the objections with the court. All interested parties shall appear in court without further notice. The unit may not hold further proceedings concerning the improvement until the matters presented by the objections are heard and determined by the court. The matters shall be heard and

determined by the court without a jury.

(b) The court shall hear the evidence on the date fixed under subsection (a). The court may confirm the order of the works board or sustain the objections. The order of the court is conclusive, and all subsequent proceedings concerning the improvement must conform to the order.

(c) A special judge may be appointed if for any reason the regular judge of the court cannot hear the objections within the twenty (20) day time limit established by subsection (a).

As added by P.L.98-1993, SEC.7.

IC 36-9-36-17

Construction or repair of sidewalks and curbs; notice to abutting property owner of order requiring construction or repair

Sec. 17. (a) The works board may require the owners of abutting property to construct or repair the owners' own sidewalks or curbs if the works board:

- (1) desires to improve or repair any sidewalks or curbs in the unit; and
- (2) adopts a final resolution to that effect.

(b) The works board must give notice of the order concerning the construction or repair to the abutting property owners in person or by mail. Mailing of notices to owners as the names of the owners appear on the assessor's books of the county in which the land is located complies with this requirement.

(c) A property owner has thirty (30) days from the date of the notice to construct the sidewalks or curbs or make the repairs as required by the notice.

(d) If a property owner fails to comply with the order, the works board may have the sidewalk or curb constructed or repaired by an independent contractor.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-18

Contracting by works board for construction or repair of sidewalk or curb

Sec. 18. (a) The works board may let a general contract for the making or repairing of all sidewalks or curbs of a specified material within the unit. The contract shall include an agreed price per square yard for the sidewalk construction.

(b) If the contract is for work in a municipality, the contract may also specify the following:

- (1) The price per cubic yard for excavation and filling.
- (2) The price per lineal foot for curb.

(c) The letting of a contract under this section is governed by the statutes regulating contractual authority of the unit.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-19

Levy and collection of assessments for construction or repair of

sidewalk or curb

Sec. 19. (a) Assessments for the construction or repair of sidewalks or curbs shall be levied and collected according to this chapter.

(b) The entire cost of the sidewalk or curb improvements or repairs that the board undertakes by one (1) resolution shall be assessed and apportioned against each lot or parcel of property abutting on the improvement in the proportion the improved lineal front footage of each lot or parcel of property bears to the entire length of the improvement.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-20**Improvements on streets occupied by railroad tracks; procedure**

Sec. 20. (a) This section does not apply to a county.

(b) If the track of a railroad, an interurban, or an interurban street railroad occupies part of a street that is ordered improved under this chapter, the works board may, on petition of the railroad, provide in the plans and specifications for the improvement for a different material and plan of construction for the part of the street occupied by the railroad.

(c) If the railroad is bound by contract to improve or pay the cost of improving the part of the street occupied by the railroad, the railroad is entitled to construct all of that part of the improvement if the railroad does the following:

(1) Elects to do so by written notice filed as follows:

(A) With the works board or other department of the unit having power to order the improvement.

(B) At any time before the adoption of the final resolution or ordinance providing for the improvement.

(2) On request of the works board or other department of the unit, files with the board or other department a bond in the amount and with the surety required by the works board or other department. The bond must be conditioned on the railroad's improvement of that part of the street:

(A) according to the plans and specifications;

(B) within the required time; and

(C) to the satisfaction of the engineer of the unit in charge of the work.

(d) The works board may issue a written improvement order requiring a railroad, an interurban, or an interurban street railroad to comply with IC 8-6-12.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-21**Roadway grading; assessment**

Sec. 21. (a) This section does not apply to a county.

(b) The works board may grade the roadway of a street and assess the cost of the grading against the property specially benefited.

(c) The works board may let the contract under the statutes

regulating contractual authority of units. The unit shall levy and collect the assessments for the grading according to this chapter.
As added by P.L.98-1993, SEC.7.

IC 36-9-36-22

Advertisement for bids; opening and consideration of bids

Sec. 22. (a) If the works board finally orders an improvement, the works board shall advertise for bids for the work as required by IC 36-1-12.

(b) The advertisement must state the following:

(1) That on the date named, the unit will receive bids for the improvement according to the resolution as modified or confirmed.

(2) The part of the cost of the improvement, if any, that will be paid by the unit.

(c) On the date named, all bids shall be publicly opened and considered.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-23

Bid bond or deposit

Sec. 23. (a) If the works board finally orders an improvement and has advertised for bids, the works board shall require each bidder to deposit with the bidder's bid, at the bidder's option, either a bid bond or a certified check to ensure the execution of the contract.

(b) The bid bond or certified check must be equal to the greater of the following:

(1) An amount not less than two and one-half percent (2 1/2%) of the engineer's estimate of the cost of the improvement.

(2) One hundred dollars (\$100).

(c) The following applies if a bidder elects to deposit a bid bond:

(1) The bond must be payable to the works board with sufficient sureties.

(2) The bond must be conditioned upon the bidder's execution of a contract in accordance with the bidder's bid if accepted by the works board.

(3) The bond must provide for forfeiture of the amount of the bond upon the bidder's failure to execute the contract in accordance with the bidder's bid.

(d) The works board shall do the following:

(1) Return all checks and bonds submitted by unsuccessful bidders.

(2) Return a successful bidder's check or bond when the bidder enters into a contract with the works board.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-24

Contracts; scope; actions to enjoin performance

Sec. 24. (a) The contract for an improvement must be for the entire improvement.

(b) After the execution of a contract for an improvement, the validity of the contract may be questioned only in an action to enjoin the performance of the contract. This action must be brought:

(1) before the actual commencement of work under the contract, for an improvement by a county; or

(2) before the later of the following, for an improvement by a municipality:

(A) The actual commencement of work under the contract.

(B) Not later than ten (10) days after the execution of the contract.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-25

Contractor's guarantee

Sec. 25. (a) A contractor for an improvement must guarantee the contractor's workmanship and all materials used in the work.

(b) The guarantee required under subsection (a) must be in the following form:

"The contractor warrants the contractor's workmanship and all materials used in the work and agrees that during the guarantee period specified the contractor will at the contractor's own expense make all repairs that may become necessary by reason of improper workmanship or defective materials. The maintenance obligation, however, does not include repair of any damage resulting from any force or circumstance beyond the control of the contractor, nor is the contractor a guarantor of the plans and specifications furnished by the (county, city, or town)."

As added by P.L.98-1993, SEC.7.

IC 36-9-36-26

Repairs by contractor

Sec. 26. (a) If repairs become necessary, the unit must give written notice to the contractor to make the repairs. If the contractor fails to begin the repairs not later than thirty (30) days after the notice is received, the unit may do the following:

(1) Make the repairs using the unit's own employees or an independent contractor.

(2) Recover from the contractor and the contractor's sureties the reasonable cost of the repairs and the cost of the supervision and inspection of the repairs.

(b) At the expiration of the guarantee period, the unit has sixty (60) days in which to notify the contractor of any necessary repairs.

(c) This subsection does not apply to a county. If the repairs necessary to be made at the expiration of the guarantee period amount to more than one-half (1/2) the surface of one (1) block, the entire pavement of the block shall be taken up and relaid in accordance with the original specifications.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-27**Monthly payments to contractor**

Sec. 27. (a) A contractor for an improvement is entitled to monthly estimates of the work done during each month. The estimates shall be made by the engineer of the unit and approved by the works board.

(b) The works board shall issue to the contractor certificates for eighty-five percent (85%) of the amount due the contractor by the estimates. The contractor is entitled to receive the amounts named in the certificates in cash or improvement bonds to be collected or issued by the unit. The certificates are negotiable instruments.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-28**Completed improvements; acceptance; cost estimates**

Sec. 28. (a) An improvement that is completed according to contract must be accepted by the works board.

(b) Upon the completion of an improvement according to contract, the cost of the improvement shall be estimated according to the entire length of the improvement.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-29**Assessments; abutting lands or lots; street and alley intersections**

Sec. 29. (a) The total cost of an improvement as determined under section 28(b) of this chapter, except for one-half (1/2) of the cost of street and alley intersections, shall be assessed on the abutting land or lots in the manner prescribed by this chapter.

(b) The remaining one-half (1/2) of the cost of street and alley intersections shall be assessed on the land or lots abutting on the streets or alleys that intersect the improved street or alley.

(c) Land and lots may be assessed for the following distances:

(1) One (1) block in either direction along the intersecting street or alley if the intersecting street or alley crosses the improved street or alley.

(2) One (1) block along the intersecting street or alley if the intersecting street or alley enters but does not cross the improved street or alley.

(d) For purposes of this section, the distance from the intersection of:

(1) a street or an alley improved under this chapter; and

(2) another street or alley;

along the other street or alley to the street line of the next intersecting street or alley is considered one (1) block.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-30**Assessments; basis; back lots; platted subdivisions**

Sec. 30. (a) Lots, parcels, and tracts of land bordering on an improvement shall be assessed on the basis set forth in this chapter, without regard to the depth of the lots, parcels, or tracts back from the

front line of the improvement.

(b) After the final hearing before the works board concerning the actual benefits to abutting and adjacent property, the works board may assess other property behind the first lot if the following conditions are met:

(1) The back lot is within one hundred fifty (150) feet of the line of the improvement.

(2) The works board finds at the hearing that properties behind the abutting lot and within one hundred fifty (150) feet of the improvement are specially benefited by the improvement.

(c) Land and lots assessed under subsection (b) shall be assessed only in the amount the lands or lots are specially benefited by the improvement.

(d) Lots or land adjacent to the improvement are liable for the payment of the assessment as set forth on the final assessment roll.

(e) This subsection applies only to counties. If an improvement is constructed within a platted subdivision, the works board may assess all or part of the lots in that subdivision or any other platted subdivision connected to that platted subdivision by the improvement.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-31

Preparation of assessment roll

Sec. 31. (a) As soon as a contract for an improvement has been completed, the works board shall have an assessment roll prepared for the property abutting on and adjacent to the improvement. The property abutting on and adjacent to the improvement is liable to assessment under this chapter.

(b) The assessment roll must include the following:

(1) The name of the owner of each parcel of property.

(2) A description of each parcel of property.

(3) The total assessment, if any, against each parcel of property.

The total assessment must be listed opposite each name and description.

(c) A mistake in the name of the owner or the description of property does not void the assessment or lien against the property.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-32

Presumptive finality of assessments; publication of notice

Sec. 32. (a) The following apply to the assessment indicated against each lot, tract, or parcel of land on the assessment roll:

(1) The assessment is presumed to be the special benefit to the lot, parcel, or tract of land.

(2) The assessment is the final and conclusive assessment unless the assessment is changed under section 33 of this chapter.

(b) Immediately after the assessment roll is completed and filed, the works board shall publish a notice according to IC 5-3-1. The notice must do the following:

- (1) Describe the general character of the improvement.
- (2) State that the assessment roll, with the names of owners and descriptions of property subject to assessment and the amounts of any presumptive assessments, is on file and may be inspected at the works board's office.
- (3) Name a time and date after the date of the last publication on which the works board will do the following at the works board's office:
 - (A) Receive and hear remonstrances against the amounts assessed on the roll.
 - (B) Determine whether the lots or tracts of land have been or will be benefited by the improvement in the following amounts:
 - (i) The amounts listed on the assessment roll.
 - (ii) Amounts greater or lesser than the amounts listed on the assessment roll.
 - (iii) Any amount at all.

(c) This subsection applies only to counties. The notice must also describe the platted subdivision or the parts of the subdivision on which there is property that is benefited and liable for assessment.

(d) This subsection applies only to municipalities. The notice must also describe the following:

- (1) The public way or public place on which the improvement has been made.
- (2) The terminals of the improvement.
- (3) The public ways:
 - (A) that:
 - (i) intersect the improvement; or
 - (ii) are parallel to the improvement and within one hundred fifty (150) feet of the improvement; and
 - (B) on which there is property that is benefited and liable for assessment.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-33

Remonstrance hearings; final determination of assessments

Sec. 33. (a) On the date fixed under section 32 of this chapter, the works board shall receive and hear all remonstrances from the owners of property described in the notice or the representatives of the owners.

(b) After the hearing, the works board shall sustain or modify the presumptive assessment as indicated on the assessment roll by confirming, increasing, or reducing the presumptive assessment against all or part of the property described in the roll. The works board's decision must be based on the works board's findings concerning the special benefits that the property has received or will receive on account of the improvement.

(c) If any property liable for assessment is initially omitted from the assessment roll or a presumptive assessment has not been made against the property, the works board may place on the assessment

roll any special benefit that the omitted property has sustained or will sustain by the improvement.

(d) The aggregate amount of assessments approved by the works board under this section may not exceed the cost of the improvement and must be equal to the aggregate amount of special benefits determined by the board under section 10 of this chapter.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-34

Completion and delivery of assessment roll; appeals

Sec. 34. (a) The works board shall complete the assessment roll and render the works board's decision by modifying or confirming the roll. The assessment roll shall show the total amount of special benefits opposite each name and a description of the property on the roll. When completed, the assessment roll shall be delivered to the following:

- (1) The county assessor, for an improvement by a county.
- (2) The municipal fiscal officer, for an improvement by a municipality.

(b) The decision of the works board as to all benefits is final and conclusive on all parties. However, an owner of an assessed lot or parcel of land who has filed a written remonstrance with the board may appeal to the circuit or superior court for the county.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-35

Delivery of primary assessment roll; payment of assessments to disbursing officer

Sec. 35. (a) The works board shall deliver a certified copy of the assessment roll completed under section 34 of this chapter to the disbursing officer of the unit after the works board:

- (1) approves and accepts the entire work under any contract; and
- (2) allows a final estimate.

(b) The duplicate assessment roll, to be known as the primary assessment roll, must show the following:

- (1) The amount due on each piece of property if paid in cash within the time limit.
- (2) The amount of waivers filed.

(c) The primary assessment roll must also have an appropriate column in which payments may be properly credited by the disbursing officer.

(d) This subsection does not apply to a county. All assessments, regardless of whether the assessments are payable in installments, are payable to the disbursing officer. The disbursing officer shall receive the payments, give proper receipts, and enter the proper credit.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-36

Assessment installments; notice when due

Sec. 36. (a) Upon receipt of the primary assessment roll, the

disbursing officer shall by mail notify each affected person of the amount of the assessment against the person's property.

(b) The notice must state when the assessment is due, or when the assessment installments are due.

As added by P.L.98-1993, SEC.7. Amended by P.L.62-2001, SEC.2.

IC 36-9-36-37

Cash payment of assessments; interest on delinquencies

Sec. 37. (a) Except as provided in section 38 of this chapter, the entire assessment is payable in cash without interest not later than thirty (30) days after the approval of the assessment roll by the works board if an agreement has not been signed and filed under section 36 of this chapter.

(b) If the assessment is not paid when due, the total assessment becomes delinquent and bears interest at the rate prescribed by IC 6-1.1-37-9(b) per year from the date of the final acceptance of the completed improvement by the works board.

As added by P.L.98-1993, SEC.7. Amended by P.L.172-1994, SEC.1; P.L.67-2006, SEC.14; P.L.113-2010, SEC.154.

IC 36-9-36-38

Appeal of assessment; payment by property owner following court certification

Sec. 38. (a) If a property owner appeals the assessment made against the owner's property to the circuit court or superior court, the clerk of the court shall certify the judgment of the court to the unit's disbursing officer. The disbursing officer shall immediately notify the property owner of the amount of the assessment fixed by the court.

(b) The property owner has thirty (30) days from the date the notice is sent to:

- (1) pay the assessment in cash; or
- (2) elect to pay the assessment in installments by entering into an agreement under section 36 of this chapter.

(c) The unit shall then issue bonds in the amount of the assessment fixed by the court. The bonds must bear the date of the final acceptance of the work.

(d) The assessment bears interest as follows:

- (1) From the date of the final acceptance of the work.
- (2) At a specified rate per year that is not less than the interest rate specified for installments under section 36 of this chapter.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-39

Appeal of assessment; payment of part ordered to be assessed against unit

Sec. 39. The following applies to any part of the assessment that the court orders to be assessed against the unit:

- (1) The assessment bears interest:
 - (A) from the date of the final acceptance of the work; and
 - (B) at a specified rate per year that is not less than the

interest rate specified for installments under section 36 of this chapter.

(2) The assessment may be paid by the unit in any manner provided by law for paying other assessments against the unit for similar work.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-40

Assessment liens

Sec. 40. (a) The unit has a lien against each parcel of real property that is assessed for:

- (1) the construction, maintenance, or repair of an improvement; or
- (2) the taking of lands for any purpose of the unit.

(b) The lien is established when the assessments are certified to the disbursing officer for collection. The unit may bring a foreclosure action to enforce the lien against a person who defaults in payment of the assessment.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-41

Installment payment procedure; proceeds constituting special fund for payment of improvement; diversion prohibited

Sec. 41. (a) The disbursing officer of the unit shall do the following:

- (1) Receive the payment of assessment installments.
- (2) Keep all accounts and give proper vouchers for the payment of assessment installments.

(b) Proceeds arising from assessments for the payment of a particular improvement may not be diverted to the payment of any other improvement.

(c) The proceeds from assessments for the payment of a particular improvement constitute a separate special fund for the following:

- (1) The payment of contractors for the particular work, upon the allowance of estimates by the works board.
- (2) The security and payment of any bonds issued in anticipation of the collection of the assessments for the improvement, including debt service reserves to secure the payment of the bonds.
- (3) The payment of expenses incurred by the unit in performing the unit's duties under this chapter, IC 36-9-37, IC 36-9-38, and IC 36-9-39 (or under IC 36-9-18 through IC 36-9-21, before the repeal of those provisions in 1993), including expenses, duties, and costs associated with the issuance, sale, or payment of the bonds.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-42

Notice; payments to bond owner; process collectable by fiscal officer

Sec. 42. If a bond owner receives a payment of interest or principal, or both, that was to have been collected under this chapter (or under IC 36-9-18 before its repeal in 1993) by the fiscal officer of a unit, the bond owner shall notify the fiscal officer of the payment.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-43

Delinquent installments; acceleration; foreclosure of lien; notice of delinquency

Sec. 43. (a) Failure to pay an installment of principal or interest when the installment is due makes all installments of principal yet unpaid due and payable immediately, unless the unpaid installment of principal or interest is paid within the grace period provided.

(b) If the unit fails to collect an unpaid assessment or installment when due, liability does not accrue against the unit. However, the owner of the bonds or the person to whom the amount of the unpaid assessment for the performance of the work is due and owing is entitled to proceed in court to do the following:

- (1) Enforce the lien or the unpaid assessment.
- (2) Recover interest, costs, and reasonable attorney's fees.
- (3) Have the proceeds of sale applied to the owner's or person's claim.

(c) If a person defaults in the payment of an installment of principal or interest, the disbursing officer shall mail a notice of the delinquency to the person in accordance with IC 36-9-37 regardless of whether a waiver has been signed. A notice mailed to the person in whose name the lands are assessed, addressed to the person within the unit, is sufficient notice. The person is not liable for attorney's fees unless an action is actually brought on the assessment.

(d) An action to collect an unpaid assessment may not be brought until the notice required by subsection (c) has been given.

(e) An action for foreclosure must be commenced not more than five (5) years after the cause of action accrues.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-44

Bonds in anticipation of assessment proceeds; authorization

Sec. 44. (a) The works board may issue bonds in anticipation of the collection of the assessments for an improvement. Except as provided in subsections (b) and (c), the bonds shall be issued and sold in the manner prescribed for other bonds of the unit. A unit issuing bonds under this section is not required to attach coupons to the bonds.

(b) The works board may provide for the issuance of the bonds directly to the contractor in the works board's preliminary resolution for the improvement. If direct issuance is authorized by the resolution, the disbursing officer shall issue the bonds directly to the contractor.

(c) The works board may by resolution choose to:

- (1) sell the bonds by negotiated private sale to a financial institution; and
- (2) remit the proceeds of the sale to the contractor.
- (d) The following applies after the issuance of bonds:
 - (1) An action to enjoin the collection of an assessment or to challenge the validity of the bonds or the sale of the bonds may not be brought.
 - (2) The validity of the assessment may not be questioned.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-45

Bonds; date; tax exemption

Sec. 45. (a) This section applies only to municipalities.

(b) Bonds issued in anticipation of the collection of assessments for an improvement must bear the date of the completion of the improvement under the contract and the acceptance of the improvement by the works board. The bonds draw interest from that date.

(c) The bonds are exempt from taxation for all purposes.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-46

Bonds; maturation; interest rate

Sec. 46. (a) The works board may provide in the preliminary resolution that the bonds issued in anticipation of the collection of the assessments shall be issued so as to mature not less than ten (10) years and not more than thirty (30) years from the date of issuance.

(b) The interest on the bonds shall be payable semiannually from the date of issue. The works board shall fix the rate of interest on the bonds issued.

(c) Bonds issued in the manner described in subsection (a) shall mature serially, so that some bonds mature each year until the final maturity date of the issue is reached. The terms of the bonds may allow early redemption of the bonds in the event of and to the extent of prepayment of the assessments in anticipation of which the bonds were issued.

(d) The works board must issue the bonds to mature as provided under subsection (c) if a petition requesting the bonds to mature in that manner is filed by a majority of the resident property owners affected by the improvement not later than sixteen (16) days after the resolution is first published.

As added by P.L.98-1993, SEC.7. Amended by P.L.62-2001, SEC.3.

IC 36-9-36-47

Transfer of assessment liens to bond owners

Sec. 47. (a) Bonds issued in anticipation of the collection of assessments convey and transfer to the owner of the bonds all interests in the assessments and liens upon the respective lots or parcels of land.

(b) The liens stand as security for the bonds and interest until the

bonds and interest are paid. A bond owner has full power to enforce the lien by foreclosure in court as provided in this chapter if the bond or interest is not paid when presented to the disbursing officer.
As added by P.L.98-1993, SEC.7.

IC 36-9-36-48

Bond owners; foreclosure actions; procedure

Sec. 48. (a) Except as provided in subsection (b), sales to satisfy the bonds and interest shall be made as provided in this chapter for sales upon judgments or decrees foreclosing liens for assessments levied for improvements.

(b) The first bondholder who brings a foreclosure action against the property or any part of the property is entitled to have the proceeds of the action applied pro rata to the payment of that bondholder's own bonds and of bonds held by others.

(c) Only one (1) foreclosure action may be brought against one (1) lot or parcel of land. However, all lots or parcels of land against which the assessments are in default may be joined in one (1) proceeding.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-49

Sale of property following foreclosure action; amount

Sec. 49. (a) The property upon which the assessment is placed may not be sold for less than the amount of the assessment, attorney's fees, and costs. The proceeds of the sale shall be distributed as provided in this chapter.

(b) If the property sells for an amount greater than the amount necessary to pay the principal, interest, attorney's fees, and costs, the excess amount shall be paid to the property owner or party lawfully entitled to that excess amount.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-50

Negotiability of bonds

Sec. 50. (a) The bonds issued in anticipation of the collection of assessments are negotiable instruments and are free from all defenses by property owners.

(b) It is not necessary that the bonds include language describing the actions taken in ordering the improvement or directing the assessment. The bonds may instead include a general reference to this chapter.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-51

Foreclosure actions by contractors

Sec. 51. (a) This section applies to a contractor that is entitled to enforce liens or assessments.

(b) The contractor or the contractor's assignee may bring an action against a person who has defaulted in payment of an assessment to

foreclose the lien established by the assessment.
As added by P.L.98-1993, SEC.7.

IC 36-9-36-52

Foreclosure actions; complaint; proof

Sec. 52. (a) The complaint for a foreclosure action under this chapter need not set forth the specific proceedings leading to the final assessment. However, the complaint must include the following information:

- (1) The date on which the contract for the improvement was finally let.
- (2) The name of the improvement.
- (3) The amount and date of the assessment.
- (4) A statement that the assessment is unpaid.
- (5) A description of the property on which the assessment was levied.

(b) At the trial of a foreclosure action, the plaintiff is not required to introduce proof of the proceedings before the works board leading to the final assessment. However, the plaintiff must introduce the final assessment roll or a copy of the final assessment roll. The final assessment roll or the copy of the final assessment roll must be properly certified.

(c) The final assessment roll or the copy is presumptive evidence that the works board took all actions required to be taken in making the final assessment.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-53

Foreclosure actions; defenses

Sec. 53. (a) A defense to a foreclosure action may not be based on any of the following:

- (1) Any irregularity in the proceedings making, ordering, or directing the assessment.
- (2) The propriety or expediency of any improvement.

(b) A property owner may not raise any defense to a foreclosure action if the owner has done the following:

- (1) Exercised the option to pay the owner's assessment in installments.
- (2) Signed a waiver.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-54

Foreclosure actions; amount of recovery; sale procedure

Sec. 54. (a) In a foreclosure action brought under this chapter, the plaintiff is entitled to recover the amount of the assessment, principal and interest, and reasonable attorney's fees. The court shall order the sale to be made without relief from valuation or appraisal law.

(b) The county sheriff shall sell the property in the same way that lands are sold on execution. The sheriff shall, not later than five (5) days after the sale, execute a certificate of sale to the purchaser. The

certificate of sale vests title in the purchaser when the certificate of sale is delivered. Title vested by a certificate of sale is subject only to the right to redeem under section 55 of this chapter.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-55

Foreclosure sales; irregularities; redemption

Sec. 55. (a) An irregularity or error in making a foreclosure sale under this chapter does not make the sale ineffective, unless the irregularity or error substantially prejudiced the property owner.

(b) A property owner has two (2) years from the date of sale in which to redeem the owner's property. The property owner may redeem the owner's property by paying the principal, interest, and costs of the judgment, plus interest on the principal, interest, and costs at the rate prescribed by IC 6-1.1-37-9(b).

(c) If the property is not redeemed, the sheriff shall execute a deed to the purchaser. The deed relates back to the final letting of the contract for the improvement and is superior to all liens, claims, and interests, except liens for taxes.

As added by P.L.98-1993, SEC.7. Amended by P.L.67-2006, SEC.15; P.L.113-2010, SEC.155.

IC 36-9-36-56

Foreclosure actions; parties; appearances; disposition of proceeds

Sec. 56. (a) In a foreclosure action under this chapter, other than a foreclosure action in which the unit is the plaintiff, the plaintiff must do the following:

(1) Name the officer who has custody of the improvement funds of the unit as a party defendant.

(2) Name that officer as custodian of the improvement assessment fund of the unit.

(b) The officer described in subsection (a) shall then notify the attorney of the unit to appear in the action.

(c) The fiscal officer of the unit shall do the following:

(1) Trace the proceeds of the foreclosure so that proceeds arising from assessments for the improvement of a particular project are not diverted to the payment of any other improvement.

(2) Ensure that in each case the judgment proceeds constitute a special fund for the payment of contractors or bondholders for the particular work.

(d) The judgment proceeds shall be allocated to the proper public improvement fund for pro rata distribution to the bondholders or contractors who are entitled to those proceeds.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-57

Foreclosure actions; payment of judgment; costs and attorney's fees; decree

Sec. 57. (a) The court costs and the attorney's fees allowed in

foreclosure actions shall be paid directly to the clerk of the court to satisfy that part of a judgment. The remainder of the judgment shall be paid directly to the disbursing officer for the benefit of the special improvement fund of the department that is entitled to the foreclosure proceeds.

(b) The disbursing officer shall do the following:

- (1) Enter the payment under subsection (a) on the records and duplicates.
- (2) Satisfy the judgment docket as to the payment of the judgment.

(c) The court decree of foreclosure must assign the duties described in subsection (b) to the disbursing officer.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-58

Foreclosure actions; copy of complaint forwarded to disbursing officer; certification to disbursing officer of dismissals and sheriff's sales

Sec. 58. (a) In every foreclosure action under this chapter, other than a foreclosure action in which the unit is the plaintiff, the plaintiff must forward to the disbursing officer a copy of the complaint that sets out, among other allegations, the following:

- (1) The name of the owner or owners being sued.
- (2) The description of the property.
- (3) The name of the improvement.
- (4) The number of the assessment roll.

(b) The disbursing officer shall enter the facts upon the duplicate involving the litigated assessment while the action is pending.

(c) All dismissals of foreclosure litigation and all proceedings of sheriff's sales in foreclosures of assessment liens shall be certified to the disbursing officer.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-59

Foreclosure actions; suspension of collection of assessments

Sec. 59. The following apply while a foreclosure action is pending:

- (1) The assessment may not be certified for collection.
- (2) Bills or statements for payments may not be given to anyone except the plaintiff or the plaintiff's attorney of record.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-60

Reduction of installments

Sec. 60. (a) A statement showing the amount of the reduction of the installments shall be certified to the disbursing officer if:

- (1) the property is sold by the sheriff under this chapter and the money collected is insufficient to pay the principal and interest in full; or
- (2) a court orders a reduction of principal and interest as

assessed.

(b) Upon the receipt of the statement, the disbursing officer shall do the following:

- (1) Calculate the reduction that applies to each installment.
- (2) Enter on the bonds the amount of the reduction when the bonds are presented for payment.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-61

Disposition of foreclosure proceeds contrary to chapter

Sec. 61. (a) A person who disposes of the proceeds of foreclosure litigation in a way other than as provided by this chapter is considered to be a receiver for those entitled to the proceeds.

(b) In such instances the statute of limitations does not apply.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-62

Improvement costs to be paid by unit; bonds and certificates of indebtedness

Sec. 62. (a) A difference between the total assessments for an improvement and the contract price of the improvement shall be paid by the unit.

(b) The unit's part of the cost of an improvement shall, if possible, be paid from the general fund of the unit. If payment from the unit's general fund is not possible, the unit may issue bonds or certificates of indebtedness to the contractor for the amount of the unit's part of the cost. The unit's fiscal officer shall issue the bonds or certificates and shall fix the denominations of the bonds or certificates at the time of the approval of the final assessment roll and at the time of a subsequent reduction of assessments on appeal.

(c) The certificates of indebtedness issued under this section (or under IC 36-9-18 before its repeal in 1993) entitle the contractor to the amounts the certificates specify when a fund for redemption of the certificates has been provided.

(d) The certificates of indebtedness are negotiable instruments and bear interest from the date of the final acceptance of the work.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-63

Certificates of indebtedness issued under IC 36-9-36-62; authorization; interest; payment; maturity date

Sec. 63. (a) The certificates of indebtedness issued under section 62 of this chapter must be authorized by a resolution adopted by the works board and shall be signed by the following:

- (1) The county auditor, for an improvement by a county.
- (2) The municipal executive and fiscal officer, for an improvement by a municipality.

(b) The rate of interest on the certificates of indebtedness shall be fixed in the resolution of the works board. The rate may not be less than the current rate being paid on bonds then being issued in

anticipation of the collection of special assessments.

(c) The certificates of indebtedness are payable out of the proceeds of the special tax levy or sale of bonds under section 64 of this chapter (or under IC 36-9-18 before its repeal in 1993). This fact must be recited on the face of the certificates.

(d) All of the certificates mature on December 31 of the year in which the special levy to pay the certificates is collected unless the resolution authorizing the issuance of the certificates of indebtedness provides the following:

- (1) That not more than one-half (1/2) of the certificates are payable on June 30 of the year in which the special levy to pay the certificates is collected if a levy has been made in place of the sale of bonds.
- (2) That the balance is payable on December 31 of the same year.

(e) The certificates of indebtedness do not draw interest after the maturity date named in the certificates unless the certificates are presented for payment on that date and stamped "not paid for want of funds". If not paid for want of funds, the certificates may be presented for payment again at six (6) month intervals after the maturity date, until the certificates are paid.

(f) If a sufficient levy or sale of bonds is not made in any year for the payment of the certificates of indebtedness, the certificates shall be paid when money becomes available for that purpose out of taxes collected from any subsequent levy of the special tax or sale of bonds.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-64

Funding for payment of certificates of indebtedness; special tax levy

Sec. 64. (a) For the purpose of raising money for the payment of certificates of indebtedness issued under section 62 of this chapter (or under IC 36-9-18 before its repeal in 1993) the fiscal body of the unit may do any of the following:

- (1) Levy a special tax on all property in the unit each year.
- (2) Issue and sell the bonds of the unit.
- (3) Appropriate money from the general fund of the unit or from any other source.

(b) A special tax levied under this section shall be fixed at a rate on each one hundred dollars (\$100) of assessed valuation of taxable property in the unit sufficient for the payment of the certificates, together with interest, that were or will be issued between July 1 of the preceding year and July 1 of the year in which the levy of taxes is made.

(c) A special tax levied under this section shall be:

- (1) levied, certified to the county auditor, and collected in the same manner as other taxes are levied, certified, and collected; and
- (2) deposited in a separate fund known as the county (or

municipal) improvement certificate fund for application to the payment of the certificates.

(d) The balance of the improvement certificate fund does not revert to the unit's general fund at the end of the unit's fiscal year, but remains in the fund for the next fiscal year.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-65

Special assessments to pay improvement costs; issuance of anticipatory certificates

Sec. 65. (a) This section applies only to municipalities.

(b) In addition to issuing bonds and certificates of indebtedness under section 62 of this chapter, a unit may pay the unit's part of the cost of an improvement from a fund raised by special assessments against all of the lands and lots in the unit. The unit comprises a special assessment district for that purpose.

(c) The following apply to special assessments under this section:

(1) The special assessments shall be levied in proportion to the value of the land or lots, excluding the value of improvements on the land or lots, as the land or lots are assessed for general taxation.

(2) The special assessments shall be levied annually at the time of the levy of general taxes. The levy must be for the amount necessary to pay the cost, with interest, of all work done during the year for which the special assessments are levied.

(3) The special assessments are payable at the time of payment of general taxes.

(d) The fund raised under this section is a specific fund to be held and used only for the purpose prescribed by this section.

(e) In anticipation of the collection of the special assessments, certificates in denominations not exceeding five hundred dollars (\$500) shall be issued under a resolution adopted by the works board in the name of the unit. The fiscal officer shall sell the certificates or deliver the certificates to the contractor, as directed by the works board.

(f) The certificates entitle the holder to the amounts named in the certificates when a fund for redemption of the certificates has been collected. The certificates are negotiable instruments. One-half (1/2) of the certificates are payable on June 30 of the year after the special assessments for payment of the certificates have been made, and the remaining one-half (1/2) are payable on December 31 of that year. The certificates must be dated as of the date of the final acceptance of the improvement and may bear interest at any rate.

As added by P.L.98-1993, SEC.7.

IC 36-9-36-66

Correction of defects and irregularities

Sec. 66. If a defect or an irregularity results in the invalidity of a contract, an assessment, or a lien under this chapter, the defect or irregularity shall be corrected by supplementary proceedings that

substantially comply with this chapter.
As added by P.L.98-1993, SEC.7.

IC 36-9-36-67

Surface improvements on public ways; performance by municipality; procedure

Sec. 67. (a) This section applies only to municipalities.

(b) As an additional method of making surface improvements on public ways, the works board may do the following:

(1) Make the improvements with the municipality's materials and employees.

(2) Assess the cost of the improvements against the abutting property owners.

(c) An improvement under this section must be at least one (1) city block long.

(d) A works board acting under this section shall determine a feasible cost for labor and materials per square yard for nonpermanent and permanent types of street surfaces. The works board shall, on the works board's own motion or on the petition of an owner of property abutting on any residential street, then do the following:

(1) Name certain public ways, including those petitioned for, for which an improvement is proposed.

(2) Give notice of the proposed improvement, in person or by mail, to the owners of property abutting on and affected by the proposed improvement.

(3) Hold a public hearing at the time and place set out in the notice.

(e) Notice of the hearing shall be given by publication in accordance with IC 5-3-1. At the hearing, the works board shall do the following:

(1) Inform the abutting owners of each owner's individual cost for each type of surface improvement.

(2) Inform the owners that the board shall order the improvement if, within the time fixed at the hearing, the owners do the following:

(A) Determine by a majority vote the type of improvement the owners want.

(B) Tender the cost of the improvement to the municipality.

(f) After the hearing, the works board shall order the improvement unless:

(1) the works board finds that the improvements should not be made; or

(2) the abutting owners do not comply with the conditions listed in subsection (e)(2).

(g) A municipality acting under this chapter may establish a revolving fund and may appropriate an amount of not more than ten thousand dollars (\$10,000) for the fund. Payments made by property owners under this section shall be paid into the fund, and the cost of material and labor for the improvements shall be paid out of the fund.

The fund, which may be used only for the purposes of this section, does not revert to the municipality's general fund until the municipality ceases to act under this section.

As added by P.L.98-1993, SEC.7.

IC 36-9-37

Chapter 37. Barrett Law Funding for Municipalities

IC 36-9-37-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-2

Repealed

(Repealed by P.L.97-2004, SEC.133.)

IC 36-9-37-3

Municipalities owning and operating water utilities; water main extensions

Sec. 3. For municipalities that own and operate a water utility, water main extensions from the water utility may be made under this chapter only within the corporate boundaries of the municipality.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-4

Prerequisites for enforcement and collection of special assessments

Sec. 4. If a municipality levies special assessments against specific parcels of property under the Barrett Law, the municipal fiscal officer shall collect and enforce the special assessments and pay the bonds issued in anticipation of the collections of the special assessments if the following conditions are met:

- (1) The municipal legislative body has by ordinance declared that the proposed improvement will be:
 - (A) a general benefit to the municipality and the citizens of the municipality; and
 - (B) a special benefit to the property owners in the area where the improvement is to be located.
- (2) The ordinance has established the following:
 - (A) The general and special benefits described in subdivision (1).
 - (B) The proportions of the general and special benefits described in subdivision (1).
- (3) The provisions of the Barrett Law have been followed.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-5

Assumption by municipality of responsibility for payment of bonds

Sec. 5. (a) A municipality may assume primary responsibility for the full payment of principal and interest of all bonds issued under this chapter (or under IC 36-9-19 before its repeal in 1993) for the improvement.

(b) The following apply if the municipality assumes the responsibility under subsection (a) for the full payment of principal and interest:

(1) All payments of principal and interest shall be made by the municipal fiscal officer out of appropriations for the project.

(2) The municipality shall be reimbursed by the collection of special assessments under the Barrett Law.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-6

Responsibility for payment of bonds; election to pay assessment in installments; collection

Sec. 6. If a property owner elects to pay the property owner's assessments in installments, the assessment shall be entered for collection on the improvement duplicate and shall be collected in the same manner as other taxes.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-7

Municipal fiscal officers; surety bonds; personal liability

Sec. 7. (a) A municipal fiscal officer acting under this chapter shall, in the manner prescribed by IC 5-4-1, obtain, execute, and file a bond conditioned upon the following:

(1) The faithful compliance of the municipal fiscal officer with this chapter.

(2) The faithful accounting for all money coming into the municipal fiscal officer's possession under the Barrett Law.

(b) A municipal fiscal officer who does any of the following is personally liable to a person suffering loss due to that action and may be removed from office by proper action filed under IC 5-8-1-35:

(1) Fails to collect the interest or penalties provided for by this chapter on delinquent assessments and installments of assessments.

(2) Fails to enforce the collection of the assessments by the sale of the property. However, this subdivision does not apply to a municipal fiscal officer of a municipality that has adopted an ordinance under section 24(a) of this chapter.

(3) Otherwise fails to comply with this chapter.

(c) The surety on the municipal fiscal officer's bond is also liable to the extent of the bond.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-8

Payment of expenses

Sec. 8. (a) Each year the municipal legislative body shall include in the municipal legislative body's annual budget and tax levy the necessary expense of any of the following that will enable the municipal fiscal officer to perform the duties prescribed by this chapter:

(1) Employing additional clerks.

(2) Furnishing suitable quarters.

(3) Obtaining necessary records, books, forms, and other supplies.

(b) If money for the purposes described in subsection (a) is needed before the collection of the tax levy, the money shall be:

- (1) supplied by appropriation from the general fund of the municipality; or
- (2) obtained from temporary loans in anticipation of the taxes levied.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-8.5

Assessments; installment payments

Sec. 8.5. (a) With respect to assessments imposed after June 30, 2001, the municipal works board shall establish a procedure to permit owners of real property in the unit to elect whether to pay assessments in:

- (1) ten (10), twenty (20), or thirty (30) annual installments; or
- (2) a number of monthly installments that corresponds to ten (10), twenty (20), or thirty (30) annual installments.

(b) The municipal works board shall establish the timing of the election under subsection (a) to permit the municipal works board to structure the maturities of the principal of the bonds in a number of annual series that is consistent with the installment periods elected by owners of real property under subsection (a).

(c) A person who elects to pay the person's assessment in installments under this section must, when directed by the municipal works board, enter into a written agreement stating that in consideration of that privilege the person:

- (1) will not make an objection to an illegality or irregularity regarding the assessment against the person's property; and
- (2) will pay the assessment as required by law with specified interest.

(d) The agreement under subsection (c) shall be filed in the office of the disbursing officer.

(e) The interest rate specified for the installments of the assessment may be equal to or greater than the interest rate on bonds issued under section 28 of this chapter.

(f) An assessment of less than one hundred dollars (\$100) may not be paid in installments.

(g) If the property owner is not an individual, the election under subsection (a) must be made in the following manner:

- (1) For a partnership, at least one (1) of the partners must sign the waiver and other instruments required for the election.
- (2) For a corporation, the president or vice president must do all of the following:
 - (A) Sign the waiver and other instruments required for the election.
 - (B) File a certified copy of the resolution of the board of directors or trustees authorizing the president or vice president to execute those instruments on behalf of the corporation.
- (3) For a church, a lodge, a charitable institution, or other

organization, the person or persons acting on behalf of the organization must sign the waiver and other instruments required for the election, but only after being instructed to do so by a resolution adopted at a meeting of the organization called for that purpose.

As added by P.L.62-2001, SEC.4.

IC 36-9-37-9

Certification of assessment roll; liens

Sec. 9. (a) When the assessment roll for an improvement ordered by the works board of a municipality is finally approved, the assessment roll shall be certified to the municipal fiscal officer. The fiscal officer shall then collect the special assessments listed on the assessment roll.

(b) Each special assessment constitutes a lien against the property on which the special assessment is levied.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-10

Liability of municipalities for assessments for public improvements

Sec. 10. (a) A political subdivision has the same powers and is subject to the same duties and liability in respect to municipal assessments for the cost of public improvements affecting the political subdivision's real property as private owners of real property.

(b) The real property of a political subdivision is subject to liens for the assessments if the real property would have been subject if owned by a private owner at the time the lien attached. However, a penalty or attorney's fees arising from such an assessment may not be collected from a political subdivision.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-11

Assessment installments; interest

Sec. 11. If a municipal works board orders any of the following improvements and assessments are imposed after June 30, 2001, to pay for the improvements or to repay bonds issued under this chapter after June 30, 2001, each owner of property assessed for that improvement may elect to pay the owner's assessment in installments with interest as described in section 8.5(a) of this chapter:

- (1) Streets.
- (2) Alleys.
- (3) Other paved public places.
- (4) Lighting.
- (5) For municipalities that own and operate a water utility, water main extensions from the water utility.
- (6) Sanitary sewers.
- (7) Emergency warning systems.

As added by P.L.98-1993, SEC.8. Amended by P.L.62-2001, SEC.5; P.L.45-2004, SEC.1; P.L.42-2006, SEC.2.

IC 36-9-37-12

Payment of assessment in deferred installments; time for making payments

Sec. 12. (a) If a property owner has elected to pay the property owner's assessment in installments and the assessment roll for the cost of the improvement was finally approved before July 1 of a year, the first installment of the principal of the assessment, together with accrued interest, is payable on November 10 of that year.

(b) If a property owner has elected to pay the property owner's assessment in installments and the assessment roll for the cost of the improvement was finally approved after June 30 of a year, the first installment of the principal of the assessment, together with accrued interest, is payable on May 10 of the following year.

(c) Subsequent installments of principal and interest are payable at:

- (1) one (1) year intervals after the date of payment of the first installment under subsection (a) or (b) if the property owner elected annual payments; or
- (2) one (1) month intervals after the date of payment of the first installment under subsection (a) or (b) if the property owner elected monthly payments.

(d) This subsection applies if the property owner elected annual installment payments. With the first installment of principal, and interest to the first bond maturity date, an amount sufficient to cover six (6) months interest in advance on the assessment shall also be collected. With each succeeding installment of principal, except the last installment, six (6) months interest shall be collected in advance, so that only one (1) annual payment is made by the property owner on the assessment.

(e) This subsection applies if the property owner elected monthly installment payments. With each of the first six (6) installments of principal, and interest to the first bond maturity date, an amount sufficient to cover one (1) additional month's interest in advance on the assessment shall also be collected. With each succeeding installment of principal, except the last six (6) installments, one (1) month's interest shall be collected in advance.

As added by P.L.98-1993, SEC.8. Amended by P.L.62-2001, SEC.6.

IC 36-9-37-13

Payment of assessment in installments; proceeds; special fund

Sec. 13. Proceeds from assessments for the payment of a particular improvement may not be used for the payment of other improvements. The proceeds from assessments for the payment of a particular improvement constitute a special fund for the following:

- (1) Payment of contractors for the particular improvement if allowance of the estimates has been made by the works board of the municipality.
- (2) Security and payment of bonds issued in anticipation of the collection of the assessments for the improvements, including debt service reserves to secure the payment of the bonds.

(3) Payment of expenses incurred by the municipal fiscal officer in performing the municipality's duties under this chapter, IC 36-9-36, IC 36-9-38, or IC 36-9-39 (or under IC 36-9-18 through IC 36-9-21, before the repeal of those provisions in 1993), including any expenses, duties, and costs associated with the issuance, sale, or payment of the bonds.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-14

Prepayment of assessment installments

Sec. 14. (a) A property owner who has secured the right to pay the property owner's assessments in deferred installments by the filing of a waiver may, at any time after the expiration of the first year after the filing, pay the entire balance of the assessment and be relieved of the lien on the property owner's property. A property owner may not pay the property owner's entire balance under this subsection unless at the same time the property owner pays all interest due at the next interest paying period.

(b) If a person who exercises the right to prepay the person's assessment fully pays the assessment and interest, all interest and liability as to the assessed property ceases.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-15

Prepaid assessments; proceeds; special fund; investment; redemption of outstanding bonds

Sec. 15. (a) Prepaid assessments constitute a special fund to be held in trust by the municipality for the owner or owners of the bonds upon which the prepayments have been made.

(b) The municipal fiscal officer shall promptly invest and reinvest the special fund in securities of the federal government so that the principal will be available to pay the bonds upon which prepayments were collected as the bonds become due. The interest collected on these securities shall be applied to the payment of the interest lost on account of the prepayment of the assessments. The difference between the interest lost on account of the prepayment of assessments and the amount of interest earned by the investment in federal securities shall be paid by the municipal corporation that issued the improvement bonds.

(c) If the terms of the bonds allow early redemption for and to the extent of prepayments of the assessments in anticipation of which the bonds were issued, the municipality may use prepaid assessments to redeem outstanding bonds. However, if the bonds are issued on each parcel of real property covering the assessment against the real property, the municipality shall pay the prepayment to the holder of the bonds and cancel the bonds.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-16

Negligent investment of special fund money; liability of

municipality

Sec. 16. If a municipality negligently fails to invest or reinvest the special fund in the manner prescribed by section 15 of this chapter, the municipality is liable to the special fund for interest on the fund, calculated at the rate of interest of the bonds issued on account of the assessments. A holder of bonds upon which prepayments have been made may compel compliance with section 15 of this chapter by mandamus or other appropriate remedy. However, the failure of a bondholder to compel compliance does not relieve the municipality or any of the municipality's officers from liability under this chapter. *As added by P.L.98-1993, SEC.8.*

IC 36-9-37-17

Special fund created under IC 36-9-37-15; warrants for disbursements

Sec. 17. Warrants for disbursements from the special fund established under section 15 of this chapter shall be drawn and issued in the manner provided by statute for disbursements from municipal funds. The officer having custody of the special fund shall honor and pay those warrants.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-18

Notice; payments to bond owner; proceeds collectable by fiscal officer

Sec. 18. If a bond owner receives a payment of interest or principal, or both, that was to have been collected by the fiscal officer of a municipality under this chapter (or under IC 36-9-19 before its repeal in 1993), the bond owner shall notify the fiscal officer of the payment.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-19

Notice of default on installment payments

Sec. 19. (a) If a person defaults in the payment of a waived installment of principal or interest of an assessment, the municipal fiscal officer shall mail notice of the default to the person. The notice must meet the following conditions:

- (1) Be mailed not more than sixty (60) days after the default.
- (2) Show the amount of the default, plus interest on that amount for the number of months the person is in default at one-half (1/2) the rate prescribed by IC 6-1.1-37-9(b).
- (3) State that the amount of the default, plus interest, is due by the date determined as follows:
 - (A) If the person selected monthly installments under section 8.5(a)(2) of this chapter, within sixty (60) days after the date the notice is mailed.
 - (B) If the person selected annual installments under section 8.5(a)(1) of this chapter, within six (6) months after the date the notice is mailed.

(b) A notice that is mailed to the person in whose name the property is assessed and addressed to the person within the municipality is sufficient notice. However, the fiscal officer shall also attempt to determine the name and address of the current owner of the property and send a similar notice to the current owner.

(c) Failure to send the notice required by this section does not preclude or otherwise affect the following:

(1) The sale of the property for delinquency as prescribed by IC 6-1.1-24.

(2) The foreclosure of the assessment lien by the bondholder.

(3) The preservation of the assessment lien under section 22.5 of this chapter.

As added by P.L.98-1993, SEC.8. Amended by P.L.172-1994, SEC.2; P.L.45-2004, SEC.2; P.L.67-2006, SEC.16; P.L.113-2010, SEC.156.

IC 36-9-37-20

Collection of delinquent assessments; interest penalties

Sec. 20. (a) If any principal and interest, or an installment of principal and interest, is not paid in full when due, the municipal fiscal officer shall enforce payment of the following:

(1) The unpaid amount of principal and interest.

(2) A penalty of interest at the rate prescribed by subsection (b).

(b) If payment is made after a default, the municipal fiscal officer shall also collect a penalty of interest on the delinquent amount at one-half (1/2) the rate prescribed by IC 6-1.1-37-9(b) for each six (6) month period, or fraction of a six (6) month period, from the date when payment should have been made.

As added by P.L.98-1993, SEC.8. Amended by P.L.67-2006, SEC.17; P.L.113-2010, SEC.157.

IC 36-9-37-21

Interest penalty collections; surplus Barrett Law account; use of funds

Sec. 21. (a) Interest penalties collected under section 20(b) of this chapter shall be credited to an account to be known as the surplus Barrett Law account. The amount credited shall be a part of the waived municipal improvement funds. The money in the surplus Barrett Law account may be used as follows:

(1) To pay the interest on improvement assessments that is lost or forgiven due to the prepayment of installments of assessments.

(2) If the amount of money in the account exceeds five (5) times the average annual amount of lost or forgiven interest paid under subdivision (1) during the preceding three (3) years, that excess may be used for any of the following:

(A) The purchase of equipment for or pay expenses incurred by the municipal fiscal officer in performing the municipal fiscal officer's duties under the Barrett Law.

(B) Providing debt service reserves or other security for bonds issued by the municipality under this chapter,

IC 36-9-36, IC 36-9-38, or IC 36-9-39 (or under IC 36-9-18 through IC 36-9-21 before the repeal of those provisions in 1993).

(b) If payments of delinquent principal, delinquent interest, and interest penalties that are collected during any six (6) month period ending on May 10 or November 10 are sufficient to pay one percent (1%) of the face value of the bonds, all payments during that six (6) month period shall be applied to the payment of bonds after the next February 1 or August 1. However, if there are no more delinquent collections to be made, payment of the amounts collected shall be made in full.

(c) The fact that collections during a six (6) month period are insufficient to pay one percent (1%) of the face value of the bonds does not require the bonds to be marked "not paid for want of funds".
As added by P.L.98-1993, SEC.8.

IC 36-9-37-22

Default on single installment

Sec. 22. Except as provided in section 22.5 of this chapter, the following apply if at least one (1) installment of an assessment is in default:

- (1) The total amount of the assessment that remains unpaid is considered to be in default.
- (2) The assessed property is subject to sale under sections 23 through 24 of this chapter to pay that amount.
- (3) The assessment is subject to the:
 - (A) requirements and duties imposed;
 - (B) rights and remedies provided; and
 - (C) procedures available to the county treasurer;for the collection of delinquent property taxes.

As added by P.L.98-1993, SEC.8. Amended by P.L.45-2004, SEC.3.

IC 36-9-37-22.5

Preservation of assessment in default as a lien

Sec. 22.5. (a) The municipal fiscal officer and the municipal works board may jointly establish procedures allowing a municipality to avoid a sale, on property that is not delinquent for property taxes, penalties, and other special assessments, that:

- (1) is required under section 22 of this chapter; and
- (2) would be conducted under IC 6-1.1-24;

by preserving an assessment that is in default as a lien against the property on which the assessment was imposed. A lien created under this section applies to the total assessment principal, interest, and penalties owed by the property owner on the date on which the municipality determines that the assessment is in default.

(b) Except as provided in subsection (c), an assessment preserved as a lien under this section shall be paid by the person liable for the assessment when ownership of the property is transferred.

(c) The following apply to an assessment preserved as a lien under this section:

(1) Additional penalties do not accrue to the lien after the date described in subsection (a).

(2) The procedures established under subsection (a) must specify when additional interest shall accrue to the lien after the date described in subsection (a).

(3) The lien must be recorded.

(4) The amount owed by the property owner must be paid by the person liable for the assessment before the final bond maturity date.

(d) When the person liable pays an assessment preserved as a lien under this section, the proceeds of the collection are subject to the same requirements as the proceeds of a sale conducted under section 24 of this chapter.

As added by P.L.45-2004, SEC.4.

IC 36-9-37-23

Certification of delinquent assessments

Sec. 23. (a) This section does not apply to a municipality if the legislative body of the municipality adopts an ordinance providing that this section does not apply to the municipality.

(b) Except as provided in subsection (d), before June 1 of each year the municipal fiscal officer shall certify to the county auditor a list of all delinquent waived and nonwaived assessments. The list must include the following:

(1) The name or names of the owner or owners of each piece of real property on which the assessments for principal and interest are in default.

(2) The description of each of those pieces of property as shown by the records of the county auditor.

(3) The total amount of principal, interest, and penalty due on each of those pieces of property.

(c) The county auditor shall immediately enter the list in a special duplicate and transmit the list to the county treasurer for collection.

(d) After the county treasurer receives the list, payments on the delinquent assessments shall be made only to the county treasurer and may not be accepted by the municipal fiscal officer. However, this subsection does not apply to payments from the county under section 24 of this chapter.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-24

Delinquent assessments; sale of property

Sec. 24. (a) This section does not apply to a municipality if the legislative body of the municipality adopts an ordinance providing that this section does not apply to the municipality.

(b) After the county auditor receives the list of delinquencies from the municipal fiscal officer under section 23 of this chapter, the real property on the list is subject to collection by the county treasurer in the same way that delinquent property taxes are collected and may be sold in the manner that property is sold for taxes. The owners and

purchasers of the property have the same rights and remedies as the owners and purchasers would have at a tax sale.

(c) The county auditor shall issue a county warrant for the principal, interest, and penalty to the municipal fiscal officer originally charged with the collection of the principal, interest, and penalty after the following:

- (1) The collection of the principal, interest, and penalty.
- (2) Settlement for principal, interest, and penalty by the county treasurer.

(d) This section does not require a county or any of the county's officers to include the amount of delinquent principal, interest, or penalty in a certificate of sale to the county.

(e) If a county or municipal officer fails to perform the officer's duties under this section or section 20(a) of this chapter, a person aggrieved by the failure may bring an action against the officer to compel performance.

As added by P.L.98-1993, SEC.8. Amended by P.L.172-1994, SEC.3.

IC 36-9-37-25

Procedures to avoid a foreclosure action

Sec. 25. (a) To avoid a foreclosure action on a special assessment, a municipality may:

- (1) defer collection of the assessment under section 22.5 of this chapter; or
- (2) accept a conveyance in satisfaction of the assessment from the owner of the assessed property.

(b) If there are bondholders other than the municipality holding bonds on the improvement for which the assessment was made, the municipality may do any of the following:

- (1) Join with the other bondholders in accepting a conveyance of an undivided interest in the property.
- (2) Cause a conveyance of the property to be made to a bank or trust company in the municipality and held under a trust agreement by the bank or trust company for the use and benefit of the municipality and the other bondholders.

(c) A conveyance under this section may be accepted by the municipality only if the head of the municipal legal department makes a written recommendation to the city executive or town legislative body that the conveyance be accepted.

As added by P.L.98-1993, SEC.8. Amended by P.L.45-2004, SEC.5.

IC 36-9-37-26

Disposition of property acquired by foreclosure or conveyance; procedure

Sec. 26. (a) If a municipality acquires an undivided interest in real property by foreclosure of a special assessment or by a voluntary conveyance under section 25(a) of this chapter, the municipality may dispose of the municipality's interest in the manner prescribed by this section.

(b) The municipality must have the municipality's interest in the

property appraised by two (2) disinterested appraisers residing in the municipality. After appraisal, the city executive or town legislative body may sell the property interest for not less than the full appraised value of the property interest. Before selling the property interest, the city executive or the town legislative body must first provide notice of the proposed sale by publication in accordance with IC 5-3-1.

(c) This subsection applies if the municipality sells the property by acceptance of bids. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify all of the following:

- (1) Each beneficiary of the trust.
- (2) Each settlor empowered to revoke or modify the trust.

(d) A conveyance under this section must be executed by the municipal executive and attested by the municipal clerk.

(e) The municipality shall return all money received from sales under this section to the fund for the use and benefit of which the property interest is held. Any money in excess of the amount necessary to provide full compensation to the fund for the obligations of the person liable for the assessment shall be returned to that person.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-27

Disposition of property held by bank or trust company

Sec. 27. (a) If property is held by a bank or trust company under section 25(b)(2) of this chapter, the trust agreement between the municipality and the bank or trust company may provide for the sale or conveyance of the property by the bank or trust company. The sale may not be made for less than the full appraised value of the property.

(b) The municipality may, in case of a sale, join in the conveyance of the property.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-28

Bonds; contents; issuance; denominations

Sec. 28. (a) When property owners have elected to pay special assessments for a public improvement in installments, the bonds issued in anticipation of the collection of those assessments must bear the date of the final acceptance of the improvement by the municipal works board. The bonds begin to bear interest on this date at a rate determined by the works board.

(b) Except as provided in subsection (d), the bonds may be issued in any denomination.

(c) Except as provided in subsection (d), the municipal fiscal officer shall choose the denomination that the municipal fiscal officer finds appropriate for the following:

- (1) The circumstances of the particular improvement project.
- (2) The efficient administration of the municipal fiscal officer's office.

(d) The last bond in a series need not be issued in a denomination

of a multiple of one hundred dollars (\$100) if the total cost of the particular improvement project for which the series is issued is not an exact multiple of one hundred dollars (\$100).

As added by P.L.98-1993, SEC.8.

IC 36-9-37-29

Bonds; series; redemption; time for payment; computation of interest; actions challenging validity

Sec. 29. (a) The municipal legislative body shall provide in the preliminary resolution that the bonds issued in anticipation of the collection of the assessments shall be issued so as to mature not less than ten (10) years and not more than thirty (30) years from the date of issuance.

(b) The terms of the bonds may allow early redemption of the bonds for and to the extent of prepayment of the assessments in anticipation of which the bonds were issued.

(c) If the assessment roll for the cost of an improvement was finally approved before July 1 of a year, the first of the series of bonds issued for the payment of the improvement is payable on February 1 of the following year, and the interest on the bonds shall be computed accordingly.

(d) If the assessment roll for the cost of an improvement was finally approved after June 30 of a year, the first of the series of bonds issued for the payment of the improvement is payable on August 1 of the following year, and the interest on the bonds shall be computed accordingly.

(e) Interest on the bonds is payable semiannually, beginning on the date prescribed by subsection (c) or (d).

(f) The municipal works board may by ordinance or resolution choose to:

- (1) sell the bonds by negotiated private sale to a financial institution; and
- (2) remit the proceeds of the bonds to the contractor for the public improvement.

(g) An action to challenge the validity of the bonds or the sale of the bonds may not be brought after issuance of the bonds.

As added by P.L.98-1993, SEC.8. Amended by P.L.62-2001, SEC.7.

IC 36-9-37-30

Payment of bonds at maturity

Sec. 30. (a) Bonds issued in anticipation of the collection of special assessments bear interest until the date of maturity if sufficient money is available to pay the principal of and interest on the bonds at that date.

(b) If sufficient money is not available to pay the principal of and interest on the bonds, any available money that was assessed to pay the bonds shall be paid to the holders of the bonds on a pro rata basis. The unpaid balances of the principal of and interest on the bonds bear interest until the delinquent assessments have been collected. The rate of interest on the unpaid balances must be the same as the rate paid

by the bonds before their maturity.

(c) If the principal of and interest on the bonds are not paid in full at their maturity, the bonds must be marked with the following:

- (1) The date of payment.
- (2) The amount of principal and interest paid.
- (3) The balance unpaid.

(d) At every six (6) month period after the maturity of the bonds, the delinquent collections for the payment of the principal of and interest on the bonds and interest on the unpaid balances of the bonds shall be paid on a pro rata basis. Each bond shall be marked with the following:

- (1) The amount of principal and interest paid.
- (2) The balance unpaid.
- (3) The amount of interest paid on unpaid balances.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-31

Bonds; presentation for payment; receipts

Sec. 31. (a) A person who holds bonds issued in anticipation of the collection of special assessments shall present the bonds for payment and arrange for the payment of interest with sufficient time before the maturity date or due date of the delinquencies so that the municipal fiscal officer has time to process the payment.

(b) The bondholder shall file with the bonds a list setting forth the following for the bonds:

- (1) The roll numbers.
- (2) The series numbers.
- (3) The face values or unpaid balances.
- (4) The total presented for payment.

(c) The municipal fiscal officer shall give a receipt to a bondholder presenting bonds for payment or receiving a payment of interest. The receipt holds the municipality responsible to the bondholders for the following:

- (1) The unpaid principal of and interest on the bonds that were presented for payment.
- (2) The unpaid balances of principal of and interest on those bonds.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-32

Schedule of amounts paid on bonds

Sec. 32. (a) If payment is made of principal or interest on bonds issued in anticipation of the collection of special assessments, the municipal fiscal officer shall prepare a schedule showing the following:

- (1) All bonds on which payment of principal or interest is made, with the amount paid on each. If payment is not made in full, the fiscal officer shall specify the balance of principal and interest unpaid on each bond.
- (2) The total of all principal of and interest on bonds on which

no payment is made.

(3) Interest paid on delinquency.

(4) The total amount of principal of and interest on bonds for which a receipt was issued.

(5) The total amount of principal and interest paid on bonds.

(6) The total amount of interest on delinquency paid.

(7) The total balance of principal of and interest on bonds unpaid.

(b) The fiscal officer shall give a copy of the schedule to the bondholder on the surrender of the bondholder's receipt.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-33

Matured bonds; notice to holder of money available for payment

Sec. 33. Upon request of the holder of any bond on which principal or interest has become due, the municipal fiscal officer shall do the following:

(1) Make a record of the following:

(A) The maturity of the principal of the bond or interest on the bond.

(B) The name and address of the holder.

(2) Notify the holder by mail immediately when money is available to pay the principal or interest.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-34

Bonds; tax exemption

Sec. 34. Bonds issued in anticipation of the collection of special assessments for public improvements are exempt from taxation for all purposes.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-35

Bonds; insufficient funds for payment; issuance of certificates of indebtedness

Sec. 35. (a) When the principal of or interest on bonds issued in anticipation of the collection of special assessments is due for payment, the municipal fiscal officer shall issue certificates of indebtedness to the owner of the bonds if:

(1) there is not enough money in the municipal improvement fund to pay the principal of or interest on the bonds in full; and

(2) at least one (1) of the conditions listed in subsection (b) is met.

(b) The municipal fiscal officer shall issue certificates of indebtedness for the amounts unpaid if the principal of or interest on the bonds cannot be paid because of any of the following:

(1) The stoppage of interest due to the prepayment of assessments.

(2) The failure to collect interest to the due date of the prepaid installments.

- (3) The failure to reinvest prepaid assessments in the manner prescribed by this chapter.
 - (4) The diversion of money paid on one (1) assessment roll and account to the payment of the principal of or interest on bonds to another assessment roll and account.
 - (5) The loss of improvement money due to the closing and insolvency of a bank or trust company in which the money was on deposit.
 - (6) Any other diversion or misapplication of money collected for payment of the principal of or interest on bonds for which the municipality is liable.
- (c) The amounts of certificates of indebtedness issued under this section shall be computed in the following manner:
- (1) If the certificates are issued for a deficiency resulting from prepayment of assessments, the amount:
 - (A) is limited to the amount of interest that would have been payable at the respective due dates of the installments of assessments if the assessments had not been prepaid; and
 - (B) does not include interest between the time of the due dates and the issuance of the certificates.
 - (2) If the certificates are issued for a deficiency resulting from a diversion of money, the amount:
 - (A) is limited to the amount that would have been due if the diversion had not occurred; and
 - (B) does not include any interest after the date on which payment of the principal of or interest on the bonds is due.
 - (3) If the certificates are issued for a deficiency resulting from the loss of improvement money due to the closing and insolvency of a bank or trust company in which the money was on deposit, the amount is limited to:
 - (A) the actual amount deposited, plus interest at the depository rate up to the time of the closing of the bank or trust company; less
 - (B) any amounts that are recovered from any source by reason of the deposits and loss.
- (d) No part of any delinquent assessments or installments, or of any interest on the delinquent assessments after the due date of the assessments, may be included in a certificate of indebtedness.
- (e) The deficiency and diversion remedial provisions of this section do not make a municipality liable in any manner for any of the following:
- (1) Assessments or installments of assessments not paid by the owner of the property assessed.
 - (2) Interest on any unpaid assessment or installment.
- As added by P.L.98-1993, SEC.8.*

IC 36-9-37-36

Bonds; certificates of indebtedness; payment

Sec. 36. (a) Upon the delivery of certificates of indebtedness in payment of part of the principal of or interest on any bonds because

of a deficiency, the municipality shall, by proper endorsement of the bonds:

- (1) reduce the face value of the bonds or the interest payable on the bonds by a corresponding amount; or
- (2) cancel the bonds if the principal of and interest on the bonds are paid in full.

(b) The certificates of indebtedness shall be authorized, issued, and paid in the same manner as certificates of indebtedness issued under IC 36-9-36-62 and IC 36-9-36-64. However, the certificates draw interest only from the date of issue and the rate of interest shall be fixed by the resolution authorizing the issuance of the certificates.

(c) A municipality is not required to provide for or pay upon the certificates of indebtedness issued under section 35 of this chapter (or under IC 36-9-19 before its repeal in 1993) a total amount in any one (1) year in excess of the following:

- (1) Fifty thousand dollars (\$50,000) for a municipality having a population of at least thirty-five thousand (35,000).
- (2) Twenty-five thousand dollars (\$25,000) for a municipality having a population of at least ten thousand (10,000) but less than thirty-five thousand (35,000).
- (3) Ten thousand dollars (\$10,000) for a municipality having a population of less than ten thousand (10,000).

(d) A municipality shall make payments on the certificates of indebtedness issued under section 35 of this chapter (or under IC 36-9-19 before its repeal in 1993) in the order of the tender and demand for payment of outstanding certificates in each year. The municipality is not required to prorate the payments among all the outstanding certificates. The municipal fiscal officer is the sole judge of the order of tender and priorities of the certificates of indebtedness.

(e) Before issuing payment on a certificate, the fiscal officer shall, by audit and other investigation of the facts, determine the right to payment and the proper amount of the payment. The fiscal officer's determination is final and conclusive upon all the parties involved.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-37

Refunding bonds

Sec. 37. (a) Instead of issuing certificates of indebtedness under section 35 of this chapter, the municipal legislative body may by ordinance issue refunding bonds to meet a deficiency arising in the municipal improvement fund if the following conditions are met:

- (1) At least one (1) of the conditions listed in section 35(b) of this chapter is met.
- (2) The amount of the deficiency is clearly established.
- (3) The liability of the municipality for the deficiency is established. However, this subdivision does not require the liability of the municipality to be established by a judgment against the municipality.

(b) Refunding bonds issued under this section shall be issued in the manner prescribed by IC 5-1-9. The proceeds of the bonds may

be used only to discharge the liability of the municipality for the deficiency.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-38

Overpayment of special assessments; refunds

Sec. 38. (a) If excess payments have been made and collected on special assessments for public improvements, the municipal fiscal officer shall, not later than thirty (30) days after the discovery of the overpayment, give notice of the amount of the overpayment by mail to the owner of record of the property on which the payment was made.

(b) When the municipal fiscal officer determines the amount of the overpayment and the person or persons to whom the reimbursement should be made, the fiscal officer shall issue a refund of the overpayment to the proper person or persons.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-39

Overpayments; annual statement; notice; disposition

Sec. 39. (a) During January of each year, the municipal fiscal officer shall determine all amounts of overpayments on the special assessment rolls for public improvements that have been unclaimed for at least five (5) years. The fiscal officer shall prepare a detailed statement showing the following information for each overpayment:

- (1) The date.
- (2) The number of the receipt.
- (3) The amount overpaid.
- (4) The book and page where the overpayment is recorded.
- (5) The owner of record of the property on which the overpayment was made.

(b) After preparing the statement described in subsection (a), the municipal fiscal officer shall give notice by publication in accordance with IC 5-3-1. The notice must do all of the following:

- (1) Contain the names of the owners of record of the property affected by the assessment.
- (2) State the amounts of the respective overpayments.
- (3) State that the overpayments will be transferred to the general fund of the municipality unless the owners or the owners' legal successors or assigns appear and provide proof of their claims to the overpayments not later than thirty (30) days after the date of the first publication of the notice.

(c) At the expiration of the thirty (30) day redemption period under subsection (b), the municipal fiscal officer shall transfer and pay the unclaimed overpayments into the general fund of the municipality. The amounts transferred shall be used and expended in the same manner as other money in the general fund.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-40

Money collected as special assessments; disposition after five years

Sec. 40. (a) If:

- (1) all or part of any money collected as nonwaivered special assessments for public improvements has been in the possession of the municipal fiscal officer for at least five (5) years; and
- (2) a demand for the money has not been made by a party entitled to the money within one (1) year preceding the end of the five (5) year period;

the municipal fiscal officer shall prepare a detailed list of the unclaimed money.

(b) The fiscal officer shall then give notice of the list by publication in the manner prescribed by section 39 of this chapter.

(c) At the expiration of the thirty (30) day redemption period provided by section 39 of this chapter, the municipal fiscal officer shall transfer and pay all of the unclaimed money into the general fund of the municipality. Money transferred under this subsection may be used and expended in the same manner as other money in the general fund is used and expended.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-41

Money deposited in general fund; claims

Sec. 41. (a) A person who is legally entitled to any money paid into the municipal general fund under sections 39 and 40 of this chapter may file a claim for the money with the municipal fiscal officer.

(b) A claim under subsection (a) must be filed as follows:

- (1) In the same manner as other claims are filed against the municipality.
- (2) Not later than five (5) years after the money is paid into the general fund.

(c) The fiscal officer shall pay the claim out of the general fund of the municipality if, upon investigation and proper proof of the claim, the municipal officials charged with the duty of making payments from Barrett Law funds do the following:

- (1) Determine that the claimant is legally entitled to the money.
- (2) Approve the refund of the money.

(d) The payment of the claim by the fiscal officer under subsection (c) shall be made without an appropriation.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-42

Transfer of unclaimed money to surplus Barrett Law account

Sec. 42. Balances of money may be transferred to the surplus Barrett Law account established under section 21 of this chapter (or under IC 36-9-19 before its repeal in 1993) if the following conditions are met:

- (1) The balances have been on hand for at least ten (10) years.
- (2) The balances were collected as waived assessments for the payment of bonds.

- (3) At least one (1) of the following conditions is met:
- (A) Bonds have not been presented for payment.
 - (B) Bonds have:
 - (i) been presented for payment;
 - (ii) been withdrawn; and
 - (iii) have not been not presented for payment again for at least ten (10) years.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-43

Unpaid warrants or checks; cancellation

Sec. 43. (a) A warrant or check shall be canceled on December 31 of a year if the warrant or check:

- (1) is for:
- (A) the payment of principal or interest on bonds;
 - (B) the payment of nonwaivered funds to contractors for public improvements; or
 - (C) damages sustained by a property owner on account of the operation of the public improvement assessment laws; and
- (2) has been written and not cashed for a period of at least two (2) years.

(b) The proceeds of the canceled warrants or checks shall be credited to the funds on which the warrants or checks were originally drawn. If the funds on which the checks or warrants were originally drawn cannot be determined, the proceeds shall be credited to the following:

- (1) The surplus Barrett Law account if the warrants or checks were drawn on waived accounts.
- (2) The nonwaivered account if the proceeds were drawn on the nonwaivered account.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-44

Prepaid interest; reimbursement

Sec. 44. (a) If:

- (1) a municipality purchased under threat of condemnation real property upon which there were any unpaid Barrett Law assessments; and
- (2) because of the purchase the vendor paid, under protest, the interest on the Barrett Law assessment for a period of ten (10) years in advance;

the vendor is entitled to a reimbursement for the interest paid in advance, less the interest for one (1) year.

(b) The vendor must present and prove a claim for the interest to the municipal fiscal officer. The reimbursement under this section shall be paid out of the surplus Barrett Law account of the municipality.

As added by P.L.98-1993, SEC.8.

IC 36-9-37-45

Municipalities no longer using Barrett Law; transfer of surplus money

Sec. 45. Notwithstanding any other statute, a municipality may by ordinance transfer the surplus Barrett Law account money to the general fund or general improvement fund of the municipality if the following conditions are met:

- (1) The municipality:
 - (A) has money in the surplus Barrett Law account;
 - (B) has established a general improvement fund under IC 36-9-17 or a similar statute; and
 - (C) no longer uses the Barrett Law for public improvements.
- (2) There are no obligations or potential obligations arising out of the operation of the Barrett Law for which the surplus Barrett Law account money was accumulated or may be used.
- (3) Notice of intention to transfer the surplus Barrett Law account money to the general fund or general improvement fund has been published in accordance with IC 5-3-1.

As added by P.L.98-1993, SEC.8.

**IC 36-9-37-46
Barrett Law revolving improvement fund**

Sec. 46. (a) A Barrett Law revolving improvement fund may be established under the municipal fiscal officer. This fund shall be initially funded by transferring to the fund from the surplus Barrett Law account any amount approved by the municipal legislative body.

(b) If the legislative body decides that payment from the Barrett Law revolving improvement fund will increase the probability that competent contractors will bid on the project, the fiscal officer may pay all or part of the cost of the project from the Barrett Law revolving improvement fund to the contractor who is to do the work or has done the work.

(c) The municipality shall levy a special assessment against property that benefits from the improvement project. The provisions of this chapter concerning special assessments to repay bonds also apply to special assessments for projects paid for from the Barrett Law revolving improvement fund.

(d) When the cost of an improvement is paid from the Barrett Law revolving improvement fund, collections from the special assessment for the improvement shall be deposited in the surplus Barrett Law account.

(e) If the municipal works board determines that to do so will facilitate the initiation, progress, or completion of a public improvement project, the works board may ask the municipal legislative body to do the following:

- (1) Approve the amount of money the works board will advance from the Barrett Law revolving improvement fund for the project.
- (2) Decide upon what terms the works board will make the advancement.

(f) The municipal fiscal officer may invest the money in the

Barrett Law revolving improvement fund in the same manner that money in the surplus Barrett Law account is invested.
As added by P.L.98-1993, SEC.8.

IC 36-9-38

Chapter 38. Barrett Law Funding for Municipal Improvement Districts

IC 36-9-38-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-2

Permissible improvements

Sec. 2. The following improvements may be made under this chapter:

- (1) Sidewalks.
- (2) Streets.
- (3) Pedestrian ways or malls that are set aside entirely or partly, or during restricted hours, for pedestrian rather than vehicular traffic.
- (4) Parking facilities.
- (5) Lighting.
- (6) Electric signals.
- (7) Landscaping, including trees, shrubbery, flowers, grass, fountains, benches, statues, floodlighting, gaslighting, and structures of a decorative, an educational, or a historical nature.
- (8) Emergency warning systems.

As added by P.L.98-1993, SEC.9. Amended by P.L.42-2006, SEC.3.

IC 36-9-38-3

Improvement to be owned, maintained, and operated by municipality

Sec. 3. An improvement constructed under this chapter shall be owned, maintained, and operated by the municipality under the direction of the municipal works board.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-4

Application of statutes relating to planning and zoning, building codes, and restrictions on use of property

Sec. 4. The statutes relating to planning and zoning, building codes, and restrictions on the use of property apply to an improvement under this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-5

Application of IC 36-9-36 and IC 36-9-37

Sec. 5. To the extent they are not in conflict with this chapter, all the provisions of IC 36-9-36 and IC 36-9-37 apply to proceedings under this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-6

Persons having the same rights and powers as the owner of fee simple title

Sec. 6. For purposes of this chapter, the following persons have the same rights and powers as the owner of the fee simple title to a parcel of real property:

- (1) The legal or authorized representative of the owner.
- (2) A person obligated under a written instrument to pay an assessment against the property under this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-7

Petition to establish district

Sec. 7. (a) A petition for the establishment of an improvement district under this chapter may be filed with the works board of a municipality by any of the following:

- (1) An association established under section 8 of this chapter.
- (2) The owners of at least twenty-five percent (25%) of the parcels of real property in the proposed improvement district if an association has not been formed under section 8 of this chapter.

(b) A petition filed under this section by an association must be signed by a majority of the association's directors.

(c) A petition filed under this section must set forth all of the following:

- (1) The boundaries of the proposed improvement district, including all of the real property that the petitioners believe will be specially benefited or damaged by the proposed improvement.
- (2) The location and a general description of the proposed improvement.
- (3) The estimated cost of the proposed improvement.
- (4) As part of the petition or as an accompanying exhibit, the names and addresses of all the owners of real property within the boundaries of the proposed improvement district as the names and addresses are listed on the tax duplicates in the records of the county auditor.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-8

Association of owners of property affected by proposed improvement; requirements for establishment

Sec. 8. At least fifteen (15) persons may establish an association for purposes of this chapter if the persons are the owners of the following:

- (1) At least fifteen (15) separate parcels of real property.
- (2) At least twenty percent (20%) of the surface area of the real property affected by a proposed improvement under this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-9

Association established under IC 36-9-38-8; articles of association; filing and recording; powers

Sec. 9. (a) The persons establishing an association under section 8 of this chapter must sign and acknowledge written articles of association specifying the following:

- (1) The name of the association.
- (2) The purposes of the association, which must be limited to the purposes of this chapter.
- (3) The names and addresses of the initial members.
- (4) The principal office of the association.
- (5) The name of the agent for purposes of communications and service of process.
- (6) The term of existence of the association, which may be perpetual.
- (7) The number of directors, which may not be less than three (3) or more than eleven (11).
- (8) The amount of any membership fee and any annual dues.
- (9) The area affected by any proposed improvements included within the purposes of the association.
- (10) The square footage of the area affected by the proposed improvement.
- (11) The square footage of the area affected by the proposed improvement included within the association.
- (12) Any other provisions that the initial members consider desirable and that are not inconsistent with this chapter.

(b) The association shall file a copy of the articles of association, signed and acknowledged by all of the initial members, with the works board of the municipality in which the affected area is located. A copy of the articles of association shall be recorded in the office of the recorder of the county within which the area is located.

(c) An association formed under this chapter (or under IC 36-9-20 before its repeal in 1993) is a nonprofit corporate body and may do the following:

- (1) Enter into contracts.
- (2) Hold, convey, and transfer property.
- (3) Sue and be sued.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-10

Association established under IC 36-9-38-8; notice; meeting

Sec. 10. (a) Not later than ninety (90) days after the filing and recording of the articles of association, the association shall hold a meeting of all owners of real property in the area described in the articles for the purpose of electing directors of the association.

(b) At least twenty (20) days before the meeting, notice of the meeting shall be mailed, first class postage prepaid, to all owners of real property in the area described in the articles of association. The notice must set forth the following:

- (1) The time and place of the meeting.

- (2) The purpose of the meeting.
- (3) A general description of the nature and object of the association.
- (4) The amount of any membership fee and any annual dues.
- (5) Notice that an owner of real property may become a member of the association and be eligible to vote in the meeting, either in person or by authorized agent or attorney, by doing the following:
 - (A) Signing a copy of the articles of association at any time before the commencement of the meeting.
 - (B) Paying the membership fee, if any, and the dues for the first year, if any.

(c) The notice under subsection (b) may be mailed to the owners of real property at the owners' addresses appearing upon the tax duplicates in the records of the county auditor.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-11

Association established under IC 36-9-38-8; directors; bylaws

Sec. 11. (a) The directors of the association must be:

- (1) members of the association; and
- (2) owners of real property in the affected area.

(b) The directors elected under section 10 of this chapter serve until the next annual meeting and until the directors' successors are elected and qualified.

(c) The directors shall approve bylaws of the association. The following apply to the bylaws of the association:

- (1) The bylaws may be amended.
- (2) The bylaws may provide for officers of the association to be elected annually by the directors.
- (3) The bylaws may contain any other provisions that are desirable for the conduct of the affairs of the association.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-12

Association established under IC 36-9-38-8; articles; amendment; property owners subsequently becoming members

Sec. 12. (a) The articles of association may be amended upon the recommendation of the directors and the approval of two-thirds (2/3) of all members of the association at a meeting called for that purpose. Amended articles must be signed and acknowledged by a majority of the directors. A copy of all amendments shall be filed with the municipal works board and recorded in the office of the county recorder.

(b) A copy of the articles of association, with any amendments, shall be kept available at the office of the agent of the association during regular business hours for signature by an owner of real property who desires to become a member of the association by signing the copy and by paying any membership fee and any annual dues.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-13

Notice of hearing on establishment of district

Sec. 13. (a) Upon the filing of a petition under section 7 of this chapter, the municipal works board shall fix a date for a hearing on the establishment of the proposed improvement district. At least twenty-one (21) days before the date fixed for the hearing, the petitioners shall have a notice mailed to all owners of real property within the proposed improvement district. The notice may be mailed to the owners of real property at the owners' addresses appearing upon the tax duplicates in the records of the county auditor.

(b) The petitioners shall publish a notice of the hearing and the date, place, and time of the hearing in accordance with IC 5-3-1.

(c) The notice to be published and mailed must do the following:

- (1) Contain a general description of the contents of the petition.
- (2) Specifically set forth the boundaries of the proposed district.
- (3) State that all of the property in the proposed district will be assessed benefits or damages under this chapter for the proposed improvement.
- (4) State that at the hearing all owners of real property within the proposed improvement district or the owners' representatives may be heard upon the question of the establishment of the district.

(d) Proof of service shall be made by affidavit of the person or persons causing service to be made.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-14

Petition in opposition to district; termination of proceedings

Sec. 14. (a) The owners of real property located in a proposed improvement district may remonstrate against the establishment of that district by filing a petition with the municipal works board. The county auditor shall verify the signatures on the petition.

(b) If the number of valid signatures equals or exceeds fifty-one percent (51%) of the owners of real property in the proposed improvement district, the works board shall cease the works board's proceedings to establish the improvement district.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-15

Conduct of hearing; resolution

Sec. 15. (a) At the hearing fixed under section 13 of this chapter, the municipal works board shall hear all owners of real property in the proposed improvement district who appear and request to be heard upon the following questions:

- (1) The sufficiency of the petition and notice.
- (2) Whether the proposed improvement is of public utility and benefit.
- (3) Whether all of the probable benefits of the proposed

improvement, including the benefits to the municipality generally, will equal or exceed the estimated cost of the improvement.

(4) Whether the improvement district contains all, more than all, or less than all of the property specially benefited or damaged by the proposed improvement.

(b) The hearing under subsection (a) may be adjourned periodically without further notice. After the completion of the hearing, the works board shall adopt a resolution determining whether the following conditions have been met:

(1) The petition is sufficient.

(2) The required notice was given.

(3) The proposed improvements are of public utility and benefit.

(4) All of the probable benefits of the proposed improvement will equal or exceed the estimated cost of the proposed improvement.

(5) The proposed improvement district contains all, more than all, or less than all of the property specially benefited or damaged by the proposed improvement.

(c) The works board shall establish the improvement district with the boundaries described in the petition if the works board does the following:

(1) Answers the questions in subsection (b)(1) through (b)(4) affirmatively.

(2) Determines that the proposed improvement district contains all of the property specially benefited or damaged.

(d) If the works board answers any of the first four (4) questions negatively, the works board may:

(1) allow amendments and the issuance of additional notice and may hold further proceedings; or

(2) dismiss the petition without prejudice to the right to file a new petition.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-16

Hearing; determination that petition includes property not specially benefited; further proceedings

Sec. 16. (a) If the works board determines that property not specially benefited or damaged has been included within boundaries described in the petition, the works board shall do the following:

(1) Redefine the boundaries of the district and include in the works board's resolution only the property that is specially benefited or damaged.

(2) Establish the district with the boundaries as redefined.

(b) The works board shall fix a date for a further hearing if the works board determines that:

(1) less than all of the property specially benefited or damaged has been included within the boundaries described in the petition; or

(2) less than all of the property specially benefited or damaged

has been included within the boundaries described in the petition and some property that is not specially benefited or damaged has been included.

(c) Notice of the further hearing, describing the proposed revised boundaries, shall be given in the manner prescribed by section 13 of this chapter. However, notice by mail shall be given only to the owners of real property in an area that is proposed to be added to the district and that was not included in the initial petition.

(d) At the further hearing, all owners of real property within the proposed district boundaries or the owners' representatives are entitled to be heard. The works board shall then adopt a resolution on the establishment of the district.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-17

Resolution establishing improvement district; recitations; notice to property owners; finality; recording; appeal

Sec. 17. (a) A resolution establishing an improvement district must also recite the following:

(1) That all real property within the district is subject to assessment of special benefits and damages by appraisers to be appointed by the municipal works board.

(2) That the assessments are subject to review in a hearing before the works board.

(b) The works board's resolution is considered notice to all property owners who have appeared or who have been notified of the proceedings that the owners' property is subject to an assessment of special benefits and damages under this chapter. Further notice or hearing is not required, except as provided by section 26 of this chapter.

(c) The resolution of the works board:

(1) is final and conclusive; and

(2) may not be challenged unless an appeal is made under subsection (e).

(d) A copy of the resolution establishing an improvement district, certified by the municipal clerk, shall be recorded in the miscellaneous records in the office of the recorder of the county in which the municipality is located.

(e) A person aggrieved by the adoption of a resolution establishing an improvement district may appeal in the manner prescribed by IC 34-13-6.

As added by P.L.98-1993, SEC.9. Amended by P.L.1-1998, SEC.217.

IC 36-9-38-18

Plans, specifications, and cost estimates

Sec. 18. (a) Upon adoption of a resolution establishing an improvement district, the petitioners for the district shall submit any plans, specifications, and estimates of the cost of the proposed improvement that the petitioners have prepared to the municipal works board for review and approval.

(b) If the petitioners have not prepared plans and specifications, the works board shall have plans, specifications, and estimates of the cost of the proposed improvement prepared. For the purpose of preparing plans, specifications, and estimates of cost, the works board may employ architects, engineers, and other necessary consultants without an appropriation. The petitioners may advance money for this employment, subject to reimbursement, or the municipality may advance money on the approval of the municipal legislative body from unappropriated funds without an appropriation, also subject to reimbursement.

(c) Estimates of costs prepared under this section must include the following:

- (1) Architectural, appraisal, consultant, engineering, legal, supervision, and other professional fees.
- (2) The cost of plans and specifications, including amounts to be reimbursed under subsection (b).
- (3) Construction costs, including the cost of land, material, and labor.
- (4) All other related and incidental expenses.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-19

Eminent domain; vacation of streets and alleys; property owned by government entities

Sec. 19. (a) If:

- (1) an improvement under this chapter requires the acquisition of property or property rights; and
- (2) the acquisition cannot be made through the assessment proceedings established by this chapter;

the municipality may proceed by eminent domain.

(b) The eminent domain proceeding shall be conducted in the manner provided by the statutes applicable to acquisition of property by the municipality for public purposes. Any property or property rights acquired belong to the municipality.

(c) If it is necessary to vacate streets or alleys, the vacation shall be made in the manner provided by statute.

(d) Any property owned by the municipality or another governmental entity may be made available for any public improvement under this chapter, without charge.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-20

Letting of construction contracts; actions to enjoin performance; limitations

Sec. 20. (a) All contracts for construction of an improvement under this chapter shall be let by the municipal works board after advertisement as required for other contracts.

(b) All statutes applicable to the letting and performance of other contracts apply to contracts under this chapter.

(c) The validity of a contract entered into under this chapter may

not be questioned, except in an action to enjoin performance. The action must be brought not later than fifteen (15) days from the execution of the contract. If the action is not brought within the fifteen (15) day period, the contract is valid, conclusive, and binding upon all persons.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-21

Appointment of appraisers to assess benefits and costs

Sec. 21. (a) After the municipal works board approves plans and specifications for an improvement under this chapter, the works board shall appoint three (3) disinterested persons as appraisers to examine the following:

- (1) The plans, specifications, and estimates of the cost of the proposed improvement.
- (2) The real property within the improvement district.

(b) Upon request from the appraisers or the petitioners, the works board may do the following:

- (1) Retain or employ qualified personnel to provide necessary technical or consulting assistance.
- (2) Supply the appraisers with information that will assist the appraisers in making the assessment under section 22 of this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-22

Appointment of appraisers; assessment of benefits and costs; filing of roll

Sec. 22. (a) The appraisers shall make an assessment of the following:

- (1) The special benefits and damages, if any, that will accrue to each parcel of real property from the construction of the proposed improvement.
- (2) The benefits, if any, that will accrue to the municipality generally from the construction of the proposed improvement.

(b) The appraisers shall file with the municipal works board a copy of the roll of all owners of real property and of the municipality generally. The copy must:

- (1) be signed by all three (3) appraisers;
- (2) show the assessment of benefits and damages; and
- (3) be filed by the appraisers with the works board not later than thirty (30) days after appointment of the appraisers, unless the board extends the time.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-23

Costs exceeding benefits; postponement of improvement; reappraisal; deficiency supplied; bond

Sec. 23. (a) If the total of the assessed benefits, after deducting assessed damages, does not equal or exceed the total estimated cost

of the improvement, further action may not be taken on the proposed improvement until:

- (1) a second assessment of benefits and damages has been completed; or
- (2) the petitioners, the municipality, or another source, separately or jointly, undertakes to provide the deficiency.

(b) The municipal works board may request the original appraisers to make the second assessment or may appoint three (3) other qualified, disinterested appraisers to make the second assessment. The second assessment shall be completed in the same manner as the first assessment.

(c) If a second assessment of benefits, after deducting the damages, does not equal or exceed the estimated cost of the improvement, further action may not be taken on the proposed improvement, unless the petitioners, the municipality, or another source, separately or jointly, undertakes to provide the deficiency. If the petitioners elect to provide the deficiency, further action may not be taken upon the improvement until the petitioners file with the works board a bond with adequate surety. The bond must be conditioned on payment of the net balance of the actual cost of the improvement over the total of the assessments after deducting damages.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-23.5

Assessments; installment payments

Sec. 23.5. (a) With respect to assessments imposed after June 30, 2001, the works board shall establish a procedure to permit owners of real property in the improvement district to elect whether to pay assessments in:

- (1) one (1), five (5), ten (10), fifteen (15), or twenty (20) annual installments; or
- (2) a number of monthly installments that corresponds to one (1), five (5), ten (10), fifteen (15), or twenty (20) installments.

(b) The works board shall establish the timing of the election under subsection (a) to permit the works board to structure the maturities of the principal of the bonds in a number of annual series that is consistent with the installment periods elected by owners of real property under subsection (a).

As added by P.L.62-2001, SEC.8.

IC 36-9-38-24

Final determination of costs; revised assessment

Sec. 24. (a) The municipal works board may, with the approval of the municipal legislative body, determine all of the following:

- (1) Whether the benefits assessed against the municipality are proper and should be paid.
- (2) Whether the municipality should pay a part of the cost of the improvement regardless of benefits assessed.

(b) An amount of benefits or costs to be paid by the municipality

may be paid:

- (1) out of the money of the municipality appropriated to the use of the works board for such an improvement; or
- (2) through the issuance of bonds of the municipality.

(c) The notice of hearing required by section 26 of this chapter shall be given after the cost of the improvement has been finally determined by the works board through firm bids or contracts and firm estimates for other costs.

(d) If the finally determined cost of the improvement exceeds the total of:

- (1) the benefits assessed, less damages assessed; and
- (2) the contributions of the petitioners, the municipality, and other sources;

the works board shall direct the appraisers to review the assessments and submit a revised assessment list.

(e) The notice of hearing shall be given only after the works board determines that the money available from all sources is adequate to cover the total cost of the improvement, including all costs that are to be reimbursed under section 18(c) of this chapter.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-25

Appraisers; qualification for appointment

Sec. 25. A person appointed as an appraiser under this chapter must be:

- (1) a disinterested licensed real estate broker; or
- (2) a disinterested licensed appraiser under IC 25-34.1.

As added by P.L.98-1993, SEC.9. Amended by P.L.113-2006, SEC.22.

IC 36-9-38-26

Notice of proposed assessments to property owners; contents

Sec. 26. (a) Promptly after completion of all of the following, the municipal works board shall mail a notice, first class postage prepaid, to each owner of real property to be assessed:

- (1) The filing of an adequate assessment.
- (2) The determination of the cost of the improvement.
- (3) The determination that adequate money will be available.

(b) The notices shall be mailed not later than twenty-one (21) days before the hearing date and must do all of the following:

- (1) Set forth the amount of the proposed assessment.
- (2) State that the proposed assessment on each parcel of real property in the district is on file and can be seen in the office of the works board.
- (3) Set forth the date and time the works board will, at the works board's office, do the following:

- (A) Receive written remonstrances against the assessments.
 - (B) Hear all owners of assessed real property who have filed written remonstrances before the date fixed for the hearing.
- (c) The notices to the owners may be mailed to the owners' names

and addresses appearing on the tax duplicates in the records of the county auditor.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-27

Proposed assessments; written remonstrances; hearings; assessment roll; deficiency of funds

Sec. 27. (a) At the hearing fixed under section 26 of this chapter, the municipal works board shall hear all owners of assessed real property who have filed written remonstrances before the date of the hearing. The hearing may be continued from time to time without further notice, as necessary to hear the owners.

(b) The works board shall make a determination increasing, decreasing, or confirming each assessment by setting opposite each name, parcel, and appraisers' assessment on the assessment roll the amount of the assessment as determined by the works board. If the total of the assessments exceeds the amount needed, the works board shall make a pro rata reduction in each assessment.

(c) The signing of the assessment roll by a majority of the members of the works board and the delivery of the roll to the municipal fiscal officer constitute a final and conclusive determination of the benefits or damages assessed. However, a person may appeal the determination if:

- (1) the person had previously filed a written remonstrance under this section; or
- (2) the person's assessment was increased above the amount fixed by the appraisers.

(d) An appeal must be made in the manner prescribed by IC 34-13-6.

(e) If the final determination of the works board causes the total of the money available to be inadequate to cover the cost of the improvement, the deficiency may be supplied in the manner provided by section 24 of this chapter.

As added by P.L.98-1993, SEC.9. Amended by P.L.1-1998, SEC.218.

IC 36-9-38-28

Lien of assessment

Sec. 28. Each assessment levied under this chapter (or under IC 36-9-20 before its repeal in 1993) is a lien on the real property assessed. This lien is second in priority only to taxes levied on the property.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-29

Municipal assessment; manner of payment; other assessments; payment in installments; interest

Sec. 29. (a) At the time the municipal works board determines the amount of the assessments, the municipal works board shall also determine the following:

- (1) The manner in which the municipality shall pay the

municipality's assessment, if any.

(2) The number of monthly or annual installments over which the other assessments will be paid.

(3) The maximum rate of interest on the installments, which may be equal to or greater than the interest rate on bonds issued under section 30 of this chapter.

(b) The works board shall certify the determination under subsection (a) to the municipal fiscal officer. This certification must accompany the assessment roll.

As added by P.L.98-1993, SEC.9. Amended by P.L.62-2001, SEC.9.

IC 36-9-38-30

Bonds

Sec. 30. (a) For the purposes of anticipating the collection of assessments under this chapter, the municipality shall issue bonds payable out of the assessments. However, a consolidated city is not required to issue bonds under this section.

(b) The terms of the bonds may allow early retirement of the bonds for and to the extent of prepayment of assessments in anticipation of which the bonds were issued.

(c) The bonds bear interest at a rate or rates determined by the legislative body of the municipality and shall be executed, sold, and delivered in denominations determined to be appropriate by the municipal fiscal officer as bonds of a municipality are executed, sold, and delivered.

(d) If the bonds are sold at a public sale, the advertisement of the sale of the bonds shall be published in accordance with IC 5-3-1. The municipality may also sell the bonds by negotiated private sale to a financial institution.

(e) Unless the municipality chooses to sell the bonds by a negotiated private sale to a financial institution, the sale shall be made to the highest and best bidder, as provided in IC 36-9-36. However, the sale may not be for less than the face value of the bonds, plus interest from the date of the bonds to the date of delivery.

(f) The bonds and interest on the bonds are exempt from taxation to the extent provided by IC 6-8-5-1.

(g) The bonds are not a corporate obligation or an indebtedness of the municipality and are payable only out of money actually paid and collected under this chapter (or under IC 36-9-20 before its repeal in 1993). The bonds must state this fact on the bonds' face.

As added by P.L.98-1993, SEC.9. Amended by P.L.62-2001, SEC.10.

IC 36-9-38-31

Fees for use of improvement; changes; hearing upon petition in cases of certain changes

Sec. 31. (a) At or before the completion of the assessment roll, the municipal works board may do either of the following:

(1) Adopt a schedule of fees for the use of an improvement.

(2) Determine that the use of the improvement will be free.

(b) Fees established under subsection (a) may be reduced,

eliminated, increased, or added to by the works board without a hearing, but only to reflect increased or decreased costs of operation and maintenance.

(c) Any other changes in the fees established shall be made only after a hearing for that purpose is petitioned for by the owners of property originally assessed for at least ten percent (10%) of the cost of the improvement.

(d) If a petition is filed with the works board under subsection (c), notice of a hearing shall be given to all owners of property in the improvement district. The notice may be mailed to the owners at the owners' names and addresses appearing in the records of the official charged with the duty of collecting the assessments. The notice must:

- (1) state the date, time, place, and purpose of the hearing; and
- (2) be addressed and mailed at least ten (10) days before the date of the hearing.

(e) The works board may not alter the fees at the hearing if the owners of property originally assessed for more than fifty percent (50%) of the total assessments object to the proposed change.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-32

Fees for use of improvement; excess revenues; payment of bonds

Sec. 32. If the fees established under section 31 of this chapter produce net revenue in excess of reasonable costs of operation and maintenance, the excess revenue shall be used to pay part of the principal and interest on the bonds issued as the bonds mature. To the extent that principal and interest is paid from the excess revenue, the assessments shall be reduced and canceled on a pro rata basis.

As added by P.L.98-1993, SEC.9.

IC 36-9-38-33

Fees for use of improvement; amount limitation following retirement of bonds

Sec. 33. After the bonds are retired, the fees established under section 31 of this chapter may not be greater than is necessary to pay for the reasonable costs of operation and maintenance of the improvement.

As added by P.L.98-1993, SEC.9.

IC 36-9-39

Chapter 39. Barrett Law Funding for Municipal Sewers

IC 36-9-39-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-1.3

"Construction" defined

Sec. 1.3. As used in this chapter, "construction" includes repair, remodeling, renovation, or betterment, but only in instances when:

- (1) a municipality acquires a sewage works that is in need of repair, remodeling, renovation, or betterment; and
- (2) before the acquisition of the sewage works, the municipality was not responsible for the maintenance of the sewage works.

As added by P.L.1-1994, SEC.184.

IC 36-9-39-2

Transfer of powers and duties of municipal works board to utility service board; authorization

Sec. 2. If a municipality has a utility service board that operates at least one (1) municipally owned utility, the municipal legislative body may by ordinance transfer the powers and duties of the municipal works board under this chapter to the utility service board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-3

Adoption of resolution; contents

Sec. 3. (a) The municipal works board shall adopt a resolution containing the information required under subsection (b) if:

- (1) the municipal works board orders the construction of any sewage works in the municipality; and
- (2) the cost of that construction is to be assessed against property under this chapter.

(b) A resolution adopted under subsection (a) must include all of the following:

- (1) A description of the works to be constructed.
- (2) Full detail drawings and specifications for the works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-4

Notice of resolution and hearing; cost estimate

Sec. 4. (a) Notice of the resolution required under section 3 of this chapter shall be published in accordance with IC 5-3-1. The notice must state the date, time, and place of a hearing at which the municipal works board will hear all interested persons, including persons whose property is affected or will be affected by the proposed sewage works, on the question of whether the special benefits that will accrue to the property to be assessed will be equal

to the estimated cost of the works.

(b) On or before the date specified in the notice, the engineer shall file with the works board the engineer's estimate of the total cost of the work, including any amount determined under IC 36-9-22-5.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-5

Conduct of hearing; findings

Sec. 5. (a) At the hearing specified in the notice given under section 4 of this chapter, the municipal works board shall hear all interested persons on the question of special benefits and on any other matter related to the proposed sewage works.

(b) If after the hearing the works board finds that the special benefits accruing to the abutting property are equal to the estimated cost of the sewage works, the finding shall be entered of record. The finding is final and conclusive on all parties.

(c) If after the hearing the works board finds that the special benefits accruing to the abutting property are not equal to the estimated cost of the sewage works, the works board may not proceed with the construction of the sewage works under any resolution for one (1) year. However, the works board may proceed with the sewage works if the works board finds that the municipality is benefited in an amount sufficient to cover the deficiency.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-6

Confirmation or modification of resolution; subsequent proceedings under alternative sections depending on nature of sewage works

Sec. 6. (a) After the hearing under section 5 of this chapter, the original resolution may be rescinded, confirmed, or modified.

(b) If the resolution is confirmed or modified, the municipal works board shall do the following:

(1) Proceed under section 7 of this chapter if the resolution is for sewage works intended only for use by owners of abutting property.

(2) Proceed under section 8 of this chapter if the resolution is for sewage works intended to receive sewage from collateral drains.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-7

Sewage works for use by owners of abutting property; bidding procedure

Sec. 7. If the proposed sewage works are intended only for use by owners of abutting property, the municipal works board shall in accordance with IC 5-3-1 publish a notice that does the following:

(1) Informs the public and contractors of the following:

(A) The general nature of the works.

(B) The fact that drawings and specifications of the works are on file in the office of the works board.

- (2) Requests sealed proposals for the works by a specified date.
- (3) Specifies the date the proposals shall be opened and considered.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-8

Sewage works adapted for receiving sewage from collateral sewers; map, profiles, drawings, and specifications; filing

Sec. 8. (a) The municipal works board shall prepare the information described in subsection (b) if, from the size and character of the proposed sewage works, the proposed sewage works are intended and adapted as follows:

- (1) For use by owners of abutting property along the line of the works.
- (2) For receiving sewage from collateral sewers that have been or may be constructed.

(b) If the conditions of subsection (a) are satisfied, the municipal works board shall prepare the following:

- (1) A map showing the following:
 - (A) The exact course of the proposed works.
 - (B) Any appurtenances and branches of the works.
 - (C) The boundary lines of the district to be beneficially affected by and assessed for the construction of the works.
- (2) All necessary profiles, drawings, and specifications for the works.

(c) The map, profiles, drawings, and specifications prepared under subsection (b) shall be placed on file in the office of the works board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-9

Sewage works adapted for receiving sewage from collateral sewers; resolution; notice

Sec. 9. (a) After the material prepared under section 8 of this chapter is filed, the municipal works board shall do the following:

- (1) Adopt a resolution ordering the construction of the sewage works.
- (2) Publish a notice of the adoption of the resolution, in accordance with IC 5-3-1.

(b) The resolution and notice must describe the following:

- (1) The general character of the sewage works.
- (2) The termini and general course of the sewage works.
- (3) The boundary lines of the district or area to be drained by and assessed for the sewage works.

(c) The notice must state the date, time, and place of a hearing at which the board will do the following:

- (1) Receive and hear remonstrances from persons interested in or affected by the construction of the works.
- (2) Hear and determine the following questions:
 - (A) Whether the district is properly bounded for the purpose of the drainage.

(B) Whether other territory not included in the boundaries should be added to the district.

(C) Whether any of the territory included should be excluded from the district.

(D) Whether the special benefits accruing to the land within the district and to the municipality from the proposed improvement will be equal to the estimated cost of the improvement.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-10

Sewage works adapted for receiving sewage from collateral sewers; estimate of costs; hearing

Sec. 10. (a) On or before the day the notice is first published under section 9 of this chapter, the engineer shall file with the municipal works board the engineer's estimate of the total cost of the sewage works. A contract that exceeds this estimate may not be let under the resolution.

(b) At the hearing specified in the notice, the works board shall hear and receive evidence on the questions listed in section 9(c) of this chapter from all persons owning property within the district who appear before the board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-11

Sewage works adapted for receiving sewage from collateral sewers; hearing; findings

Sec. 11. (a) If after a hearing under section 10 of this chapter the municipal works board finds that:

(1) the district to be drained is properly bounded; and

(2) the special benefits to the property within the district and to the municipality will be equal to the estimated cost of the sewage works;

the findings shall be entered of record and the resolution shall be confirmed or modified. The findings of the works board under this subsection are final and conclusive as to all parties.

(b) If after the hearing under section 10 of this chapter the works board finds that the benefits will not equal the estimated cost, the board may not proceed with the construction of the sewage works under the resolution.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-12

Sewage works adapted for receiving sewage from collateral sewers; enlargement of district; resolution; notice; hearing

Sec. 12. (a) If after a hearing under section 10 of this chapter the municipal works board finds that the district described in the resolution and notice should be enlarged by adding to the district other lots and lands that, at the hearing, were shown to be benefited by the sewage works, the board may do the following:

- (1) Adopt a supplementary resolution reciting this finding.
- (2) Proceed under that supplementary resolution.

(b) The works board shall give notice to the property owners in the added territory by publishing in accordance with IC 5-3-1 a notice that does the following:

- (1) Describes the proposed works.
- (2) Sets forth the boundaries of the original district.
- (3) Describes the boundaries of the territory proposed to be added.
- (4) Fixes a date when the owners of property in the added territory may be heard on the question of whether the new territory or any part of the new territory should be incorporated into the original district.

(c) At the hearing specified in the notice, any of the owners of the lots or lands situated in the territory proposed to be added to the district may appear before and be heard by the works board on the question of whether the territory should be added. The decision of the works board is final and conclusive as to all parties in the territory.

(d) If the original resolution is confirmed or modified, the works board shall do the following:

- (1) Proceed to advertise for proposals.
- (2) Open and consider the proposals in the same manner as other proposals under this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-13

Payment of costs; appropriations; assessments; contracts

Sec. 13. (a) The municipal legislative body may by ordinance appropriate money from the general fund or from the sanitary district funds of the municipality to pay all or part of the cost of constructing sewage works under this chapter.

(b) Any costs not paid by appropriation shall be paid by at least one (1) of the following:

- (1) By assessment under sections 15 through 27 of this chapter.
- (2) By contract under IC 36-9-22.

(c) A second class city may not make an appropriation under this section unless the following conditions exist:

- (1) The city works board makes a request for the appropriation to the city fiscal officer.
- (2) The city fiscal officer prepares and submits to the city legislative body an ordinance for the appropriation.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-14

Payment of costs; application of statutes concerning public bond issues, construction, appropriations, and tax levies

Sec. 14. Construction of sewage works from a municipal general fund must comply with the statutes concerning public bond issues, construction, appropriations, and tax levies.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-15**Sewage works for use by property owners along street, alley, or other public place; requirements**

Sec. 15. (a) The requirements listed in subsection (b) apply only if the municipal works board finds that the sewage works to be constructed:

- (1) are intended and adapted only for local use by property owners along the line of the street, alley, or other public place on which the sewage works are constructed; and
- (2) are not intended or adapted for receiving sewage from collateral sewers.

(b) The following requirements apply to the sewage works if the conditions of subsection (a) are satisfied:

- (1) The abutting lots, parcels, and tracts of land shall be assessed primarily for the cost of the sewage works.
- (2) The cost of the sewage works shall be primarily estimated according to the total number of lots abutting on the line of the works and served by the sewage works.
- (3) The costs shall be primarily apportioned equally among all abutting lands or lots. However, adjustments shall be made as provided by section 16 of this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-16**Sewage works for use by property owners along street, alley, or other public place; assessments; computation**

Sec. 16. (a) The primary assessment for each lot abutting on and served by the sewage works shall be determined by dividing the estimated total cost of the sewage works by the total number of lots.

(b) The total number of lots shall be computed as follows:

- (1) If all or any part of the sewage works is located within an area platted or to be platted, each lot abutting on and served by the sewage works as shown in the plat shall be included in the total number of lots.
- (2) If all or any part of the sewage works is located within an area that:
 - (A) is unplatted;
 - (B) contains a residence on each parcel of land; and
 - (C) is subject to zoning restrictions that prevent an increase in the number of residences;

each parcel of land that is abutting on or served by the sewage works and that contains a residence shall be included in the total number of lots as if the parcel was a platted lot.

(3) Except as provided in subdivision (2), if all or any part of the sewage works is located in an unplatted area, the number of lots to be included in the total number of lots shall be determined by dividing:

- (A) the total front footage of the property abutting on and served by the sewage works within the unplatted area on either or both sides of the street, alley, or right-of-way in

which the sewage works are located; by
(B) one hundred twenty-five (125) feet.

The result determined under clauses (A) and (B) shall be rounded to the nearest whole number.

(4) The front footage of property may not be used to determine the number of lots included in an unplatted area if the front footage:

- (A) is not available for future development; or
- (B) is restricted against usage because of:
 - (i) limited access; or
 - (ii) any other reasons.

(5) The total number of lots for a particular sewage works is the sum of the number of platted and unplatted lots as determined under subdivisions (1) through (4).

As added by P.L.98-1993, SEC.10.

IC 36-9-39-17

Sewage works for use by property owners along street, alley, or other public place; property abutting on two streets or one street and one alley; assessments; computation

Sec. 17. (a) If a platted lot or parcel of land:

- (1) abuts on:
 - (A) at least two (2) streets or alleys; or
 - (B) one (1) street and one (1) alley; and
- (2) has already been assessed for sewage works constructed for local use in any street or alley;

the works board shall take the previous assessment into account in making a subsequent assessment against the land under this section and sections 15 through 16 of this chapter.

(b) If the works board finds that:

- (1) a lot, parcel, or tract of land included in a district, subdistrict, or zone cannot be reasonably connected with or served by the sewage works either directly or by collateral branches or extensions;
- (2) the sewage works does not confer benefit on the property; or
- (3) the benefit that may be conferred by the sewage works is less than the amount computed in the manner provided in this section and sections 15 through 16 of this chapter;

the works board may enter upon the primary assessment roll the actual amount, if any, found by the works board as the special benefit to the property.

(c) An amount credited, eliminated, or reduced shall be primarily apportioned over all the other property assessable for the sewage works, as the works board may find the other property to be benefited in addition to the amounts estimated and apportioned under section 16 of this chapter. If all of the amounts credited, eliminated, or reduced are not reapportioned upon the other property, a deficiency shall be assessed against the municipality.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-18**Sewage works adapted for receiving sewage from collateral sewers; assessments**

Sec. 18. (a) The municipal works board shall make a division of the costs of the sewage works under subsection (b) if the municipal works board finds that a sewage works to be constructed or an enlargement of sewage works already constructed, is intended and adapted for the following:

- (1) Use by abutting property owners along the line of the works.
- (2) Receiving sewage from collateral sewers that have been or may be constructed.

(b) If the conditions of subsection (a) are satisfied, the works board shall make a division of the costs of the sewage works in the following manner:

- (1) That part of the cost that is equivalent to the cost of construction of adequate local sewage works not adapted to receive sewage from collateral sewers shall be primarily assessed against the abutting property owners. The assessment shall be in the same manner and to the same extent as assessments are primarily made against property owners for local sewage works under sections 15 through 17 of this chapter.
- (2) The excess of cost above the cost described in subdivision (1) shall be primarily assessed against each lot or parcel of land in the district to be drained. The assessment shall be in the proportion that the area of each lot or parcel bears to the total area of the district, including abutting property owners and the owners not situated on the line of the works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-19**Sewage works adapted for receiving sewage from collateral sewers; assessments; hearing; review**

Sec. 19. All primary or preliminary assessments made under section 18 of this chapter are subject to review and revision by the works board after a hearing under section 23 of this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-20**Assessments; inclusion of amount determined under IC 36-9-22-5**

Sec. 20. An assessment made under sections 15 through 19 of this chapter must include any amount determined under IC 36-9-22-5.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-21**Assessment roll; formulation; contents**

Sec. 21. (a) After the contract for the construction of sewage works has been completed, the municipal works board shall make out an assessment roll for the property that is primarily assessed for the sewage works.

(b) The assessment roll prepared under subsection (a) must include the following:

- (1) The name of the owner of each lot or parcel of land.
- (2) A description of each lot or parcel of land.
- (3) The total primary assessment against each lot or parcel of land, as determined under sections 15 through 19 of this chapter.
The amount of the total primary assessment shall be listed opposite each name and description.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-22

Assessment roll; finality of primary or preliminary assessments; notice of works, assessment roll, and hearing on assessments

Sec. 22. (a) The primary or preliminary assessments indicated on the assessment roll are considered the special benefits accruing to the land assessed and are final and absolute unless changed under sections 23 and 24 of this chapter.

(b) Immediately after the assessment roll is completed and filed, the municipal works board shall publish a notice in accordance with IC 5-3-1. The notice must do the following:

- (1) Describe the general character of the sewage works.
- (2) Describe the street, alley, or other public place on or in which the sewage works have been constructed.
- (3) Describe the terminals of the sewage works.
- (4) If the sewage works are intended to serve a district, describe the boundaries of the district benefited and to be assessed.
- (5) State that the assessment roll, with:
 - (A) the names of the owners;
 - (B) descriptions of property to be assessed; and
 - (C) amounts of the preliminary or primary assessments;is on file and may be inspected in the office of the works board.
- (6) Establish the date and time for a hearing at which the works board will, at the works board's office, do the following:
 - (A) Receive and hear remonstrances against the amounts assessed on the assessment roll.
 - (B) Determine whether the lots and parcels of land have been or will be specially benefited by the sewage works in the amounts listed on the assessment roll.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-23

Hearing on assessments; findings; modification of preliminary or primary assessments

Sec. 23. (a) At the hearing fixed under section 22 of this chapter, owners of assessed property may appear before the municipal works board and file remonstrances against the assessments. The works board may continue proceedings from day to day, as necessary to hear the evidence concerning the assessments.

(b) The works board shall determine at the hearing whether the several lots and parcels of land primarily assessed are specially

benefited in the amounts respectively assessed against the lots and parcels of land in the preliminary or primary assessment.

(c) The works board shall sustain or modify, in whole or in part, the preliminary assessment as indicated on the assessment roll, by confirming, increasing, or reducing the preliminary or primary assessment against all or part of the property described in the assessment roll. The decision of the works board must be based on the works board's findings concerning the special benefits received on account of the sewage works.

(d) The works board shall also determine at the hearing what part, if any, of the benefits resulting from the sewage works accrue to the municipality and shall be assessed against the municipality on the assessment roll.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-24

Hearing on assessments; modification of assessment roll; delivery to fiscal officer

Sec. 24. The works board shall do the following:

- (1) Complete the assessment roll and make a decision by modifying or confirming the assessment roll.
- (2) Show the amount of special benefits opposite each name and description. The works board shall show the amount of special benefit against the municipality if the works board finds that the municipality is specially benefited.
- (3) Deliver the completed assessment roll to the municipal fiscal officer.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-25

Hearing on assessments; finality of decision; appeals; effect of defective procedures

Sec. 25. (a) Except as provided in subsection (b), the decision of the works board concerning all benefits is final and conclusive on all parties.

(b) An owner of an assessed lot or parcel of land who has filed a written remonstrance with the board may appeal in the manner prescribed by IC 34-13-6. The appeal does not delay the delivery of the assessment roll to the municipal fiscal officer and does not affect the rights of any other property owner.

(c) If an assessment is reduced on appeal, the works board shall certify the correction to the municipal fiscal officer. The municipal fiscal officer shall then enter the proper amount of the assessment on the roll.

(d) The following applies if there is a defect in the assessment proceedings with respect to at least one (1) interested person:

- (1) The defect affects the proceedings only to the extent that the defect affects the interest or property of the person or persons.
- (2) Supplementary proceedings of the same general character as those described by this chapter may be had to correct or supply

the defect.
As added by P.L.98-1993, SEC.10. Amended by P.L.1-1998, SEC.219.

IC 36-9-39-26

Duties of fiscal officer

Sec. 26. When the assessment roll has been delivered to the municipal fiscal officer, the municipal fiscal officer shall discharge the same duties in respect to the assessments as are prescribed by the statutes concerning street, alley, and other improvement assessments in the municipality.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-27

Assessments against municipality; payment; property not liable for assessments; subrogation rights of municipality

Sec. 27. (a) The municipal works board shall pay assessments made against the municipality under section 23(d) of this chapter from money appropriated to the use of the municipal works board for that purpose. The payment shall be made upon the completion and acceptance of the sewage works.

(b) Unless an ordinance expressly appropriates a greater amount for the specific sewage works, a payment under subsection (a) is limited to the following:

- (1) Not more than five thousand dollars (\$5,000) in a city.
- (2) Not more than five hundred dollars (\$500) in a town.

(c) The municipality shall also pay the part of the cost of the sewage works that would be assessable against property not liable for assessment if the property was liable for assessment. The payment shall be made from the municipal general fund upon the completion and acceptance of the sewage works.

(d) A municipality that pays assessments under this section is subrogated to the rights and remedies of the contractor constructing the sewage works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-28

Enforcement of assessments and bonds; statutes applicable

Sec. 28. (a) The statutes described in subsection (b) apply to the enforcement of assessments made and bonds issued for the construction of sewage works or levees for the following:

- (1) The drainage of a parcel, lot, or tract of land.
- (2) A change in a stream or watercourse.

(b) Statutes concerning the following are subject to subsection (a):

- (1) Liens for street, alley, and other improvements.
- (2) The payment of street, alley, and other improvement assessments by installments.
- (3) The interest rates on the assessments.
- (4) The deposit of the proceeds of the assessments into a separate special fund for a particular improvement.

- (5) The application of the proceeds of the assessments under a separate special fund for a particular improvement.
- (6) The issuance, sale, and redemption of bonds to anticipate the assessments.
- (7) The duties of the municipal fiscal officer.
- (8) The enforcement of assessment liens for street, alley, and other improvements.
- (9) Actions foreclosing liens, attorney's fees in those foreclosure actions, and the procedure in those foreclosure actions.
- (10) The conduct of sales by the sheriff under any decree of foreclosure issued in a foreclosure action.
- (11) The execution of certificates and deeds.
- (12) All matters of a similar nature regarding any of the following:
 - (A) The enforcement and collection of assessments for street, alley, and other improvements.
 - (B) The rights of contractors, assignees, and bondholders under the assessments.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-29

Contractors; submission of monthly estimates of work done; issuance of certificates in payment; negotiability; interest; retainage

Sec. 29. (a) A contractor for construction under this chapter is entitled to monthly estimates of the work done during each month. The estimates shall be made by the engineer and approved by the municipal works board.

(b) The works board shall issue to the contractor certificates for sixty-five percent (65%) of the amount shown by the estimates to be due to the contractor. The contractor is entitled to receive the amounts named in the certificates in cash or sewer improvement bonds to be collected or issued by the municipality, as is provided for in the construction of street, alley, and other improvements.

(c) Certificates issued under this section (or under IC 36-9-21 before its repeal in 1993) are negotiable instruments.

(d) Interest on the certificates is payable out of the contract price and the special fund collected from the special assessments against the benefited property.

(e) If the municipality in issuing a contract for construction has required and obtained performance and payment bonds covering one hundred percent (100%) of the cost of construction, retainage shall be withheld as follows:

- (1) This subdivision applies until the public work is fifty percent (50%) complete. The works board shall, on approval of contractor monthly payment estimates, issue to the contractor certificates for ninety percent (90%) of the amount shown to be due to the contractor.
- (2) This subdivision applies after the public work is fifty percent (50%) complete. If the works board determines that the

contractor is being responsive and responsible in carrying out the construction, the works board may, on approval of contractor monthly payment estimates, issue to the contractor certificates for one hundred percent (100%) of the amount shown to be due to the contractor.

As added by P.L.98-1993, SEC.10. Amended by P.L.1-1994, SEC.183.

IC 36-9-39-30

Sewage works through cemeteries; purchase or condemnation of rights-of-way; assessments prohibited; removal of bodies; record

Sec. 30. (a) Except as provided in subsection (b), if the municipal works board finds it necessary to extend any sewage works through or adjacent to a lot or parcel of land held or used for cemetery purposes, the municipality may purchase or condemn all rights-of-way necessary for the extension.

(b) A lot or parcel of land held or used for cemetery purposes may not be assessed for the construction of the sewage works. The cost of the sewage works that would otherwise be assessable against the lot or parcel of land shall be assessed against and paid by the municipality.

(c) If the municipality acquires a right-of-way under this section by condemnation, an owner of property or valuable interests sought to be taken or to be injuriously affected who is unknown may be designated as unknown upon the list required by the statute governing municipal condemnation proceedings and in all subsequent steps in the proceedings, including notice by publication.

(d) If a body remains buried within the limits of a right-of-way acquired under this section, the friends or relatives of the decedent shall promptly remove the body. If the friends or relatives fail to remove the body, the works board shall have the body removed and decently buried in a public cemetery before proceeding with construction in the right-of-way. The works board shall do the following:

(1) Plainly mark in an appropriate manner the place of burial and the names of the persons buried, if known.

(2) Enter the place of burial in the records of the works board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39.1

Chapter 39.1. Alternative Assessment Financing for Municipal Sewage Works

IC 36-9-39.1-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-2

"Board"

Sec. 2. As used in this chapter, "board" means the following:

(1) A board described in IC 36-9-23-5.

(2) A board described in IC 36-9-25-2.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-3

"Fund"

Sec. 3. As used in this chapter, "fund" refers to a sewer improvement and extension fund established under section 5 of this chapter.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-4

Adoption of resolution

Sec. 4. If a board wants to construct, repair, extend, or improve a sewage works, the board may adopt a resolution providing that the construction, repair, extension, or improvement will be financed under this chapter.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-5

Ordinance establishing fund

Sec. 5. (a) A municipality may adopt an ordinance establishing a sewer improvement and extension fund to finance the construction, repair, extension, or improvement of a sewage works.

(b) A fund consists of the following:

(1) A special assessment imposed and collected under section 7 of this chapter. However, a special assessment imposed and collected under any other statute may not be deposited in the fund.

(2) An appropriation to the fund, including an appropriation made from taxes levied by a municipal legislative body for the construction, repair, extension, or improvement of a sewage works.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-6

Transfer of money to fund

Sec. 6. (a) The legislative body of a municipality that establishes

a fund may appropriate money from the municipal general fund and transfer the money to the fund.

(b) During the fiscal year in which a municipality establishes a fund, the legislative body of the municipality may make an emergency appropriation from the municipal general fund and transfer the money to the fund.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-7

Appropriation of money for sewage works

Sec. 7. (a) A board may adopt an ordinance or a resolution to appropriate money from funds under the board's control to pay for all or part of the cost of the construction, repair, extension, or improvement of a sewage works.

(b) Any costs not paid under subsection (a) must be paid by:

- (1) an assessment imposed under subsection (c) against the benefited properties; or
- (2) a contract under IC 36-9-22.

Any interest or penalties attributable to an assessment under this section must be deposited in the fund.

(c) The board may adopt a resolution to impose an assessment to finance the construction, repair, extension, or improvement of a sewage works. The assessment must be imposed and collected as provided by the street and sewer improvement statutes.

As added by P.L.169-2006, SEC.82.

IC 36-9-39.1-8

Contracts for sewage works

Sec. 8. (a) A contract for the construction, repair, extension, or improvement of a sewage works is subject to the statutes authorizing municipalities to make and finance public improvements.

(b) Upon awarding a contract for the construction, repair, extension, or improvement of a sewage works under this chapter, a board shall:

- (1) carefully compute the entire cost of the construction, repair, extension, or improvement, including payments to the contractor and all incidental costs, expenses, and damages paid and incurred according to law; and
- (2) prepare and make out an assessment roll listing the assessments against the properties benefited.

In determining and fixing the amount of assessments, the giving of notice of assessments, the holding of public hearings, and the making of final determinations, subject to the right of appeal from those determinations, the board is governed by the street and sewer improvement statutes.

(c) An assessment under this chapter is a lien against the benefited property from the time of the letting of the contract and shall be collected in the manner provided for collection of Barrett Law assessments.

(d) The board shall fix a period of not more than twenty (20) years

within which the assessments shall be paid.

(e) A property owner liable for an assessment may execute a waiver in the manner provided by the street and sewer improvement statutes to pay the assessment in annual installments over a period fixed by the board.

(f) All payments under this chapter are deposited into the fund.
As added by P.L.169-2006, SEC.82.

IC 36-9-40

Chapter 40. County Funding of Sewage Disposal Systems

IC 36-9-40-1

Application of chapter

Sec. 1. This chapter applies to counties.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-2

Definitions

Sec. 2. For purposes of this chapter:

- (1) "Sewage disposal system" has the meaning set forth in IC 13-11-2-201.
- (2) "System" refers to a sewage disposal system.
- (3) "Works board" refers to the works board of a county.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-3

Installation

Sec. 3. A county may install private sewage disposal systems under this chapter.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-4

Construction of system on private land

Sec. 4. A works board may construct a private system on land owned by a private entity if:

- (1) the owner of the land has applied to the works board for construction of a system that the works board determines is appropriate for the sewage disposal needs of the location for which the application is made;
- (2) the owner of the land has supplied in the application to the works board sufficient information to prepare a preliminary resolution to approve construction of the system;
- (3) the works board has adopted a preliminary resolution approving construction of the system; and
- (4) with respect to the system, the works board has, at the time the preliminary resolution is adopted, adopted and placed on file:
 - (A) cross-sections;
 - (B) general plans;
 - (C) specifications; and
 - (D) an estimate of the cost.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-5

Estimate of cost of system

Sec. 5. (a) The estimate of cost of the system required under section 4(4)(D) of this chapter may include all incidental, inspection, and engineering costs caused by the proposed construction. However,

the estimate of the costs to be paid by special assessment may not include the following:

(1) Salaries and expenses of the necessary and regularly employed personnel of the engineering department of the county.

(2) Ordinary operating costs of the works board.

(b) If the works board determines that it is necessary to employ additional engineering services for construction of a particular system, the works board may include in the estimate of cost of the system required under section 4(4)(D) of this chapter the cost of the additional service actually performed in connection with the system.
As added by P.L.7-2002, SEC.1.

IC 36-9-40-6

Incidental, inspection, and engineering costs as part of cost of construction

Sec. 6. (a) The works board may add to the cost of construction of a system under this chapter and may include in the assessment against the property on which the system is constructed the incidental, inspection, and engineering costs that are authorized by the preliminary resolution and included in the estimate.

(b) The amount of incidental, inspection, and engineering costs included in the assessment may not exceed the amount of the incidental, inspection, and engineering costs included in the estimate.
As added by P.L.7-2002, SEC.1.

IC 36-9-40-7

Notice of hearing

Sec. 7. (a) Notice of a hearing on the preliminary resolution approving construction of the system shall be published in accordance with IC 5-3-1. The notice must state:

(1) that the works board has adopted the preliminary resolution; and

(2) the time and place at which the works board will do the following:

(A) Hear all interested persons.

(B) Decide whether the benefits to the property liable to be assessed for construction of the system will equal the estimated cost of construction of the system.

(b) The works board shall send a notice containing the information required under subsection (a) to the property owner that applied for construction of the system.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-8

Filing of cost estimate by county engineer; limitation on entry into contract

Sec. 8. (a) At least ten (10) days before the date fixed for a hearing under section 7 of this chapter, the engineer of the county shall file with the works board an estimate of the maximum cost of

construction of the system proposed by the works board.

(b) A county may not enter into a contract under the preliminary resolution if the contract exceeds the engineer's estimate filed under subsection (a).

As added by P.L.7-2002, SEC.1.

IC 36-9-40-9

Works board conduct of hearing; limitation on further action

Sec. 9. (a) At the hearing specified in the notice under section 7 of this chapter, the works board shall do the following:

- (1) Hear interested persons.
- (2) Decide whether the benefits that will accrue to the property liable to be assessed for construction of the system will equal the maximum estimated cost of construction of the system.
- (3) Determine the assessment against the property on which the system is constructed in an amount that does not exceed the engineer's estimate under section 8 of this chapter.

(b) If the works board finds that the benefits will not equal the maximum estimated cost of construction of the system, the board shall take no further action.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-10

Special assessment levy; limitation on amount

Sec. 10. (a) The works board shall levy special assessments for the amount determined under section 9 of this chapter if:

- (1) the contract for construction of the system is executed; and
- (2) the system is constructed.

(b) The special assessments levied under this section may not exceed the cost of construction of the system.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-11

Works board action on preliminary resolution; effect of modified or confirmed resolution

Sec. 11. (a) After the works board determines the amount of special benefits that will accrue to the property liable to be assessed for construction of the system, the works board may do any of the following:

- (1) Confirm the preliminary resolution.
- (2) Modify the preliminary resolution.
- (3) Rescind the preliminary resolution.

(b) The preliminary resolution is final and conclusive on all parties if:

- (1) the preliminary resolution is modified or confirmed under this section; and
- (2) construction of the system is ordered.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-12

Works board advertisement for bids and performance of work

Sec. 12. If the works board finally orders construction of a system, the works board shall advertise for bids and perform the work under IC 36-1-12.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-13

Construction contract for entire system; challenge to contract

Sec. 13. (a) The contract for construction of a system must be for construction of the entire system.

(b) After the execution of a contract for construction of a system, the validity of the contract may be questioned only in an action to enjoin the performance of the contract. This action must be brought before the actual commencement of work under the contract.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-14

Contractor guarantee of workmanship and materials

Sec. 14. (a) A contractor for construction of a system must guarantee the contractor's workmanship and all materials used in the work.

(b) The guarantee required under subsection (a) must be in the following form:

"The contractor warrants the contractor's workmanship and all materials used in the work and agrees that during the guarantee period specified, the contractor will, at the contractor's own expense, make all repairs that may become necessary by reason of improper workmanship or defective materials. The maintenance obligation, however, does not include repair of any damage resulting from any force or circumstance beyond the control of the contractor, nor is the contractor a guarantor of the plans and specifications furnished by the county."

As added by P.L.7-2002, SEC.1.

IC 36-9-40-15

County and contractor responsibilities for system repairs

Sec. 15. (a) If repairs to a system become necessary, the county must give written notice to the contractor to make the repairs. If the contractor fails to begin the repairs not later than thirty (30) days after the notice is received, the county may do the following:

- (1) Make the repairs using the county's own employees or an independent contractor.
- (2) Recover from the contractor and the contractor's sureties the reasonable cost of the repairs and the cost of the supervision and inspection of the repairs.

(b) At the expiration of the guarantee period, the county has sixty (60) days in which to notify the contractor of any necessary repairs.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-16

Acceptance of system by works board

Sec. 16. A system that is completed according to contract must be accepted by the works board.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-17

Assessment of property on which system is constructed; effect of mistake in name of owner

Sec. 17. (a) As soon as a contract for construction of a system has been completed, the works board shall have an assessment prepared for the property on which the system is constructed. The property on which the system is constructed is liable for assessment under this chapter.

(b) The assessment must include the following:

- (1) The name of the owner of the property on which the system is constructed.
- (2) A description of the property, or the key number or parcel number of the property.
- (3) The total assessment, if any, against the property.

(c) A mistake in the name of the owner or the description of property does not void the assessment or lien against the property.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-18

Presumptions with respect to assessment; assessment notice to property owner

Sec. 18. (a) The following apply to the assessment indicated against each lot, tract, or parcel of land:

- (1) The assessment is presumed to be the special benefit to the lot, parcel, or tract of land.
- (2) The assessment is the final and conclusive assessment unless the assessment:
 - (A) exceeds the engineer's estimate under section 8 of this chapter; and
 - (B) is challenged under section 19 of this chapter.

(b) Immediately after the assessment roll is completed and filed, the works board shall notify in writing the owner of the property on which the system is constructed:

- (1) of the assessment amount;
- (2) that the basis of the assessment amount is on file and may be inspected at the works board's office; and
- (3) of the time and date before which an objection must be filed with the works board.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-19

Works board hearing and decision on objection to assessment

Sec. 19. (a) If an objection is filed before the time prescribed in section 18 of this chapter, the works board shall set a hearing.

(b) After the hearing, the works board shall sustain or modify the

assessment by confirming, increasing, or reducing the presumptive assessment. The works board's decision must be based on the works board's findings concerning the special benefits that the property has received or will receive on account of construction of the system.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-20

Delivery of assessment to county assessor

Sec. 20. When the assessment is completed, the works board shall deliver the assessment to the county assessor.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-21

Delivery of completed assessment to county auditor; assessment to show amount due

Sec. 21. (a) The works board shall deliver a certified copy of the completed assessment to the county auditor after the works board:

- (1) approves and accepts the entire work under any contract; and
- (2) allows a final estimate.

(b) The duplicate assessment, to be known as the primary assessment, must show the amount due if paid in cash within the time limit.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-22

County auditor notice of assessment to affected person; installment payments

Sec. 22. (a) Upon receipt of the primary assessment, the county auditor shall by mail notify the affected person of the amount of the assessment against the person's property.

(b) The notice must state the following:

- (1) That the amount is due not later than thirty (30) days after the approval of the assessment by the works board.
- (2) That a person who desires to pay the person's assessment by installments must enter into a written agreement under subsection (c) before the due date.

(c) A person who desires to pay the person's assessment in twenty (20) equal semiannual installments must before the due date enter into a written agreement stating that in consideration of that privilege the person:

- (1) will not make an objection to an illegality or irregularity regarding the assessment against the person's property; and
- (2) will pay the assessment as required by law with specified interest.

(d) The agreement under subsection (c) shall be filed in the office of the county auditor. If a property owner elects to pay the property owner's assessments in installments, the assessment shall be entered for collection on the duplicate, shall have the same priority and rights, and shall be collected in the same manner as other taxes.

(e) The interest rate for the installments of the assessment is the

interest rate established in IC 6-1.1-37-9.

(f) An assessment of less than one hundred dollars (\$100) may not be paid in installments.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-23

Assessment due date; interest on delinquent assessment

Sec. 23. (a) The entire assessment is payable in cash without interest not later than thirty (30) days after the approval of the assessment by the works board if an agreement has not been signed and filed under section 22 of this chapter.

(b) If the assessment is not paid when due, the total assessment becomes delinquent and bears interest at the rate prescribed by IC 6-1.1-37-9 per year from the date of the final acceptance of the completed system by the works board.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-24

County auditor receipt and accounting for assessment payments; use of proceeds; special fund

Sec. 24. (a) The county auditor shall do the following:

(1) Receive the payment of assessment installments.

(2) Keep all accounts and give proper vouchers for the payment of assessment installments.

(b) Proceeds arising from assessments for the payment of a particular system may not be diverted to the payment of any other system.

(c) The proceeds from assessments for the payment of a particular system constitute a separate special fund.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-25

Assessment installment payments due upon delinquency; collection of delinquent installments

Sec. 25. Failure to pay an installment of principal or interest when the installment is due makes all installments of principal yet unpaid due and payable immediately, unless the unpaid installment of principal or interest is paid within the grace period provided. The county shall proceed to collect delinquent installments as delinquent taxes are collected.

As added by P.L.7-2002, SEC.1.

IC 36-9-40-26

Supplementary proceedings to correct defect or irregularity in contract

Sec. 26. If a defect or an irregularity results in the invalidity of a contract, an assessment, or a lien under this chapter, the defect or irregularity shall be corrected by supplementary proceedings that substantially comply with this chapter.

As added by P.L.7-2002, SEC.1.

IC 36-9-41

Chapter 41. Financing of Public Work Projects by Political Subdivisions

IC 36-9-41-1

Application

Sec. 1. This chapter applies to the following:

- (1) A public work project that will cost the political subdivision not more than two million dollars (\$2,000,000).
- (2) An eligible efficiency project that will cost not more than three million dollars (\$3,000,000).

As added by P.L.81-2004, SEC.47. Amended by P.L.88-2009, SEC.16.

IC 36-9-41-1.5

"Eligible efficiency project"

Sec. 1.5. As used in this chapter, "eligible efficiency project" means:

- (1) a project necessary or useful to carrying out an interlocal cooperation agreement entered into by two (2) or more political subdivisions or governmental entities under IC 36-1-7; or
- (2) a project necessary or useful to the consolidation of local government services.

As added by P.L.88-2009, SEC.17.

IC 36-9-41-2

"Public work"

Sec. 2. As used in this chapter, "public work" means a project for the construction of any public building, highway, street, alley, bridge, sewer, drain, or any other public facility that is paid for out of public funds.

As added by P.L.81-2004, SEC.47.

IC 36-9-41-3

Borrowing by political subdivision to finance public work project or eligible efficiency project; notice; constitutional debt limitation

Sec. 3. Notwithstanding any other statute, a political subdivision may borrow the money necessary to finance:

- (1) a public work project; or
- (2) an eligible efficiency project;

from a financial institution in Indiana by executing a negotiable note under section 4 of this chapter. The political subdivision shall provide notice of its determination to issue the note under IC 5-3-1. Money borrowed under this chapter is chargeable against the political subdivision's constitutional debt limitation.

As added by P.L.81-2004, SEC.47. Amended by P.L.88-2009, SEC.18.

IC 36-9-41-4

Terms of the note

Sec. 4. A political subdivision borrowing money under section 3 of this chapter shall execute and deliver to the financial institution the negotiable note of the political subdivision for the sum borrowed. The note must bear interest, with both principal and interest payable in equal or approximately equal installments on January 1 and July 1 each year over a period not exceeding ten (10) years.

As added by P.L.81-2004, SEC.47. Amended by P.L.182-2009(ss), SEC.453.

IC 36-9-41-5

Payments

Sec. 5. (a) The first installment of principal and interest on a note executed under this chapter is due on the next January 1 or July 1 following the first tax collection for which it is possible for the political subdivision to levy a tax under subsection (b).

(b) The political subdivision shall appropriate an amount for and levy a tax each year sufficient to pay the political subdivision's obligation under the note according to its terms.

(c) An obligation of a political subdivision under a note executed under this chapter is a valid and binding obligation of the political subdivision, notwithstanding any tax limitation, debt limitation, bonding limitation, borrowing limitation, or other statute to the contrary.

As added by P.L.81-2004, SEC.47.

IC 36-9-41-6

Taxpayer objections

Sec. 6. If a political subdivision gives notice under section 3 of this chapter of its determination that money should be borrowed under this chapter, not less than ten (10) taxpayers in the political subdivision who disagree with the determination may file a petition in the office of the county auditor not more than thirty (30) days after notice of the determination is given. The petition must state the taxpayers' objections and the reasons why the taxpayers believe the borrowing to be unnecessary or unwise.

As added by P.L.81-2004, SEC.47.

IC 36-9-41-7

Department of local government finance proceedings

Sec. 7. (a) Upon receiving a petition under section 6 of this chapter, the county auditor shall immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and other data, the department of local government finance shall fix a time and place for a hearing on the matter.

(b) The hearing shall be held not less than five (5) and not more than thirty (30) days after the department's receipt of the certified petition, and shall be held in the county where the petition arose.

(c) The department of local government finance shall give notice

of the hearing by letter to the political subdivision and to the first ten (10) taxpayer petitioners listed on the petition. A copy of the letter shall be sent to each of the first ten (10) taxpayer petitioners at the taxpayer's usual place of residence at least five (5) days before the date of the hearing. In addition, public notice shall be published at least five (5) days before the date of the hearing under IC 5-3-1.

(d) After the hearing under subsection (c), the department of local government shall issue a final determination concerning the petition.
As added by P.L.81-2004, SEC.47.

IC 36-9-41-8

Judicial review

Sec. 8. A:

- (1) taxpayer who signed a petition filed under section 6 of this chapter; or
- (2) political subdivision against which a petition is filed under section 6 of this chapter;

may petition the tax court established by IC 33-3-5-1 for judicial review of the final determination of the department of local government finance on the taxpayers' petition. The petition for judicial review must be filed in the tax court not more than forty-five (45) days after the date of the department's final determination.

As added by P.L.81-2004, SEC.47.

IC 36-9-42

Chapter 42. Utility Relocations

IC 36-9-42-1

"Cost of relocation"

Sec. 1. As used in this chapter, "cost of relocation" has the meaning set forth in IC 8-1-9-2(b).

As added by P.L. 79-2013, SEC. 1.

IC 36-9-42-2

"Facility"

Sec. 2. As used in this chapter, "facility" has the meaning set forth in IC 8-1-26-7.

As added by P.L. 79-2013, SEC. 1.

IC 36-9-42-3

"Improvement project"

Sec. 3. As used in this chapter, "improvement project" means a project undertaken by a unit that involves:

- (1) a highway, street, or road that is under the jurisdiction of the unit; and
- (2) the relocation of a facility.

As added by P.L. 79-2013, SEC. 1.

IC 36-9-42-4

"Major project"

Sec. 4. As used in this chapter, "major project" means an improvement project designated by a unit as a major project under section 6 of this chapter.

As added by P.L. 79-2013, SEC. 1.

IC 36-9-42-5

"Utility"

Sec. 5. As used in this chapter, "utility" means the owner of a facility.

As added by P.L. 79-2013, SEC. 1.

IC 36-9-42-6

Designation of major project; identification of facilities; notice to utilities

Sec. 6. (a) A unit may designate an improvement project as a major project. The unit shall consider the scope, complexity, and duration of the project in making the designation.

(b) Before undertaking a major project, a unit shall make a reasonable effort to do the following:

- (1) Identify each facility located in a public right of way within the geographical limits of the major project by:
 - (A) investigating field conditions; and
 - (B) reviewing base map data that is:
 - (i) maintained and updated by the association (as defined

- in IC 8-1-26-3) under IC 8-1-26-17(c); and
 - (ii) made available by the association to the unit.
- (2) Notify each utility that owns a facility identified under subdivision (1) of the major project and the need, if any, to relocate the facility.

As added by P.L.79-2013, SEC.1.

IC 36-9-42-7

Facility relocation agreement

Sec. 7. A unit may enter into an agreement with a utility described in section 6(b)(2) of this chapter concerning the relocation of the facility. The agreement must include the following:

- (1) A date certain by which the utility agrees to relocate the facility.
- (2) Conditions under which the utility is excused from relocating the facility by the date described in subdivision (1), including the following:
 - (A) The facility relocation was affected by:
 - (i) significantly differing site conditions;
 - (ii) unexpected impacts of other utilities; or
 - (iii) a force majeure event.
 - (B) Severe weather, delays in acquiring a relocation area, or other factors beyond the control of the utility.
- (3) Conditions under which the unit must notify the utility of cancellations, delays, or changes related to the major project.

As added by P.L.79-2013, SEC.1.

IC 36-9-42-8

Payment of relocation costs by unit

Sec. 8. If, as part of an improvement project, a unit is responsible for relocation costs, the unit shall pay the relocation costs in arrears in accordance with accounting procedures established by the state board of accounts.

As added by P.L.79-2013, SEC.1.

IC 36-9-42-9

Use of public right of way

Sec. 9. This chapter does not limit or alter the authority of the Indiana utility regulatory commission under IC 8-1-2-101 to review a unit's determination, or the rights and duties of affected parties, with respect to use of a public right of way as set forth in IC 8-1-2-101.

As added by P.L.79-2013, SEC.1.

IC 36-9-42.2

Chapter 42.2. Federal Fund Exchange Program

IC 36-9-42.2-1

"Department"

Sec. 1. As used in this chapter, "department" refers to the Indiana department of transportation established by IC 8-23-2-1.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-2

"Eligible entity"

Sec. 2. As used in this chapter, "eligible entity" means a county or municipality that receives, directly or indirectly, federal funds.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-3

"Federal funds"

Sec. 3. As used in this chapter, "federal funds" means funds received by an eligible entity through the federal surface transportation program.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-4

"Program"

Sec. 4. As used in this chapter, "program" refers to the federal fund exchange program established by section 5 of this chapter.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-5

Program established

Sec. 5. The federal fund exchange program is established to provide eligible entities and the department with greater flexibility in funding transportation projects. The department shall administer the program.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-6

Available state funds

Sec. 6. The department shall determine the amount of state funds available for the program. In making the determination, the department shall consider the following:

(1) Whether adequate state funds are available to fund the program without putting at risk other transportation activities or projects needing state funds.

(2) Whether the department can readily and effectively use federal funds received through the program.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-7

Eligibility; exchange agreement

Sec. 7. An eligible entity is eligible to participate in the program upon entering into an exchange agreement with the department. The department shall consider the following before entering into an exchange agreement with an eligible entity:

- (1) The amount of federal funds the eligible entity wants to exchange and the proposed exchange rate.
- (2) A brief description of each project the eligible entity wants to fund, including the estimated cost of the project.
- (3) The benefit to a project described in subdivision (2) from the removal of federal funding, due to the project's size, type, location, or other features.
- (4) The availability of state funds.

Subject to section 7.5 of this chapter, an eligible entity may enter into an exchange agreement with respect to a project at any time during the project development process.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-7.5

Exchange agreement; approval

Sec. 7.5. (a) The department may enter into an exchange agreement only if the exchange agreement is first approved by the office of management and budget and the attorney general.

(b) The executive of an eligible entity may enter into an exchange agreement on behalf of the eligible entity. However, the executive of an eligible entity may enter into an exchange agreement only if the exchange agreement is first approved by the fiscal body of the eligible entity.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-8

Exchange agreement; contents

Sec. 8. An exchange agreement must provide the following:

- (1) The eligible entity may exchange only federal funds for state funds.
- (2) The eligible entity may use state funds only for a capital project that will fulfill the purpose of the original federal project award and that is approved by the department.
- (3) If the eligible entity uses state funds to replace local funds in order to use the local funds for purposes unrelated to transportation, the eligible entity:
 - (A) must repay the state funds to the department; and
 - (B) may not participate in the program during the succeeding fiscal year.
- (4) An exchange rate of not less than seventy-five cents (\$0.75) of state funds for each one dollar (\$1) of federal funds.
- (5) The eligible entity agrees to provide local matching funds equal to not less than ten percent (10%) of the estimated project cost.
- (6) The department will disburse the state funds to the eligible entity on a reimbursement basis.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-9

Report to general assembly

Sec. 9. Not later than November 1 of each year, the department shall submit a report on the program to the general assembly in an electronic format under IC 5-14-6. A report submitted under this section must include:

- (1) a summary of the exchange agreements entered into during the previous state fiscal year; and
- (2) a status report on the implementation of projects funded through the program.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-10

Compliance with applicable laws

Sec. 10. An eligible entity that participates in the program shall comply with applicable public purchasing laws and competitive bidding requirements with respect to projects funded through the program.

As added by P.L.141-2013, SEC.1.

IC 36-9-42.2-11

Adoption of rules

Sec. 11. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.141-2013, SEC.1.