

## **IC 8-1.5-5**

### **Chapter 5. Department of Storm Water Management**

#### **IC 8-1.5-5-1**

##### **Application of chapter**

Sec. 1. This chapter applies to each:

- (1) municipality; and
- (2) county that:
  - (A) does not have a consolidated city; and
  - (B) receives notification from the department of environmental management that the county will be subject to storm water regulation under 327 IAC 15-13;

that adopts the provisions of this chapter by ordinance.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.2.*

#### **IC 8-1.5-5-1.5**

##### **Definitions**

Sec. 1.5. The definitions in IC 36-1-2 apply throughout this chapter.

*As added by P.L.282-2003, SEC.3.*

#### **IC 8-1.5-5-2**

##### **"Board" defined**

Sec. 2. As used in this chapter, "board" means the following:

- (1) For a consolidated city, the board of public works established by IC 36-3-5-6.
- (2) For all other municipalities, the:
  - (A) board of directors described in section 4 of this chapter; or
  - (B) board that controls the third class city's municipally owned utilities under IC 8-1.5-3-3(a) if the city has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities.
- (3) For a county:
  - (A) the county executive; and
  - (B) the county surveyor.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.3; P.L.98-1993, SEC.1; P.L.282-2003, SEC.4.*

#### **IC 8-1.5-5-3**

##### **"Department" defined**

Sec. 3. As used in this chapter, "department" means the following:

- (1) For a consolidated city, the department of public works.
- (2) For all other municipalities, the department of storm water management established under section 4 of this chapter.
- (3) For a county, the department of storm water management

established under section 4.5 of this chapter.  
*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.4;  
P.L.98-1993, SEC.2; P.L.282-2003, SEC.5.*

#### **IC 8-1.5-5-3.5**

##### **"District" defined**

Sec. 3.5. As used in this chapter, "district" means the special taxing district established by section 5 of this chapter.  
*As added by P.L.93-1993, SEC.5 and P.L.98-1993, SEC.3.*

#### **IC 8-1.5-5-4**

##### **Board of storm water management; directors**

Sec. 4. (a) This section applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) Except as provided in subsections (f) and (g), the board consists of three (3) directors. The executive of the municipality shall appoint the directors, not more than two (2) of whom may be of the same political party.

(d) Except as provided in subsections (f) and (g), the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

(g) If a third class city:

(1) has a board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a); and

(2) has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities;

the members of the board that controls the city's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any

transition procedure specified in the ordinance under IC 8-1.5-3-3(b).

(h) A member of the board of directors of the department of storm water management who:

- (1) is appointed under subsection (f); or
- (2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the third class city's municipally owned utilities;

is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.6; P.L.98-1993, SEC.4; P.L.5-1998, SEC.1; P.L.282-2003, SEC.6.*

#### **IC 8-1.5-5-4.5**

##### **County department of storm water management; board of directors; compensation**

Sec. 4.5. (a) This section applies to a county.

(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) An ordinance adopted under this section shall provide for the appointment of:

- (1) the members of the county executive; and
- (2) the county surveyor;

as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive is coextensive with the member's term of office on the county executive. The term of the surveyor or the surveyor's designee as a member of the board is coextensive with the surveyor's term of office.

(d) A member of the board of directors is not entitled to a salary or per diem for serving as a member of the board of directors. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

*As added by P.L.282-2003, SEC.7.*

#### **IC 8-1.5-5-5**

##### **Special taxing district**

Sec. 5. (a) The ordinance adopting the provisions of this chapter creates a special taxing district that includes the following:

- (1) For a consolidated city, all of the territory of the county containing the consolidated city.
- (2) For all other municipalities, all territory within the corporate boundaries of the municipality.
- (3) For a county, all the territory in the county that is not located in a municipality.

(b) All the territory within the district constitutes a special taxing

district for the purpose of providing for the collection and disposal of storm water of the district in a manner that protects the public health and welfare and for the purpose of levying special benefit taxes for purposes of storm water collection and disposal. All territory in the district and all territory added to the district is considered to have received a special benefit from the storm water collection and disposal facilities of the district equal to or greater than the special taxes imposed on the territory under this chapter in order to pay all or part of the costs of such facilities.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.7; P.L.98-1993, SEC.5; P.L.282-2003, SEC.8.*

#### **IC 8-1.5-5-6**

##### **Powers of board**

Sec. 6. The board has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition, the board may:

- (1) hold hearings following public notice;
- (2) make findings and determinations;
- (3) install, maintain, and operate a storm water collection and disposal system;
- (4) make all necessary or desirable improvements of the grounds and premises under its control; and
- (5) issue and sell bonds of the district in the name of the unit served by the department for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the board.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.9.*

#### **IC 8-1.5-5-7**

##### **Financing of facilities; user fees**

Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

- (1) proceeds of special taxing district bonds of the storm water district;
- (2) the assumption of liability incurred to construct the storm water system being acquired;
- (3) service rates;
- (4) revenue bonds; or
- (5) any other available funds.

(b) Except as provided in IC 36-9-23-37, the board, after holding a public hearing with notice given under IC 5-3-1 and obtaining the approval of the fiscal body of the unit served by the department, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. The amount of the user fees must be the minimum amount

necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(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) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

- (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 storm water district.
- (7) Any other factors the board considers necessary.

(e) 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 furnishing services to various classes of users or to 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.125-1987, SEC.1. Amended by P.L.176-2002, SEC.6; P.L.282-2003, SEC.10; P.L.114-2008, SEC.3.*

#### **IC 8-1.5-5-8**

##### **Fixing and setting aside revenues**

Sec. 8. The board may fix and set aside:

- (1) revenues of the department necessary for reasonable and proper operation and maintenance;
- (2) revenues for a proper and adequate depreciation account; and
- (3) revenues to be applied to the payment of the principal and interest of the authorized bonds.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-9**

##### **Maintenance account; surplus**

Sec. 9. (a) In fixing the revenues of the department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the department.

(b) If a surplus is accumulated in the operating and maintenance account, the board may transfer any excess over that surplus to:

- (1) the depreciation account, to be used for any improvements, extensions, or additions to the storm water system; or
- (2) the bond and interest redemption account.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-10**

##### **Bond and interest redemption account; surplus**

Sec. 10. (a) The revenues set aside for the payment of the principal and interest of the authorized bonds shall be deposited and credited to a special account identified as "the bond and interest redemption account".

(b) In determining the amount that is to be set aside for the payment of the principal and interest of the authorized bonds, the board may provide that the amount to be set aside and paid into the bond and interest redemption account for any year or years should not exceed a fixed sum, which must be at least sufficient to provide for the payment of the interest and principal of the bonds maturing and becoming payable in each year.

(c) If a surplus is created in the bond and interest redemption account, the board may transfer any excess over the surplus to:

- (1) the operation and maintenance account; or
- (2) the depreciation account.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-11**

##### **Depreciation account; use of revenues**

Sec. 11. The revenues set aside to the depreciation account shall be expended for:

- (1) the repair of the storm water system;
- (2) new acquisition, construction, extensions, or additions to the property of the storm water system; or
- (3) transfer to the bond and interest redemption account to prevent a default.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-12**

##### **Assumption and payment of liability upon acquisition of storm water system**

Sec. 12. (a) If the board acquires a storm water system and assumes the liability incurred by the seller to construct the storm water system, the principal and interest on the liability so assumed shall be paid from the bond and interest redemption account in the same manner as bonds of the district would be paid, and the board shall set aside sufficient revenues to comply with the requirements of the instrument creating the liability.

(b) A unit acquiring a storm water system may not assume any

liability for the payment of a secured debt or charge other than the obligation to apply the revenues in the manner prescribed in the ordinance.

(c) The board may issue bonds in exchange for, or satisfaction of, the liability assumed in the acquisition of a storm water system. The bonds so issued may not be issued at less than ninety-seven percent (97%) of the par value thereof in exchange for, or satisfaction of, the liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.11.*

### **IC 8-1.5-5-13**

#### **District bonds; nature**

Sec. 13. (a) The bonds of the district are:

- (1) a valid claim of the holders only against the bond and interest redemption account and the revenues of the storm water system; and
- (2) exempt from taxation in Indiana as provided by IC 6-8-5.

(b) The bonds may be issued either as registered bonds or as coupon bonds payable to the bearer.

(c) Except as provided in this chapter or IC 5-1-5, bonds shall be sold in accordance with IC 5-1-11. The registration of bonds does not affect negotiability.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-14**

#### **Bond issue**

Sec. 14. A board acquiring a storm water system and paying for it and for extensions and betterments authorized at the time of acquisition may provide for the combined cost in one (1) issue of bonds. The board shall issue and secure the bonds in the manner provided in this chapter to provide funds for the original construction of a storm water system.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-15**

#### **Use of bond proceeds; actions to compel performance; actions upon default**

Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel

performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

- (1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.
  - (2) Segregating the income and revenues of the department.
  - (3) Applying the respective funds created under this chapter.
- (c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:
- (1) appoint an administrator or receiver to administer the storm water system on behalf of the unit served by the department and the bondholders, with power to:
    - (A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and
    - (B) apply the income and revenues in conformity with this chapter and the ordinance; or
  - (2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the unit served by the department and its citizens.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.12.*

#### **IC 8-1.5-5-16**

##### **Charge for services in a municipality; deposit of funds**

- Sec. 16. (a) This section applies to a municipality.
- (b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:
- (1) charged against the municipality; and
  - (2) paid for as the service accrues out of:
    - (A) the current revenues of the municipality, collected or in process of collection; or
    - (B) the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.13.*

#### **IC 8-1.5-5-16.5**



### **Charge for services in a county; deposit of funds**

Sec. 16.5. (a) This section applies to a county.

(b) The reasonable cost and value of any service rendered to the county by the storm water system by furnishing storm water collection and disposal shall be:

- (1) charged against all the territory in the county, except territory within a municipality; and
- (2) paid for as the service accrues out of:
  - (A) the current revenues of the county, collected or in process of collection; or
  - (B) the tax levy of the county made by the county to raise money to meet the county's necessary current expenses.

(c) The compensation for the service provided to the county shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

*As added by P.L.282-2003, SEC.14.*

### **IC 8-1.5-5-17**

#### **Proposed projects; resolution; notice to property owners; preadoption contracts for purchase**

Sec. 17. (a) If, upon investigation, the board finds that:

- (1) the storm water system is insufficient to furnish the necessary collection and disposal of storm water to properly protect the public health and welfare and safeguard the property within the district; or
- (2) it is necessary to acquire, construct, rebuild, repair, extend, and improve the storm water system and equipment, to acquire lands, or to construct, erect, or acquire other systems and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the rights are to be acquired, whether by purchase or appropriation, along with a description of any other property that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution approving the project by:

- (1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the storm water district and the safeguarding of the property within the district;
- (2) declaring that it is of public utility and benefit;
- (3) appropriating the property described in the resolution;
- (4) stating the maximum proposed cost of any land to be purchased; and
- (5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption of the resolution and of the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine the public utility and benefit of the project. Notice shall be mailed to the owners of all property appropriated by the resolution. If a landowner is a nonresident and the landowner's place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then the owner is considered notified of the pendency of the proceedings by the publication of notice.

(d) Separate descriptions of each piece or parcel of land are not required in the resolution and notice, but it is a sufficient description of the property purchased or to be purchased, or to be appropriated or damaged, to give a description of the entire tract, whether it is one (1) or more lots or parcels and whether it is owned by one (1) or more persons.

(e) All persons affected by the proceedings, including all taxpayers in the storm water district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the property an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land appraisers. An option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-18 Remonstrances**

Sec. 18. (a) At the time fixed for the hearing or before the hearing, the following persons may file a written remonstrance with the board:

- (1) The owner of real property, rights-of-way, or other property to be appropriated under the resolution.
- (2) A person injuriously affected by the appropriation.
- (3) A person owning real or personal property within the storm water district.

(b) The board shall:

- (1) hear all persons interested in the proceedings;
- (2) hear all the remonstrances that have been filed; and
- (3) take action to confirm, modify, or reject the resolution.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-19**

## **Appeal**

Sec. 19. (a) A person who has remonstrated in writing and is aggrieved by the decision of the board may, within thirty (30) days, take an appeal to the circuit or superior court of the county in which the storm water district is located.

(b) A remonstrator desiring to appeal the action of the board shall, within thirty (30) days after the final action of the board, file in the office of the clerk of the circuit or superior court a copy of the order of the board and the remonstrance, together with a bond conditioned to pay the costs of the appeal, should the appeal be determined against the remonstrator.

(c) The court may hear the appeal only if the question is whether the board acted arbitrarily or capriciously in adopting the resolution.

(d) The cause shall be tried by the court without a jury.

(e) All remonstrances upon which appeals are taken may be consolidated and heard as one (1) claim for relief by the court.

*As added by P.L.125-1987, SEC.1.*

## **IC 8-1.5-5-20**

### **Property held in name of unit served by the department**

Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the unit served by the department.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.15.*

## **IC 8-1.5-5-21**

### **Bonds for proposed work projects**

Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the unit served by the department, special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:

(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and

(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the fiscal officer, who shall then prepare the bonds. The executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district,

payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the unit but are an indebtedness of the storm water district. The bonds and interest are payable:

- (1) out of a special benefit tax levied upon all of the property of the storm water district; or
- (2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

*As added by P.L.125-1987, SEC.1. Amended by P.L.6-1997, SEC.132; P.L.282-2003, SEC.16.*

#### **IC 8-1.5-5-22**

##### **Special benefit tax**

Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

- (1) after approval by the fiscal body of the unit served by the department, shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and
- (2) shall certify the tax levied each year to the fiscal officer of the unit served by the department at the same time and in the same manner as other levies of the unit are certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

- (1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and
- (2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.17.*

#### **IC 8-1.5-5-23**

##### **Approval of bond issuance by unit served by the department; applicability of IC 6-1.1-20**

Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the fiscal body of the unit served by the department.

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

*As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.18.*

#### **IC 8-1.5-5-24**

##### **Combined sanitary sewer and storm water system projects**

Sec. 24. (a) Whenever work on a storm water system (that is combined with a sanitary sewer system) necessitates the repair or replacement of all or part of a sanitary sewer system, the entity that owns or maintains the sanitary sewer system shall assume a proportionate share of the cost of repairing or replacing the sanitary sewer system.

(b) The board and the entity that owns or manages the sanitary sewer system shall negotiate the division of the costs described in subsection (a).

(c) If the parties cannot agree to a division of the costs, they shall petition the circuit court, superior court, or probate court of the county where the majority of the systems are located to divide the costs. The circuit court, superior court, or probate court shall hold a hearing on the division of costs within sixty (60) days after receiving the petition. The court shall publish notice of the hearing in accordance with IC 5-3-1. The decision of the court is binding on both parties.

*As added by P.L.125-1987, SEC.1. Amended by P.L.84-2016, SEC.35.*

#### **IC 8-1.5-5-25**

##### **Use of bond payment revenues; pledge of user fees; reductions in fees**

Sec. 25. (a) Revenues received by the department may be used to pay for bonds issued to acquire, construct, install, operate, and maintain facilities and land for storm water collection and disposal systems.

(b) If there are bonds outstanding for which user fees were pledged, the board may not rescind user fees or reduce them below a rate that would produce one hundred twenty-five percent (125%) of the highest annual debt service on the bonds issued under this chapter to their final maturity, based on an average of the

immediately preceding three (3) years of user fee collections, if the user fees have been levied for the preceding three (3) years. If the user fees have not been levied for the preceding three (3) years, the board may not reduce user fees below a rate that would produce one hundred twenty-five percent (125%) of the highest debt service, based upon a study by a qualified public accountant or financial adviser.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-26**

##### **User fee pledges; effect of amendments or repeal of chapter**

Sec. 26. With respect to bonds for which a pledge has been made under section 25 of this chapter, the general assembly covenants with the holders of these bonds that:

- (1) this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the user fees under this chapter; and
- (2) this chapter will not be amended in a manner that will change the purpose for which revenues from the user fees imposed under this chapter may be used;

as long as those bonds are outstanding.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-27**

##### **Maintenance of private property by the department**

Sec. 27. If the department:

- (1) uses private property for storm water collection or disposal; and
- (2) obtains the consent of the owner of the private property to maintain the private property;

the department shall maintain the private property.

*As added by P.L.282-2003, SEC.19.*

#### **IC 8-1.5-5-28**

##### **Screening of storm water outfalls**

Sec. 28. A person may not be required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than twenty-four (24) inches.

*As added by P.L.282-2003, SEC.20.*

#### **IC 8-1.5-5-29**

##### **Liens for unpaid fees**

Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a city that before January 1, 2005, adopted an ordinance establishing procedures for the collection of unpaid user fees under this chapter through the enforcement of a lien.

(b) Fees assessed against real property under this chapter constitute a lien against the property assessed. The lien is superior to

all other liens except tax liens. Except as provided in subsections (c) and (d), the lien attaches when notice of the lien is filed in the county recorder's office under section 30 of this chapter.

(c) 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 property is conveyed before a lien is filed, the department 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.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner not later than twenty (20) days after the time the user 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 department, 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.

(e) The department 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 P.L.131-2005, SEC.1. Amended by P.L.196-2014, SEC.1.*

### **IC 8-1.5-5-30**

#### **Collection of unpaid fees; recording of liens; fees, charges, and penalties**

Sec. 30. (a) The board 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 department of its duty under section 29(d) of this chapter to notify the owner not later than twenty (20) days after the time user fees become sixty (60) days delinquent.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner 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.

(c) An officer of the board 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 mail by certified mail, or by another delivery service providing proof of delivery, 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. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), 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.

(e) The board 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.

(f) Upon receipt of the list under subsection (c), 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. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall



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.

(g) After certification of liens under subsection (d), the board 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.

(h) 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.

(i) 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 district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) 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 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

*As added by P.L.131-2005, SEC.2. Amended by P.L.196-2014, SEC.2.*

### **IC 8-1.5-5-31**

#### **Foreclosure of liens**

Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district 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 P.L.131-2005, SEC.3.*

### **IC 8-1.5-5-32**

#### **Withdrawal from district by excluded municipality; notice; outstanding bonds; payments to municipality**

Sec. 32. (a) This section applies to excluded cities and towns in a county containing a consolidated city.

(b) A municipality to which this section applies may withdraw from the district established by the consolidated city if the municipal

legislative body adopts an ordinance withdrawing the municipality from the district. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to the following:

(1) All owners of lots and parcels within the municipality that are subject to storm water user fees imposed in the district by the department of public works of the consolidated city.

(2) The department of public works of the consolidated city.

(c) An ordinance described in subsection (b) takes effect sixty (60) days after adoption by the municipal legislative body.

(d) In addition to the notice required by subsection (b), if a municipal legislative body adopts an ordinance under subsection (b), the municipal legislative body shall mail written notice of the withdrawal from the district to the department of public works of the consolidated city not more than thirty (30) days after the ordinance becomes effective.

(e) If on the date of a municipality's withdrawal from the district there are bonds outstanding that have been issued by the board of public works of the consolidated city, the municipality is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the municipality bears to the assessed valuation of all property included in the district on the date one (1) day before the date of withdrawal, as shown in the most recent assessment for taxation before the date of withdrawal.

(f) If a municipal legislative body adopts an ordinance under subsection (b), the municipality is entitled to receive the following:

(1) An annual lump sum payment equal to the total amount of property taxes paid and allocated to the district's flood debt service fund from all property taxpayers within the municipality, to the extent the property taxes are not necessary to pay the indebtedness owed by the municipality under subsection (e). A payment under this subdivision is required for property taxes assessed beginning on the January 1 preceding the effective date of the municipality's withdrawal from the district.

(2) The total amount of storm water user fees collected by the department of public works of the consolidated city from the lots and parcels in the municipality beginning on the January 1 preceding the effective date of the municipality's withdrawal from the district.

(g) Payments received under subsection (f):

(1) shall be deposited by the municipality in a dedicated fund; and

(2) may be used by the municipality only for purposes of storm water management in the municipality and may not be diverted, directly or indirectly, in any manner to any use other than the purposes of storm water management in the municipality.

*As added by P.L. 52-2006, SEC.1 and P.L. 175-2006, SEC.1. Amended*

*by P.L.154-2006, SEC.65.*