

## **IC 5-13-12**

### **Chapter 12. Board for Depositories**

#### **IC 5-13-12-1**

##### **Creation; purpose; public deposit insurance fund; tax exemption**

Sec. 1. (a) There is created an independent body politic and corporate, constituting an instrumentality of the state for the public purposes set out in this chapter, to be known as the board for depositories. The board is separate from the state in its corporate and sovereign capacity. The purpose of the board is to insure the safekeeping and prompt payment of all public funds deposited in any depository, to the extent they are not covered by insurance of any federal deposit insurance agency, by maintaining and operating in its own name the public deposit insurance fund under this chapter.

(b) Every depository that has public funds shall pay into the public deposit insurance fund the assessments provided in this chapter and comply with all lawful requirements of the board for depositories. The public deposit insurance fund shall be maintained by the assessments payable by the depositories and by the collection of all claims created under IC 5-13-13 and by the receipt of all interest and other earnings of the insurance fund from any source.

(c) All property in the public deposit insurance fund, the interest or income derived from it or through its use, and all property otherwise held by the board for depositories under this chapter is exempt from all taxes imposed by the state or any political subdivision.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-2**

##### **Membership; term; officers; quorum; conduct of meetings; notice; proceedings; executive sessions; records**

Sec. 2. (a) The board for depositories consists of the governor, the treasurer of state, the auditor of state, the chairperson of the department of financial institutions, the chief examiner of the state board of accounts, and four (4) appointed members. For appointments after June 30, 2010, one (1) member shall be appointed by the speaker of the house of representatives, one (1) member shall be appointed by the president pro tempore of the senate, and two (2) members shall be appointed by the governor. All appointed members must be residents of Indiana. The speaker of the house of representatives shall make the appointment to fill the first vacancy on the board, and the president pro tempore of the senate shall make the appointment to fill the second vacancy on the board that occurs after June 30, 2010. In making the governor's two (2) appointments, the governor shall assure that no more than two (2) of the four (4) appointees identify with the same political party. For appointments after June 30, 2010, all four (4) appointed members must be a chief executive officer or a chief financial officer of a depository at the time of the appointment if the depository is domiciled in Indiana. If

the depository is not domiciled in Indiana, the appointee must be the most senior corporate officer of the depository with management or operational responsibility, or both, or the person designated to manage public funds for the depository that is located in Indiana. In making the governor's appointments, the governor shall provide for geographic representation of all regions of Indiana, including both urban and rural communities. In addition, the appointees must, at the time of the appointment, be employed by the following depositories:

- (1) One (1) member appointed by the governor who must be the chief executive officer or the chief financial officer of a depository that is a state chartered credit union.
- (2) One (1) member appointed by the governor who must be employed by a depository that:
  - (A) is not a state chartered credit union; and
  - (B) has total deposits of less than two hundred fifty million dollars (\$250,000,000).
- (3) The member appointed by the president pro tempore of the senate must be employed by a depository that:
  - (A) is not a state chartered credit union; and
  - (B) has total deposits of at least two hundred fifty million dollars (\$250,000,000) but less than one billion dollars (\$1,000,000,000).
- (4) The member appointed by the speaker of the house of representatives must be employed by a depository that:
  - (A) is not a state chartered credit union; and
  - (B) has total deposits of at least one billion dollars (\$1,000,000,000).

Total deposits shall be determined using the depository's reported deposits based on the information contained in the most recent June 30th FDIC Summary of Deposits, Market Share Selection for Indiana. The term of an appointed member is four (4) years from the effective date of the member's appointment. Each appointed member holds office for the term of this appointment and serves after the expiration of that appointment until the member's successor is appointed and qualified. An appointed member may be reappointed if the individual satisfies the requirements of this subsection at the time of the reappointment. Any appointed member may be removed from office by, and at the pleasure of, the appointing authority.

(b) The officers of the board consist of a chairman, a secretary-investment manager, a vice chairman, and other officers the board determines to be necessary. The governor shall name a member of the board to serve as its chairman. The treasurer of state shall serve as the secretary-investment manager of the board. The board, by majority vote, shall elect the other officers. Officers, except the secretary-investment manager, shall be named or elected for one (1) year terms in January of each year. The members and officers of the board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

(c) Five (5) members of the board constitute a quorum for the transaction of business, and all actions of the board must be approved by at least a simple majority of those members voting on each individual business issue. The board may adopt, amend, or repeal bylaws and rules for the conduct of its meetings and the number and times of its meetings. The board shall hold a regular meeting at least once semiannually and may hold other regular and special meetings as prescribed in its rules. All meetings of the board are open to the public under IC 5-14-1.5. However, the board shall discuss the following in executive session:

- (1) The financial strength of a particular financial institution.
- (2) The collateral requirements of a particular financial institution.
- (3) Any other matters concerning a particular financial institution.

All records of the board are subject to public inspection under IC 5-14-3. However, records regarding matters that are discussed in executive session are confidential.

(d) Two (2) days notice of the time and place of all meetings to determine and fix the assessment rate to be paid by depositories on account of insurance on public funds or the establishment or redetermination of the reserve for losses of the insurance fund shall be given by one (1) publication in a newspaper of general circulation printed and published in the city of Indianapolis. The time, place, notice, and waiver requirements for the members of the board for all meetings shall be determined by its rules. The secretary-investment manager of the board shall enter the board's proceedings at length in a record provided for that purpose, and the records of the proceedings shall be approved and signed respectively by the chairman or vice chairman and attested by the secretary-investment manager.

*As added by P.L.19-1987, SEC.14. Amended by P.L.115-2010, SEC.13; P.L.134-2012, SEC.8.*

#### **IC 5-13-12-2.5**

##### **Repealed**

*(As added by P.L.141-2000, SEC.1. Repealed by P.L.134-2012, SEC.9.)*

#### **IC 5-13-12-3**

##### **Function, powers, and purpose**

Sec. 3. (a) The board for depositories exercises essential public functions, and has a perpetual existence. The board has all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes, including but not limited to the powers to do the following:

- (1) Adopt, amend, and repeal bylaws and rules consistent with this chapter to regulate its affairs and to effect the powers and purposes of the board, all without the necessity of adopting a rule under IC 4-22-2.

- (2) Adopt its budget on a calendar year or fiscal year as it shall determine.
- (3) Sue and be sued in its own name.
- (4) Have an official seal and alter it at will.
- (5) Maintain an office or offices at a place or places within Indiana as it may designate.
- (6) Make and execute contracts and all other instruments with either public or private entities.
- (7) Communicate with the employees of the Indiana finance authority to the extent reasonably desirable in working on a guarantee of an industrial development obligation or credit enhancement obligation.
- (8) Deposit all uninvested funds of the public deposit insurance fund in a separate account or accounts in financial institutions that are designated as depositories to receive state funds under IC 5-13-9.5. The money in these accounts shall be paid out on checks signed by the chairman or other officers or employees of the board as it shall authorize.
- (9) Take any other act necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter.

(b) In enforcing any obligation of the borrower or any other person under the documents evidencing a guarantee, the board may renegotiate the guarantee, modify the rate of interest, term of the industrial development obligation or credit enhancement obligation, payment of any installment of principal or interest, or any other term of any documents, settle any obligation on the security or receipt of property or the other terms as in its discretion it deems advantageous to the public deposit insurance fund, and take any other action necessary or convenient to such enforcement.

(c) The records of the board for depositories relating to negotiations between it and prospects for industrial development obligation or credit enhancement obligation guarantees are excepted from the provisions of IC 5-14-3-3.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.106; P.L.18-1996, SEC.24; P.L.235-2005, SEC.80.*

#### **IC 5-13-12-3.1**

##### **Repealed**

*(As added by P.L.5-1996, SEC.6. Repealed by P.L.177-2011, SEC.5.)*

#### **IC 5-13-12-4**

##### **Secretary-investment manager; powers and duties**

Sec. 4. (a) The secretary-investment manager shall administer, manage, and direct the affairs and activities of the board under the policies and under the control and direction of the board. In carrying out these duties, the secretary-investment manager has the power to do the following:

(1) Approve all accounts for salaries and allowable expenses of the board, including, but not limited to:

(A) the employment of general or special attorneys, consultants, and employees and agents as may be necessary to assist the secretary-investment manager in carrying out the duties of that office and to assist the board in its consideration of applications for a guarantee of an industrial development obligation or credit enhancement obligation guarantee; and

(B) the setting of compensation of persons employed under clause (A).

(2) Approve all expenses incidental to the operation of the public deposit insurance fund.

(3) Perform other duties and functions that may be delegated to the secretary-investment manager by the board or that are necessary to carry out the duties of the secretary-investment manager under this chapter.

(b) The secretary-investment manager shall keep a record of the proceedings of the board, and shall maintain and be custodian of all books, documents, and papers filed with the board, and its official seal. The secretary-investment manager may make copies of all minutes and other records and documents of the board, and may give certificates under seal of the board to the effect that the copies are true copies. All persons dealing with the board may rely upon the certificates.

(c) Before July 30, 2013, the auditor of state shall:

(1) make the second 2013 distribution from the pension distribution fund to the Indiana public retirement system for deposit in the pension relief fund as required by this section as it existed on June 30, 2013; and

(2) transfer all of the balance in the pension distribution fund remaining after the distribution under subdivision (1) to the public deposit insurance fund.

*As added by P.L.19-1987, SEC.14. Amended by P.L.281-2001, SEC.1; P.L.146-2008, SEC.39; P.L.115-2010, SEC.14; P.L.35-2012, SEC.92; P.L.93-2013, SEC.2.*

#### **IC 5-13-12-5**

##### **Assessment rate; determination and fixing; assessment base; waiver or elimination of assessment rate**

Sec. 5. (a) Subject to the limitations prescribed in this chapter, the board for depositories may fix the assessment rate to provide assets in the fund sufficient to equal the reserve for losses of the fund for the insurance of public funds on deposit in depositories. Effective on July 1, and January 1, of each year, and from time to time as the board determines necessary, the board shall determine and fix the fair and reasonable assessment rate for each classification of deposit, if any, to be used by depositories in determining the assessments. This determination shall be made by the board before or as soon as

practicable after the applicable July 1, January 1, or other date established by the board. In fixing the rate, if any, the board shall consider the amount of public funds currently on deposit, the liabilities of the insurance fund, contingent and accrued, and the determination of the board on the amount of the reserve for losses of the insurance fund as set out in section 7(b) of this chapter. For any period, the maximum assessment rate that may be fixed by the board is two percent (2%). The board may lower or waive the assessment on any or all classifications of deposit if in its discretion it determines that a lower rate or waiver will not prevent the fund from attaining sufficient assets to equal the reserve for losses. Subject to the board's power to implement an assessment at any time by action by the board, if no action has been taken by the board for depositories fixing the assessment rate, if any, on public funds, the assessment rate is the same rate, if any. Whenever as of July 1, or January 1, or another date established by the board, the value of the assets in the fund equals or exceeds the reserve for losses, the board shall eliminate the assessment requirement for each classification of deposit.

(b) During any period when an assessment rate is in effect, the assessment base for each depository of public funds shall be determined monthly. The assessment base must be equal to the sum total of all the minimum balances of each classification of public funds on deposit in each and all accounts during the month, the minimum balance of each account being taken respectively as of the date on which it occurs. For purposes of this section, deposits that are federally insured are not considered public funds deposits in a depository. On or before the second day of each month in which an assessment rate is in effect, each depository shall compute the amount of the assessment due from it to the insurance fund on account of public funds on deposit with it during the preceding month. The amount of the monthly assessment, if any, is the product obtained by multiplying one-twelfth (1/12) times the assessment base for the month for which the assessment is being computed.

(c) During the time the assessment rate on public funds has been waived or eliminated by the board for depositories, the respective depositories are not obligated to pay any assessment but shall continue to prepare and file the reports that would otherwise be required to be prepared and filed under this chapter.

*As added by P.L.19-1987, SEC.14. Amended by P.L.115-2010, SEC.15.*

#### **IC 5-13-12-6**

##### **Depositories; duty to file monthly report and pay assessment to insurance fund; failure to pay; forms**

Sec. 6. (a) On or before the fifth day of each month, every depository that had public funds on deposit with it during the preceding month shall:

- (1) file with the board for depositories a certified report under oath showing for the preceding month the amount of the

assessment base and the amount of the monthly assessment due the insurance fund, as determined under section 5 of this chapter; and

(2) pay the insurance fund the amount of the monthly assessment it is required to certify. The board for depositories may waive all or part of the reporting requirement under this section during any period when the board does not levy an assessment.

(b) If any depository fails to pay the insurance fund on or before the fifth day of each one (1) month period the full assessment due from it for the preceding one (1) month period on account of public funds deposited with it, the depository is liable for double the assessment. This amount may be recovered in any court of competent jurisdiction in a civil action by the state on the relation of the board for depositories.

(c) The state board of accounts, with the approval of the attorney general, shall prepare and prescribe the forms of reports required by this section.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-7**

#### **Insurance fund; management and operation; transfer restrictions; establishment of reserve; determination of profit distribution; investment; limitations; immunity of members**

Sec. 7. (a) The board for depositories shall manage and operate the insurance fund. All expenses incident to the administration of the fund shall be paid out of the money accumulated in it subject to the direction of the board for depositories. Money in the fund may not be expended, removed, or transferred from the fund for any purpose other than the following unless the expenditure, the removal, or transfer is first reviewed by the budget committee:

(1) Paying expenses of administering the fund.

(2) Investing, reinvesting, and exchanging investments as described in subsection (d).

(3) Paying claims on insured public deposits under IC 5-13-13.

(4) Making payments required by contracts executed under section 3(a)(6) of this chapter.

(5) Making deposits of uninvested funds under section 3(a)(8) of this chapter.

(6) Paying allowable expenses as provided in section 4 of this chapter.

(b) Effective January 1 and July 1 in each year, the board shall before those dates redetermine the amount of the reserve to be maintained by the insurance fund. The establishment or any change in the reserve for losses shall be determined by the board based on information the board considers, including but not limited to capital adequacy, liquidity, and asset quality, and a study to be made or updated by actuaries, economists, or other consultants based on the history of losses, earnings on the funds, conditions of the

depositories, economic conditions affecting particular depositories or depositories in general, and any other factors that the board considers relevant in making its determination. The reserve determined by the board must be sufficient to ensure the safekeeping and prompt payment of public funds to the extent they are not covered by insurance of any federal deposit insurance agency.

(c) At the end of each biennial period during which depositories have had public funds on deposit under this chapter and paid the assessments levied by the board, the board shall compute its receipts from assessments and all other sources and its expenses and losses and determine the profit derived from the operation of the fund for the period. Until the amount of the reserve for losses has been accumulated, all assessments levied for a biennial period shall be retained by the fund. The amount of the assessments, if any, levied by the board shall, to the extent the fund exceeds the reserve for losses at the end of a biennial period commencing July 1 of each odd-numbered year, be distributed to the depositories that had public funds on deposit during the biennial period in which the assessments were paid. The distribution shall be made to the respective depositories in the proportion that the total assessments paid by each depository during that period bears to the total assessments then paid by all depositories. A distribution to which any closed depository would otherwise be entitled shall be set off against any claim that the insurance fund may have against the closed depository.

(d) The board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in any of the following:

(1) In bonds, notes, certificates, and other valid obligations of the United States, either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(2) In bonds, notes, debentures, and other securities issued by a federal agency or a federal instrumentality and fully guaranteed by the United States either directly or, subject to the limitations in subsection (e), in the form of securities of or other interests in an open-end no-load management-type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.).

(3) In bonds, notes, certificates, and other valid obligations of a state or of an Indiana political subdivision that are issued under law, the issuers of which, for five (5) years before the date of the investment, have promptly paid the principal and interest on their bonds and other legal obligations.

(4) In bonds or other obligations of the Indiana finance authority issued under IC 4-13.5.



- (5) In investments permitted the state under IC 5-13-10.5.
- (6) In guarantees of industrial development obligations or credit enhancement obligations, or both, for the purposes of retaining and increasing employment in enterprises in Indiana, subject to the limitations and conditions set out in this subdivision, subsection (e), and section 8 of this chapter. An individual guarantee of the board under this subdivision must not exceed eight million dollars (\$8,000,000).
- (7) In guarantees of bonds or notes issued under IC 5-1.5-4-1, subject to the limitations and conditions set out in subsection (e) and section 8 of this chapter.
- (8) In bonds, notes, or other valid obligations of the Indiana finance authority that have been issued in conjunction with the authority's acquisition, development, or improvement of property or other interests for an industrial development project (as defined in IC 4-4-10.9-11) that the authority has undertaken for the purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).
- (9) In notes or other debt obligations of counties, cities, and towns that have been issued under IC 6-1.1-39 for borrowings from the industrial development fund under IC 5-28-9 for purposes of retaining or increasing employment in existing or new enterprises in Indiana, subject to the limitations in subsection (e).
- (10) In bonds or other obligations of the Indiana housing and community development authority.

(e) The investment authority of the board under subsection (d) is subject to the following limitations:

- (1) For investments under subsection (d)(1) and (d)(2), the portfolio of an open-end no-load management-type investment company or investment trust must be limited to:
  - (A) direct obligations of the United States and obligations of a federal agency or a federal instrumentality that are fully guaranteed by the United States; and
  - (B) repurchase agreements fully collateralized by obligations described in clause (A), of which the company or trust takes delivery either directly or through an authorized custodian.
- (2) Total outstanding investments in guarantees of industrial development obligations and credit enhancement obligations under subsection (d)(6) must not exceed the greater of:
  - (A) ten percent (10%) of the available balance of the insurance fund; or
  - (B) fourteen million dollars (\$14,000,000).
- (3) Total outstanding investments in guarantees of bond bank obligations under subsection (d)(7) must not exceed the greater of:
  - (A) twenty percent (20%) of the available balance of the insurance fund; or

(B) twenty-four million dollars (\$24,000,000).

(4) Total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority under subsection (d)(8) may not exceed the greater of:

(A) fifteen percent (15%) of the available balance of the insurance fund; or

(B) twenty million dollars (\$20,000,000).

However, after June 30, 1988, the board may not make any additional investment in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11, and the board may invest an amount equal to the remainder, if any, of:

(i) fifteen percent (15%) of the available balance of the insurance fund; minus

(ii) the board's total outstanding investments in bonds, notes, or other obligations of the Indiana finance authority issued under IC 4-4-11;

in guarantees of industrial development obligations or credit enhancement obligations, or both, as authorized by subsection (d)(6). In such a case, the outstanding investments, as authorized by subsection (d)(6) and (d)(8), may not exceed in total the greater of twenty-five percent (25%) of the available balance of the insurance fund or thirty-four million dollars (\$34,000,000).

(5) Total outstanding investments in notes or other debt obligations of counties, cities, and towns under subsection (d)(9) may not exceed the greater of:

(A) ten percent (10%) of the available balance of the insurance fund; or

(B) twelve million dollars (\$12,000,000).

(f) For purposes of subsection (e), the available balance of the insurance fund does not include the outstanding principal amount of any fund investment in a corporate note or obligation or the part of the fund that has been established as a reserve for losses.

(g) All interest and other income earned on investments of the insurance fund and all amounts collected by the board accrue to the fund.

(h) Members of the board and any officers or employees of the board are not subject to personal liability or accountability by reason of any investment in any of the obligations listed in subsection (d).

*As added by P.L.19-1987, SEC.14. Amended by P.L.67-1989, SEC.2; P.L.69-1989, SEC.1; P.L.11-1990, SEC.107; P.L.1-1992, SEC.10; P.L.28-1993, SEC.6; P.L.18-1996, SEC.25; P.L.281-2001, SEC.2; P.L.4-2005, SEC.26; P.L.235-2005, SEC.81; P.L.1-2006, SEC.100; P.L.115-2010, SEC.16; P.L.93-2013, SEC.3.*

### **IC 5-13-12-8**

#### **Industrial development obligation or credit enhancement obligation guarantees; limitations; conditions; claims, losses, or debts**

Sec. 8. (a) The board for depositories, in making the industrial

development obligation or credit enhancement obligation guarantees authorized under section 7(d)(6) of this chapter, shall comply with the following limitations:

(1) A guarantee shall be made only of industrial development obligations or credit enhancement obligations for the purpose of retaining, retaining and expanding, or bringing significant employment into Indiana, as determined by the board under subdivision (3)(A).

(2) Each industrial development obligation or credit enhancement obligation must be guaranteed not only by the board but also by the Indiana economic development corporation created by IC 5-28-3-1. Each guarantee must provide that in the event of a valid claim of loss by the lender, the lessor, or the issuer of the credit enhancement arising under the industrial development obligation or credit enhancement documents, the amount of the loss, up to two million dollars (\$2,000,000), shall first be paid by the industrial development project guaranty fund created by IC 5-28-30-9, and only the remainder of the loss, if any, shall to the extent guaranteed be paid by the public deposit insurance fund. Neither fund is responsible for the amount due from the other under its guarantee.

(3) The guarantee of the industrial development obligation or credit enhancement obligation by the board for depositories must be recommended by the Indiana economic development corporation. Subject to that recommendation, the board for depositories may make the guarantee if it determines:

(A) that the guarantee creates a reasonable probability that loss in Indiana employment that would occur will be significantly reduced or that Indiana's employment will be significantly expanded;

(B) that the consequent reduction in employment loss or the expansion in employment will enhance the economic stability of the community or communities in the state where the borrower or lessee conducts its business;

(C) that there is reasonable probability that the industrial development obligation will be repaid or satisfied or that the credit enhancement will be satisfied; and

(D) that the industrial development obligation or credit enhancement obligation and guarantee are protected against loss and the borrower or lessee has agreed to pay the insurance fund a guarantee premium annually as provided in subdivision (6).

(4) Protection against loss on the industrial development obligation or credit enhancement obligation guaranteed will be provided:

(A) in loan transactions by:

(i) a valid security agreement;

(ii) mortgage;

- (iii) combination of (i) and (ii); or
    - (iv) other document; and
  - (B) in lease transactions by the guaranteed party's rights as owner of the leased property.
- (5) The term of the guarantee must not exceed twenty (20) years. The amount of the guarantee provided by the board, together with the corresponding guarantee to be provided by the industrial development project guaranty fund under subdivision (2), must not exceed:
  - (A) the lesser of:
    - (i) ninety percent (90%) of the unpaid balance of the obligation; or
    - (ii) ninety percent (90%) of the appraised fair market value of the real estate;if the obligation is backed by real estate;
  - (B) the lesser of:
    - (i) seventy-five percent (75%) of the unpaid balance of the obligation; or
    - (ii) seventy-five percent (75%) of the appraised fair market value of the equipment;if the obligation is backed by equipment; or
  - (C) a weighted average of the figures derived under clauses (A)(ii) and (B)(ii) if the obligation is backed by real estate and equipment.
- (6) The guarantee premium to be received by the public deposit insurance fund for the guarantee must be at an annual percentage rate on the outstanding principal amount of the industrial development obligation or the credit enhancement obligation of not less, in the discretion of the board, than the market rate for guarantees, mortgage insurance rates, or letters of credit used for similar purposes at the time the guarantee is made. However, the annual percentage rate must not exceed two percent (2%) of the outstanding principal obligation.
- (b) The following conditions apply to the making of bond bank obligation guarantees under section 7(d)(7) of this chapter:
  - (1) Each bond bank obligation guaranteed must be secured by a pledge of securities of a qualified entity (as defined in IC 5-1.5-1-8) under an indenture of trust requiring an adequate debt reserve fund.
  - (2) The board for depositories shall fix the one (1) time or annual charge to be paid by the bond bank for each guarantee in an amount considered by the board to be appropriate and consistent with the market rate for that guarantee, taking into consideration the terms of the indenture applicable to the bond bank obligation.
  - (3) The board for depositories may agree to other terms for each guarantee that the secretary-investment manager certifies as being commercially reasonable and that the board, in its judgment, determines to be proper.

(c) Any claim, loss, or debt arising out of any guarantee authorized by section 7(d)(6) or 7(d)(7) of this chapter is the obligation of the board for depositories payable out of the public deposit insurance fund only and does not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state. The document evidencing any guarantee must have on its face the words, "The obligations created by this guarantee (or other document as appropriate) do not constitute a debt, liability, or obligation of the state or a pledge of the faith and credit of the state but are obligations of the board for public depositories and are payable solely out of the public deposit insurance fund, and neither the faith and credit nor the taxing power of the state is pledged to the payment of any obligation hereunder."

(d) Any claim of loss by a lender or lessor under a guarantee authorized by section 7(d)(6) or 7(d)(7) of this chapter, at the time it is made in writing to the board, has priority against the fund on all claims made after that time.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.108; P.L.235-2005, SEC.82; P.L.162-2007, SEC.20.*

#### **IC 5-13-12-8.5**

##### **Repealed**

*(As added by P.L.291-2001, SEC.147. Repealed by P.L.2-2005, SEC.131.)*

#### **IC 5-13-12-8.6**

##### **Validity of certain loan guaranties**

Sec. 8.6. Notwithstanding the expiration of section 8.5 of this chapter on December 31, 2002, a loan guarantee made by the board for depositories under that section before December 31, 2002, remains a valid and binding obligation of the board for depositories after December 31, 2002, as if section 8.5 of this chapter had not expired.

*As added by P.L.220-2011, SEC.96.*

#### **IC 5-13-12-9**

##### **Investment in instruments of indebtedness of credit corporation issued certificate of election by secretary of state**

Sec. 9. In addition to the investments authorized in section 7(d) of this chapter, the board may invest, reinvest, and exchange investments of the insurance fund in excess of the cash working balance in instruments of indebtedness of a credit corporation to which the secretary of state has issued a certificate of election under IC 23-6-4-8.

*As added by P.L.19-1987, SEC.14.*

#### **IC 5-13-12-10**

##### **Subordination of valid security agreement, mortgage, combinations thereof, or other appropriate document securing direct obligations**

Sec. 10. With regard to direct obligations of the Indiana finance authority that have been issued in conjunction with an industrial development project undertaken by the authority, including those obligations that are guaranteed by the board under this chapter or purchased by the board under section 7(d)(8) of this chapter, the board may upon the request of the authority permit a subordination of any valid security agreement, mortgage, combinations thereof, or other appropriate document securing the direct obligations, if the board in its discretion determines that the subordination is reasonably necessary to accomplish the objectives of the industrial development project.

*As added by P.L.19-1987, SEC.14. Amended by P.L.11-1990, SEC.109; P.L.235-2005, SEC.83.*

### **IC 5-13-12-11**

#### **Loans to commuter transportation district**

Sec. 11. (a) In addition to the authority given the board for depositories in section 7 of this chapter, the board may lend, from that part of the insurance fund reserved for economic development, to any commuter transportation district that is established under IC 8-5-15 an amount not to exceed two million six hundred thousand dollars (\$2,600,000).

(b) The board of trustees of a district that receives a loan under this section shall do the following:

(1) Use the loan proceeds only for paying or reimbursing the following costs and expenses of the district:

(A) Property and casualty insurance premiums.

(B) Trackage lease payments.

(C) Traction power expenses.

(D) Conducting a study of commuter transportation within the district under P.L.48-1986.

(E) Any expenses incurred by the district in the ordinary course of providing commuter rail service.

(2) Develop a financial plan for commuter rail service within the district for each year during the loan period. The financial plan must contain the elements prescribed in, and be subject to review and approval under, subsection (c).

(3) Repay the loan in eight (8) annual installments on dates determined by the board for depositories, subject to the following conditions:

(A) The first payment must be made on July 1, 1988.

(B) Each annual payment must equal one-eighth (1/8) of the principal of the loan plus interest at a rate determined by the board for depositories. The rate of interest must not be:

(i) lower than the lowest interest rate set by the state board of finance for a loan under IC 4-4-8-8 (transferred to IC 5-28-9-15) before April 1, 1986; or

(ii) greater than the average yield on investments made by the board in January, February, and March of 1986.

(4) As required by subsection (d), report annually to the board for depositories on compliance with the financial plan developed under subsection (c).

(5) Notwithstanding subdivision (3), pledge to repay the balance of the loan plus interest at a time and in a manner specified by the board for depositories whenever the board for depositories determines that one (1) of the following has occurred:

(A) The board of trustees of the district has failed to develop a financial plan that substantially complies with subsection (c).

(B) There has not been substantial compliance with a financial plan.

(C) The board of trustees of the district has failed to make a payment on the date established under subdivision (3).

If repayment is required under this subdivision, the treasurer of state shall transfer the amount necessary to the insurance fund from the allocation to the district from the public mass transportation fund for the remainder of the state fiscal year in which the repayment is required. If the amount transferred from the allocation is insufficient, the balance shall be transferred from the commuter rail service fund until the repayment is complete.

(c) Before December 1 of each year, the board of trustees of a district receiving a loan under this section shall submit to the board for depositories, the Indiana department of transportation, and the budget committee a financial plan for the following calendar year. The plan must provide for an annual operating budget under which expenses do not exceed revenues from all sources. The financial plan may identify supplemental revenue sources from within the district that will be dedicated during the year to commuter rail service in the district. Within sixty (60) days after the plan is submitted, the board for depositories shall determine if the financial plan complies with this subsection. In making its determination, the board for depositories shall consider the recommendations of the budget committee, which shall base its recommendations on the department of transportation's evaluation of the financial plan.

(d) Before April 1 of the second calendar year after a loan under this section is made and before April 1 of each year thereafter, the board of trustees of a district receiving a loan shall submit to the board for depositories, the Indiana department of transportation, and the budget committee a report covering the preceding calendar year. The report must summarize the district's compliance with the financial plan submitted under subsection (c) and must contain other information as the board for depositories may require. Before July 1 of that year, the board for depositories shall determine if the district has substantially complied with the financial plan. In making its determination, the board for depositories shall consider the recommendations of the budget committee, which shall base its recommendations on the Indiana department of transportation's

evaluation of the report.

(e) After January 1, 1988, the board for depositories and the board of trustees of a district receiving a loan under this section may agree to an early repayment of the loan. If an early repayment is agreed to, the board for depositories may guarantee a loan obtained by the board of trustees under conditions established by the board for depositories. These conditions may include the requirement that the district pledge to repay from its allocations from the public mass transportation fund and the commuter rail fund service any loss sustained by the insurance fund as a result of the guarantee.

*As added by P.L.19-1987, SEC.14. Amended by P.L.18-1990, SEC.10; P.L.18-1996, SEC.26; P.L.4-2005, SEC.27.*

### **IC 5-13-12-12**

#### **Board reports; presentment to budget committee**

Sec. 12. (a) In June and December each year, the board shall prepare a written report generally summarizing the board's activities and the status of the public deposit insurance fund for the previous six (6) months. However, the report may not identify a particular financial institution notwithstanding the requirements of IC 5-14-3. The report shall be made available on the board's Internet web site.

(b) The chairperson of the board or the chairperson's designee shall present the semiannual report to the budget committee at a public hearing.

*As added by P.L.115-2010, SEC.17.*

### **IC 5-13-12-13**

#### **Loan to state general fund; repayment**

Sec. 13. (a) The board for depositories shall hold until paid in accordance with its terms the instrument of indebtedness evidencing the obligation of the budget agency to repay the loan made from the public deposit insurance fund to the state general fund under P.L.224-2003, SECTION 116, as amended by P.L.229-2011, SECTION 277. The budget agency shall pay the loan in ten (10) equal annual installment payments made each July, beginning July 2013 and ending July 2022.

(b) There is annually appropriated to the budget agency from the state general fund five million dollars (\$5,000,000) each July, beginning July 2013, and ending July 2022, to make the payments required by subsection (a).

(c) This section expires July 1, 2023.

*As added by P.L.93-2013, SEC.4.*