

**IC 8-1.5**

**ARTICLE 1.5. MUNICIPAL UTILITIES**

**IC 8-1.5-1**

**Chapter 1. Definitions**

**IC 8-1.5-1-1**

**Application**

Sec. 1. The definitions in this chapter apply throughout this article.  
*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-1-2**

**"Acquisition"**

Sec. 2. "Acquisition" includes the following methods of obtaining property:

- (1) Purchases.
- (2) Condemnation.
- (3) Leases.
- (4) Exchanges.
- (5) Acceptance of gifts.

*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-1-3**

**"Commission"**

Sec. 3. "Commission" refers to the utility regulatory commission.  
*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.23-1988, SEC.61.*

**IC 8-1.5-1-4**

**"Disposition"**

Sec. 4. "Disposition" includes the sale, lease, exchange, or other transfer of property.

*As added by Acts 1982, P.L.74, SEC.1.*

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

**"Executive"**

Sec. 5. "Executive" means:

- (1) mayor, for a city; or
- (2) president of the town council, for a town.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.8-1989, SEC.40.*

**IC 8-1.5-1-6**

**"Fiscal officer"**

Sec. 6. "Fiscal officer" means:

- (1) controller, for a second class city;
- (2) clerk-treasurer, for a third class city; or
- (3) clerk-treasurer, for a town.

*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-1-7**

**"Legislative body"**

Sec. 7. "Legislative body" means:

- (1) common council, for a city; or
- (2) town council, for a town.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.8-1989, SEC.41.*

**IC 8-1.5-1-8**

**"Municipality"**

Sec. 8. "Municipality" means city or town.

*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-1-9**

**"Person"**

Sec. 9. "Person" means individual, firm, corporation, partnership, limited liability company, trustee, lessee, or receiver.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.8-1993, SEC.132.*

**IC 8-1.5-1-10**

**"Utility"; "municipally owned utility"; "public utility"**

Sec. 10. "Utility", "municipally owned utility", and "public utility" have the meanings set forth in IC 8-1-2-1.

*As added by Acts 1982, P.L.74, SEC.1.*

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

### **Chapter 2. Transfer, Acquisition, and Improvement of Utilities by Municipalities**

#### **IC 8-1.5-2-1**

##### **Application of chapter; exception**

Sec. 1. This chapter applies to all municipalities except consolidated cities.

*As added by Acts 1982, P.L.74, SEC.1.*

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

##### **Application of chapter; additional exceptions**

Sec. 2. (a) This chapter does not apply to utilities governed by IC 8-1-13 or IC 8-1-2 except for a municipally owned utility.

(b) The law relating to acquisition of electric utility property and to electricity suppliers' service area assignments shall be governed by IC 8-1-2.3 and IC 8-1-2-95.1, and nothing in this chapter modifies or abridges those provisions.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-3**

##### **Disposition, construction, and acquisition of utilities; lease and operation of waterworks facilities**

Sec. 3. (a) Subject to restrictions imposed by a bond ordinance, resolution, indenture, contract under IC 8-1-2.2, or similar instrument binding upon it, a municipality may sell or otherwise dispose of any of its municipally owned utilities under this chapter.

(b) A municipality may own, lease, acquire, or construct a utility within the corporate boundaries of the municipality, and within a radius of six (6) miles from those boundaries or any place within the county in which the municipality is located, under this chapter without the consent of any agency other than the municipal legislative body. Waterworks facilities may be leased from a public utility and operated in conjunction with its municipal waterworks, whether or not the leased facilities are located within the corporate boundaries of the municipality, if the area served by the leased facilities outside those boundaries is contiguous to, or within one (1) mile of, those boundaries. For purposes of IC 36-4-3, a municipality that leases and operates waterworks serving such an area is considered to be furnishing water service to the area.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-4**

##### **Sale of non-surplus property; ordinance or resolution providing for appraisal**

Sec. 4. Whenever the municipal legislative body determines to sell or otherwise dispose of non-surplus municipally owned utility property, it shall by ordinance or resolution, by a two-thirds (2/3) vote, provide for the following:

- (1) The appointment, as follows, of three (3) residents of

Indiana to serve as appraisers:

(A) One (1) disinterested person who is an engineer licensed under IC 25-31-1.

(B) One (1) disinterested appraiser licensed under IC 25-34.1.

(C) One disinterested person who is either:

(i) an engineer licensed under IC 25-31-1; or

(ii) an appraiser licensed under IC 25-34.1.

(2) The appraisal of the property.

(3) The time that the appraisal is due.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.113-2006, SEC.2; P.L.103-2008, SEC.2.*

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

#### **Sale of nonsurplus property; appraiser qualifications; public hearing; ordinance for sale; petitions opposing sale; submission to voters**

Sec. 5. (a) Each appraiser appointed as provided by section 4 of this chapter must:

(1) by education and experience, have such expert and technical knowledge and qualifications as to make a proper appraisal and valuation of the property of the type and nature involved in the sale;

(2) be a disinterested person; and

(3) not be a resident or taxpayer of the municipality.

(b) The appraisers shall:

(1) be sworn to make a just and true valuation of the property; and

(2) return their appraisal, in writing, to the municipal legislative body within the time fixed by the ordinance or resolution appointing them.

(c) If all three (3) appraisers cannot agree as to the appraised value, the appraisal, when signed by two (2) of the appraisers, constitutes a good and valid appraisal.

(d) If, after the return of the appraisal by the appraisers to the legislative body, the legislative body decides to proceed with the sale or disposition of the nonsurplus municipally owned utility property, the legislative body shall, not later than forty-five (45) days after the return of the appraisal, hold a public hearing to do the following:

(1) Review and explain the appraisal.

(2) Receive public comment on the proposed sale or disposition of the nonsurplus municipally owned utility property.

(3) Adopt an ordinance providing for the sale or disposition of the nonsurplus municipally owned utility property. The legislative body is not required to adopt an ordinance under this subdivision if, after the hearing, the legislative body determines it is not in the interest of the municipality to proceed with the sale or disposition.

Notice of the hearing shall be published in the manner prescribed by IC 5-3-1.

(e) The hearing on the ordinance providing for sale or disposition may not be held for thirty (30) days after notice is given as required by subsection (d).

(f) If:

(1) the legislative body adopts an ordinance under subsection (d)(3); and

(2) within the thirty (30) day period described in subsection (e), at least the number of the registered voters of the municipality required under IC 3-8-6-3 for a petition to place a candidate on the ballot sign and present a petition to the legislative body opposing the sale or disposition;

the legislative body shall submit the question as to whether the sale or disposition shall be made to the voters of the municipality at a special or general election. In submitting the public question to the voters, the legislative body shall certify the question to the county election board of the county containing the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall adopt a resolution setting forth the text of the public question and shall submit the question as to whether the sale or disposition shall be made to the voters of the municipality at a special or general election on a date specified by the municipal legislative body. Pending the results of an election under this subsection, the municipality may not take further action to sell or dispose of the property as provided in the ordinance.

(g) If a majority of the voters voting on the question vote for the sale or disposition, the legislative body shall proceed to sell the property as provided in the ordinance.

(h) If a majority of the voters voting on the question vote against the sale or disposition, the sale may not be made.

(i) If:

(1) the legislative body adopts an ordinance under subsection (d)(3); and

(2) after the expiration of thirty (30) days as provided in subsection (e), a petition is not filed;

the municipal legislative body may proceed to sell the property as provided in the ordinance.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.12-1995, SEC.99; P.L.3-1997, SEC.425; P.L.2-1998, SEC.34; P.L.103-2008, SEC.3.*

#### **IC 8-1.5-2-6**

##### **Sale of nonsurplus property; terms of ordinance; satisfaction of existing obligations; bid submitted by trust**

Sec. 6. (a) The ordinance adopted by the municipal legislative body under section 5(d) of this chapter must provide for:

(1) the sale or disposition of the municipally owned utility property;

(2) the manner of the sale or disposition;

(3) the price, terms, and conditions of the sale or disposition, which must be consistent with any contractual obligations

previously incurred under IC 8-1-2.2; and

(4) the officer or officers who are to execute the proper documents conveying title on behalf of the municipality.

(b) The property may not be sold for less than its full appraised value, as set forth in the appraisal, less the amount of any bonds, liens, or other indebtedness due upon the property, and only in accordance with contractual obligations incurred under IC 8-1-2.2. The indebtedness shall either:

(1) be paid in accordance with the terms and conditions of the instruments governing the indebtedness before the sale; or

(2) be assumed and paid by the purchaser as part of the purchase price of the property.

(c) This subsection applies if a municipal legislative body adopts an ordinance for the sale or disposition of municipally owned utility real property by acceptance of bids. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

(d) The proceeds of any sale under this chapter shall be paid into the treasury of the municipality making the sale and become part of the general fund.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.104-1983, SEC.1; P.L.336-1989(ss), SEC.18; P.L.103-2008, SEC.4.*

#### **IC 8-1.5-2-7**

##### **Public convenience and necessity; declaratory resolution**

Sec. 7. (a) A certificate of public convenience and necessity is not required as a condition precedent to the owning, leasing, acquisition, construction, or operation of a utility by a municipality, even if there is a public utility engaged in a similar service. The acquisition of electric utility property and assignment of a municipal electric utility's service area are, however, subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

(b) Subsection (d) applies to the following:

(1) A municipality that wants to acquire an existing utility, including by purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or otherwise.

(2) A municipality that wants to own and operate a utility in a location where, or contiguous to where, there is a public utility engaged in a similar service:

(A) under a franchise granted by the municipality; or

(B) under an indeterminate permit as defined in IC 8-1-2-1.

(c) Notwithstanding subsection (b), subsection (d) does not apply to the following:

(1) A municipality that owns and operates a water utility as of July 1, 2012.

(2) An action brought under:

(A) IC 8-1-2-92;

(B) IC 8-1-2-93; or

(C) this chapter;

before March 1, 2013.

(d) Before a municipality described in subsection (b) may declare by ordinance that public convenience and necessity require the establishment of a municipally owned utility, the municipality shall conduct a hearing under section 10 of this chapter.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.172-2009, SEC.3; P.L.270-2013, SEC.4.*

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

##### **Preliminary expenses; appropriation**

Sec. 8. Before a municipal legislative body:

- (1) proposes to construct or acquire a utility; and
- (2) makes a determination as to public convenience and necessity;

it may appropriate out of its general fund an amount not exceeding five percent (5%) of the total estimated cost of constructing or acquiring the utility, as necessary to pay the expenses of a preliminary investigation, surveys, plans, specifications, and appraisals, including engineering and legal expenses in constructing or acquiring the utility. Any action by the municipal legislative body in making an appropriation is final and not subject to review by the department of local government finance. The municipal legislative body may renew or adjust the appropriation on an annual basis until the construction or acquisition of the utility is complete.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.90-2002, SEC.313; P.L.172-2009, SEC.4.*

#### **IC 8-1.5-2-9**

##### **Appropriation for preliminary expenses; repayment**

Sec. 9. If the municipal legislative body proceeds to construct or acquire the utility, there must be included in the total amount of money to be raised by the issuance of bonds in connection with the construction or acquisition of the utility the amount of the expenditures that will be repaid to the general fund of the municipality from the money derived from the issuance and sale of the bonds.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-10**

##### **Ordinance declaring public convenience and necessity; notice and hearing**

Sec. 10. (a) Before a municipal legislative body adopts an ordinance declaring that public convenience and necessity require the construction or acquisition of a utility as provided by section 7 of this chapter, each public utility furnishing a similar utility service in the municipality, or in the contiguous territory in which the municipality proposes to operate, shall be given ten (10) days notice by the legislative body of the time and place where the hearing will be held. At the hearing, the public utility is entitled to be heard in person or by counsel in opposition to the proposed action.

(b) Notice must be served by delivering a copy to an officer or manager of the public utility in the municipality, if possible, or to an officer of the public utility elsewhere in Indiana.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-11**

##### **Repealed**

*(Repealed by P.L.172-2009, SEC.8.)*

#### **IC 8-1.5-2-12**

##### **Sale of heat, light, water, or power to municipality**

Sec. 12. (a) Upon the approval by resolution of the municipal legislative body, a municipally owned utility may sell or furnish heat, light, water, or power to the municipality to be used exclusively for the furnishing of utility service to the municipality for its own municipal purposes.

(b) This section is not intended to permit the sale or furnishing of power to the municipality where the sale would affect the obligation of any contract or franchise.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-13**

##### **Contracts for acquisition, construction, or replacement of public utility property; authorizing ordinance**

Sec. 13. A contract made by the municipal legislative body for the acquisition, construction, extension, or replacement of the property of a public utility must be authorized by ordinance. The ordinance must provide for the principal and interest of bonds issued for the payment of the cost of the acquisition, construction, extension, or replacement to be paid exclusively from the income and revenue of the property acquired with the proceeds of the bonds.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-14**

##### **Costs of construction or acquisition; security for payment**

Sec. 14. A municipality that constructs or acquires a utility may, through its municipal legislative body, provide for and secure the payment of the cost of constructing, acquiring, extending, or improving the utility by assigning or otherwise pledging the property acquired, together with the net earnings or profits derived or to be derived from the operation of the utility or utilities. Contracts, warrants, debentures, or pledges of future revenues entered into by a municipally owned utility are not an indebtedness of the municipality within the meaning of any constitutional debt limitation.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-15**

##### **Condemnation; authorization**

Sec. 15. (a) This section applies to the following:

- (1) A municipality that, as of July 1, 2012, had established and

operated a water utility.

(2) An action brought under:

(A) IC 8-1-2-92;

(B) IC 8-1-2-93; or

(C) this chapter;

before March 1, 2013.

(b) If the municipality and the owners of a public utility are unable to agree upon a price to be paid for the property of the public utility, the municipality may:

(1) by ordinance declare that a public necessity exists for the condemnation of the utility property; and

(2) bring an action in the circuit or superior court of the county where the municipality is located against the utility for the condemnation of the property.

(c) An ordinance adopted under subsection (b) is final.

(d) For the purpose of acquiring the property of a public utility, the municipality:

(1) may exercise the power of eminent domain in accordance with IC 32-24; and

(2) is required only to establish the necessity of taking as this chapter requires.

(e) The provisions of this section do not apply to the acquisition of electric utility property or the assignment of service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.2-2002, SEC.38; P.L.270-2013, SEC.5.*

### **IC 8-1.5-2-15.5**

#### **Condemnation of public utility**

Sec. 15.5. (a) This section does not apply to the following:

(1) A municipality that, as of July 1, 2012, had established a water utility.

(2) An action brought under:

(A) IC 8-1-2-92;

(B) IC 8-1-2-93; or

(C) this chapter;

before March 1, 2013.

(3) The acquisition of electric utility property or the assignment of service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1.

(4) The acquisition of water or sewer utility property, unless the requirements of IC 8-1-30 are satisfied.

(b) If the municipality and the owners of a public utility are unable to agree upon a price to be paid for the property of the public utility, the municipality may bring an action in the circuit or superior court of the county where the municipality is located against the utility for the condemnation of the property.

(c) For the purpose of acquiring the property of a public utility, the municipality shall exercise the power of eminent domain in accordance with IC 32-24-1.

*As added by P.L.270-2013, SEC.6.*

### **IC 8-1.5-2-16**

#### **Repealed**

*(Repealed by P.L.172-2009, SEC.8.)*

### **IC 8-1.5-2-17**

#### **Acquisition of property rights inside or outside boundaries; utility lines; protection of services from injury or pollution; attachments from abuse, destruction, or waste**

Sec. 17. (a) A municipality, by exercising the power of eminent domain in accordance with IC 32-24 or other applicable law, may acquire property rights inside or outside its corporate boundaries as necessary for the business of a municipally owned utility.

(b) The municipal legislative body may provide for utility lines to be laid through the municipality as the municipally owned utility requires. The municipality may use any property or property rights necessary for constructing, acquiring, operating, or protecting from injury or pollution the municipally owned utility services.

(c) For the purpose of preserving and protecting from injury or pollution the municipal water services, the municipality may exercise its powers in areas within twenty-five (25) miles outside its corporate boundaries.

(d) All attachments made to the utility fixtures, whether intended for public or private use, are subject to the supervision and rules of the utility for protection against abuse or destruction or the inordinate use or waste of utility services.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.2-2002, SEC.39.*

### **IC 8-1.5-2-18**

#### **Bonds; payable out of special account; issuance**

Sec. 18. (a) To provide money to pay for the construction or acquisition of a utility under this chapter, or its extension, improvement, or replacement in whole or in part, or its repair, the municipal legislative body may issue and sell bonds bearing interest at any rate, executed and payable at times not to exceed forty (40) years from the date of issuance, and at places as the legislative body determines. The bonds and interest on them are payable only out of a special account, and the bonds do not constitute an indebtedness of the municipality within the meaning of the constitutional limitations.

(b) Each bond must state plainly upon its face:

- (1) that it is payable only from a special account;
- (2) the account and the ordinance creating it; and
- (3) that it does not constitute an indebtedness of the municipality within the meaning of any constitutional debt limitation.

(c) The bonds shall be sold in accordance with IC 5-1-11.

(d) This section provides an alternative method of financing for all municipalities, notwithstanding any other law.

*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-2-19****Bonds, notes, or other obligations; issuance; approval by commission for long term bonds**

Sec. 19. (a) A municipality may not issue bonds, notes, or other obligations under this chapter without the approval of the commission if the bond, notes, or other obligations are payable more than twelve (12) months after their execution, except as authorized by IC 8-1-2.2-11.

(b) If the evidence presented to the commission establishes that the rates and charges proposed by the municipally owned utility will provide sufficient funds for the operation, maintenance, and depreciation of the utility, and to pay the principal and interest of the proposed bond issue, together with a surplus or margin of at least ten percent (10%) in excess, the commission shall so certify in its order approving the issuance of bonds.

*As added by Acts 1982, P.L. 74, SEC.1. Amended by P.L.103-2008, SEC.5.*

**IC 8-1.5-2-19.5****Purchase of equipment requiring lead time before availability; approval of contracts if sufficient funds available**

Sec. 19.5. If a municipality desires to purchase and install equipment for its utility which requires more than three (3) months lead time for the supplier to make such equipment and installation available, the legislative body may, by ordinance, approve a contract therefor even though it does not have sufficient funds appropriated or on hand to pay for such purchase if the utility:

(1) has annual net operating revenues for the immediately preceding calendar year sufficient to permit the municipality:

(A) to pay the principal of and interest on an issue of its utility revenue bonds in the principal amount necessary to fund such purchase (including engineering costs, legal costs, and costs of bond issuance associated therewith); and

(B) a margin of safety which it deems necessary to market such bonds on acceptable terms;

(2) if required by section 19 of this chapter, has received approval from the commission to issue bonds, notes, or other obligations sufficient to fund such purchase; or

(3) has received approval from the commission to raise its rates and charges in an amount sufficient to permit the issuance of said bonds.

*As added by P.L.105-1983, SEC.1. Amended by P.L.103-2008, SEC.6.*

**IC 8-1.5-2-20****Bonds; payment from revenues not derived from particular utility; restriction**

Sec. 20. Except as provided by section 22 of this chapter, the municipal legislative body may not adopt an ordinance, or enter into or ratify a contract, for the payment, directly or indirectly, of a bond

or bonds by revenues derived by the municipality from the levy of taxes, from the issuance of any bonds other than from the issuance of bonds specifically authorized by this chapter or by a refunding statute, or from any source except the revenues derived from that particular utility.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-21**

##### **Bonds payable out of special account; purchase by municipality**

Sec. 21. A municipality may invest its own money in the bonds issued under section 18 of this chapter.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-22**

##### **General obligation bonds; authorization; limitation**

Sec. 22. (a) If the municipal legislative body decides that it is impracticable to raise the entire amount necessary to construct or acquire the utility solely by the issuance and sale of revenue bonds, the legislative body may, by ordinance, provide that a part of the amount may be raised by the issuance and sale of bonds pledging the general credit of the municipality.

(b) The bonds shall be issued in accordance with IC 6-1.1-20. The bonds may not exceed one-third (1/3) of the total cost of the utility. This limitation does not apply to a utility to be owned and operated by a municipality exclusively for the purpose of furnishing utility service to the municipality for its own municipal purposes.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-23**

##### **General obligation bonds; terms; sale**

Sec. 23. If general obligation bonds are issued, they:

- (1) may be issued in any denomination;
- (2) are payable at a time not to exceed forty (40) years from issuance;
- (3) may bear interest at any rate payable semiannually; and
- (4) shall be sold for not less than par value and accrued interest;

as provided by ordinance. The bonds shall be sold in accordance with IC 5-1-11.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-24**

##### **Revenue bonds; money set aside for payment of interest and principal**

Sec. 24. (a) The board of a municipally owned utility, as defined by IC 8-1.5-3-2, shall, at least semiannually, set aside from the net earnings a sufficient amount to pay the interest and principal, as they become due, on revenue bonds issued in payment for the utility or for its improvement. This money may not be used for any other purpose.

(b) The commission shall approve the amount set aside for the payment of the interest and principal when the commission approves

the rates and charges of the municipality.  
*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-25**

##### **Special utility account; establishment by municipality; use**

Sec. 25. (a) The municipal legislative body, after providing for the:

- (1) payment of operation and maintenance expenses of the utility;
- (2) payment of the interest and principal on revenue bonds and creation of reserves for them;
- (3) payment of the interest and principal on general obligation bonds and creation of reserves for them; and
- (4) payment of assessed taxes;

shall set aside a sufficient remainder of the earnings into a separate and special account to be identified as the special utility account, to be used and applied in the extension, replacement in whole or in part, repair, and operation and maintenance of the utility.

(b) The remaining earnings may be applied to:

- (1) the general fund of the municipality in accordance with IC 8-1.5-3-11, outstanding bond ordinances, and contract provisions under IC 8-1-2.2;
- (2) the payment of the interest on a loan made for utility construction; or
- (3) the creation of a sinking fund for the liquidation of the debt;

as the legislative body determines.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-26**

##### **Tax levy for payment of bonds**

Sec. 26. (a) To pay the principal and interest on bonds issued for the construction, acquisition, extension, or improvement of a municipally owned utility, the municipal legislative body may levy an annual tax of sufficient amount on all taxable property of the municipality.

(b) If the legislative body:

- (1) has contracted with a person for supplying utility services or has agreed to lease or purchase utility services; and
- (2) has, in the contract, agreed to pay a stated rental, a stipulated purchase price, or other compensation to the person, or has issued bonds to pay for stock in the company or to purchase the plant;

it may levy an annual tax for payment of the rent or other consideration or purchase price to be paid for utility services, or for the purchase price of a plant, and to pay the principal and interest on the bonds.

(c) The tax under this section shall be levied and collected as other municipal taxes are levied and collected, and the proceeds shall be used only for the purpose for which the tax was levied.

*As added by Acts 1982, P.L.74, SEC.1.*

**IC 8-1.5-2-27****Lease of waterworks facilities; term; option to purchase or renew; transfer of property to municipality**

Sec. 27. (a) A municipality may lease waterworks facilities from a not-for-profit corporation, a public utility, a county, or a municipality. The term of the lease may not exceed fifty (50) years. The lease must provide that the municipality has an option to:

- (1) renew the lease for a further term on like conditions; and
- (2) purchase the waterworks facilities covered by the lease contract with the terms and conditions of the purchase specified in the lease.

(b) If the option to purchase the waterworks facilities covered by the lease is exercised, the municipality, for the purpose of procuring money to pay the purchase price, may issue and sell revenue bonds under other laws governing the issuance and sale of waterworks revenue bonds for additions and extensions to municipal waterworks.

(c) If the municipality has not exercised an option to purchase the property covered by the lease at the expiration of the lease, and upon the full discharge and performance by the municipality of its obligations under the lease contract, the property covered by the lease thereupon becomes the absolute property of the municipality, and the lessor shall execute proper instruments conveying to the municipality good and merchantable title thereto.

(d) A waterworks facility leased under this section is subject to IC 5-16-7.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.35-1990, SEC.26.*

**IC 8-1.5-2-28****Lease of waterworks facilities; payment of operating expenses; sufficiency of rates and charges**

Sec. 28. (a) A waterworks lease may provide that as a part of the lease rental for the waterworks facilities the lessee agrees to:

- (1) pay all property taxes and assessments levied against or on account of the leased facilities;
- (2) maintain insurance on the leased facilities for the benefit of the lessor; and
- (3) assume all responsibilities for the operation, maintenance, repair, alterations, and additions of the leased facilities.

(b) All of the expenses incurred under subsection (a) and the lease rental are payable solely from the revenues derived from water rates and charges to be collected by the lessee from property and users in the area served by the leased facilities.

(c) The lessee may establish, fix, bill, and collect rates and charges with respect to the property and users in the area served by the leased facilities that are sufficient:

- (1) to pay the costs of operation, maintenance, repair, alterations, depreciation, and additions of the leased facilities; and
- (2) to pay the lease rental as it becomes due.

Rates and charges too low to meet these requirements are unlawful. These rates and charges are subject to approval in accordance with IC 8-1.5-3-8.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-29**

##### **Lease of waterworks facilities; notice and hearing**

Sec. 29. (a) When the municipality and the lessor have agreed upon the terms and conditions of any waterworks lease proposed to be entered into under this chapter and before the final execution of the lease, a notice shall be given by publication in accordance with IC 5-3-1 to all persons interested, of a hearing to be held before the municipal legislative body, which hearing must be on a day not earlier than twenty (20) days after publication of the notice.

(b) The notice must:

- (1) name the day, place, and hour of the hearing; and
- (2) set forth a brief summary of the principal terms agreed upon, including:
  - (A) the name of the lessor;
  - (B) the character of the property to be leased;
  - (C) the lease rental to be paid; and
  - (D) the number of years the lease is to be in effect.

(c) The proposed lease must be available for inspection by the public during the twenty (20) day period and at the hearing.

(d) All persons interested are entitled to be heard, at the time fixed, upon the necessity for the execution of the lease and whether the rental to be paid to the proposed lessor is a fair and reasonable rental for the waterworks facilities. The hearing may be adjourned to a later date or dates.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.35-1990, SEC.27.*

#### **IC 8-1.5-2-30**

##### **Lease of waterworks facilities; execution; limitation of actions**

Sec. 30. (a) After the hearing under section 29 of this chapter, the municipal legislative body may:

- (1) authorize the execution of the waterworks lease as originally agreed upon; or
- (2) make modifications as may be agreed upon with the proposed lessor;

but the lease rental as set out in the published notice may not be increased without a new notice and hearing.

(b) If the execution of the lease as originally agreed upon, or as modified by agreement, is authorized by the legislative body, a notice of the signing of the contract of lease shall be given by publication in accordance with IC 5-3-1.

(c) An action to:

- (1) contest the validity of the lease; or
- (2) enjoin the performance of any of the terms and conditions of the lease;

must be brought not later than thirty (30) days after publication of the notice of execution of the lease.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-31**

##### **Leased waterworks facilities; tax exemptions**

Sec. 31. All waterworks facilities leased by a lessor contracting with 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 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-32**

##### **Leased waterworks facilities; applicable statutes**

Sec. 32. As to waterworks facilities leased and acquired under this chapter, it is not necessary to comply with any other statutes concerning the leasing and acquisition of waterworks facilities by municipalities except as specifically required by this chapter.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-2-33**

##### **Action to determine public convenience and necessity**

Sec. 33. (a) This section does not apply to the following:

- (1) A municipality that, as of July 1, 2012, had established and operated a water utility.
- (2) An action brought under:
  - (A) IC 8-1-2-92;
  - (B) IC 8-1-2-93; or
  - (C) this chapter;before March 1, 2013.

(b) Not more than thirty (30) days after a municipality described in section 7(b)(1) or 7(b)(2) of this chapter adopts an ordinance under section 7 of this chapter, the utility may bring an action against the municipality in the circuit or superior court of the county in which the municipality is located to determine the question of public convenience and necessity.

(c) The court shall stay further action by the municipality under the ordinance adopted under section 7 of this chapter pending the court's determination.

(d) The court shall try the cause without delay and without a jury and review the evidence de novo.

*As added by P.L.270-2013, SEC.7.*

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

#### **Chapter 3. Operation of Municipally Owned Utilities Generally**

##### **IC 8-1.5-3-1**

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

Sec. 1. This chapter applies to all municipalities, except consolidated cities, that own or operate utilities.

*As added by Acts 1982, P.L.74, SEC.1.*

##### **IC 8-1.5-3-2**

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

Sec. 2. As used in this chapter, "board" refers to the board operating a municipally owned utility as determined under section 3 of this chapter.

*As added by Acts 1982, P.L.74, SEC.1.*

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

###### **Control of utilities; control of storm water facilities in third class cities; ordinance; creation of utility service board**

Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

- (1) the municipal works board;
- (2) a board consisting of the members of the municipal legislative body;
- (3) a utility service board established under subsection (f) or established before January 1, 1983, under IC 8-1-2-100 (repealed); or
- (4) the board of directors of a department of waterworks established under IC 8-1.5-4.

The legislative body of a third class city also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a third class city's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the third class city's municipally owned utilities to a board described in this subsection.

(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of a third class city's storm water facilities to a board described in subsection (a) the third class city has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The

petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

(d) Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

(e) Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of \_\_\_\_\_ adopt an ordinance providing for the appointment of a utility service board to operate \_\_\_\_\_ (Insert name of utility here)?"

(f) If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members must be residents of the area served by the board. The ordinance must provide for:

- (1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;
- (2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;
- (3) the salaries, if any, to be paid to the members; and
- (4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

(g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections (c) through (e).

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.16-1983, SEC.6; P.L.3-1987, SEC.500; P.L.12-1995, SEC.100; P.L.282-2003, SEC.1.*

### **IC 8-1.5-3-3.3**

#### **Legalization of certain utility service boards**

Sec. 3.3. For purposes of section 3 of this chapter, a utility service board that:

- (1) was established before January 1, 1983, under IC 8-1-2-100 (before its repeal and formerly Acts 1913, c.76, s.109, as amended);
- (2) has continued in existence without interruption since its creation; and
- (3) was established without submitting the question of its

creation to the voters of the municipality for approval in a referendum;  
is legalized and its actions validated.  
*As added by P.L.220-2011, SEC.187.*

#### **IC 8-1.5-3-4**

##### **Board; powers and duties**

Sec. 4. (a) The board has general supervisory powers over the utilities under its control, with responsibility for the detailed supervision of each utility to be vested in its superintendent, who is responsible to the board for the business and technical operation of the utility. The board shall:

- (1) fix the number and compensation of employees;
- (2) adopt rules governing the appointment of employees including making proper classifications and rules to:
  - (A) determine the eligibility of applicants;
  - (B) determine by competitive examination the relative fitness of applicants for positions;
  - (C) establish eligible lists arranged according to the ratings secured;
  - (D) provide for the appointment of those having the highest ratings; and
  - (E) provide for the promotion of employees;
- (3) subject to IC 36-4-9-2, appoint a superintendent or manager of each utility under its control who is responsible to the board for the business and technical operation of the utility; the board shall make the appointment on the basis of fitness to manage the particular utility to which he is to be assigned, taking into account his executive ability and his knowledge of the utility industry;
- (4) subject to IC 36-4-9-12, hire attorneys when required for the operation of the utility;
- (5) hire professional or expert personnel when required for the operation of the utility;
- (6) submit a budget of its financial needs for the next year in the detail required by the municipal legislative body;
- (7) recommend to the legislative body reasonable and just rates and charges for services to the patrons of each utility;
- (8) appropriate, lease, rent, purchase, and hold all real and personal property of the utility;
- (9) enter upon lands for the purpose of surveying or examining the land to determine the location of any plant or appurtenances;
- (10) award contracts for:
  - (A) the purchase of capital equipment;
  - (B) the construction of capital improvements; or
  - (C) other property or purposes that are necessary for the full and efficient construction, management, and operation of each utility;
- (11) adopt rules for the safe, economical, and efficient management and protection of each utility;

(12) deposit at least weekly with the municipal fiscal officer all money collected from each utility to be kept in a separate fund subject to the order of the board; and

(13) make monthly reports to the fiscal officer of the receipts and disbursements of money belonging to each utility and an annual report of the condition of the utility.

(b) The board may purchase by contract electricity, water, gas, power, or any other commodity or service for the purpose of furnishing the commodity or service to the patrons of the municipally owned utility or to the municipality itself.

(c) If the board wants to purchase the commodity or service from a public utility and the parties cannot agree on a rate or charge to be paid for it, either party may apply to the commission or other appropriate state or federal regulatory agency to establish a fair and reasonable rate or charge to be paid for the commodity or service.

(d) The board may discontinue water service by a waterworks to:

(1) a water consumer; or

(2) any property;

upon failure by the water consumer or the property owner to pay charges legally due for sewer or sewage disposal plant service. However, the water service may not be discontinued for nonpayment of sewer or sewage disposal plant service charges until the charges have been due and unpaid for at least thirty (30) days.

(e) Before water service is discontinued under subsection (d), the board must give written notice to the water consumer or property owner of its intention to discontinue water service if the unpaid sewer or sewage disposal plant service charges are not paid before a date specified in the notice. The notice must be mailed not less than ten (10) days before water service is to be discontinued and addressed to the water consumer or the property owner at his last known address.  
*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-3-4.5**

##### **Application of section; bid, proposal, or quotation submitted by trust**

Sec. 4.5. (a) This section applies to the award of a contract under this chapter by acceptance of bids, proposals, or quotations.

(b) A bid, proposal, or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

*As added by P.L.336-1989(ss), SEC.19.*

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

##### **Superintendent; powers and duties; compensation; bond; removal**

Sec. 5. (a) The superintendent of each utility shall:

(1) appoint, supervise, and dismiss all employees of the utility;

(2) employ unskilled labor when needed, without competitive examination;

(3) investigate all claims against the utility;

(4) oversee the operation of the utility and any construction work, repairs, or alterations to the system; and

(5) advise the board in all matters that will bring about an efficient and economical operation and maintenance of the utility.

(b) The superintendent is entitled to the compensation for his services that is determined by resolution of the board.

(c) The superintendent shall give bond in a sum not less than double the estimated amount of money that may be in his hands at any time. The bond shall be conditioned upon the faithful discharge of his duties and the payment to the proper person of all money in his hands. The bond is subject to the approval of the executive of the municipality.

(d) The superintendent may be removed by the board for cause at any time after notice and a hearing.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-3-6**

##### **Load building appliances; purchase; sale and advertisement**

Sec. 6. (a) The board may purchase, sell, and advertise, for the purpose of sale, load building appliances.

(b) Load building appliances shall be designed to be used in:

(1) the consumption of the products; or

(2) the use of the services;

that the utility furnishes or is equipped to furnish to its customers.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-3-7**

##### **Retirement account**

Sec. 7. The board may set up a retirement account for the benefit of the employees and past employees of each utility. The board may provide for the method, manner, and amount of contributions by the utility out of its earnings, reserves, or earned surplus, and by employees if required by the plan, and may create an account for the utilities and allocate to the account contributions sufficient to establish the plan on a sound actuarial basis, including contributions for past services of employees. However, the plan may not require contributions from an employee to exceed six percent (6%) of his wage or salary.

*As added by Acts 1982, P.L.74, SEC.1.*

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

##### **Rates and charges**

Sec. 8. (a) A municipality owning a utility under this chapter shall furnish reasonably adequate services and facilities.

(b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.

(c) "Reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to:

(1) pay all the legal and other necessary expenses incident to the operation of the utility, including:

- (A) maintenance costs;
- (B) operating charges;
- (C) upkeep;
- (D) repairs;
- (E) depreciation;
- (F) interest charges on bonds or other obligations, including leases; and
- (G) costs associated with the acquisition of utility property under IC 8-1.5-2;

(2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;

(3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;

(4) provide adequate money for working capital;

(5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and

(6) provide money for the payment of any taxes that may be assessed against the utility.

(d) It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful.

(e) The board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

(f) Rates and charges established under this section are subject to the approval of:

- (1) the municipal legislative body by ordinance; and
- (2) the commission, in accordance with the procedures set forth in IC 8-1-2.

The commission shall approve rates and charges that are sufficient, in addition to the cash revenue requirements set forth in subsection (c), to include a reasonable return on the utility plant of the municipality if the legislative body so elects.

(g) Except for a municipally owned utility taxed under IC 6-1.1-8-3, the commission shall approve rates and charges sufficient to compensate the municipality for taxes that would be due the municipality on the utility property were it privately owned. These rates and charges in lieu of taxes may be transferred to the municipal general fund, if the legislative body so elects.

(h) The commission shall grant a request that an increase in rates and charges not be effective until after the occurrence of a future event if the legislative body so requests.

(i) A municipality that acquires and operates a utility under

IC 8-1.5-2 by exercising the power of eminent domain may not impose a special rate, charge, surcharge, or other fee, other than rates and charges approved under this section or otherwise authorized by law, on the customers of the utility in order to pay for the costs associated with acquiring the utility through the exercise of the power of eminent domain.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.105-1983, SEC.2; P.L.35-1990, SEC.28; P.L.172-2009, SEC.5.*

#### **IC 8-1.5-3-8.1**

##### **Hearings; adoption of rates and charges; notice; contents**

Sec. 8.1. (a) As used in this section, "utility" refers to a municipally owned:

- (1) water utility;
- (2) wastewater utility; or
- (3) combined water and wastewater utility;

that is not under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "works" refers to water or wastewater utility works.

(c) After the introduction of the ordinance establishing the rates and charges under section 8 of this chapter, but before the ordinance is finally adopted, the municipal legislative body shall hold a public hearing at which users of the works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed rates and charges. Notice of the hearing, setting forth the proposed schedule of rates and charges, shall be:

- (1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through IC 5-3-1-9);
- (2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for water or wastewater service to vacant or unimproved property; and
- (3) mailed to users of the 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 hearing is conspicuous. The hearing may be adjourned from time to time. Notice mailed under subdivision (3) must include a statement that, following adoption of the ordinance, the users described in subdivision (3) may be entitled to petition the commission under section 8.3 of this chapter to review and adjust the rates and charges imposed on the users if a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance has not been filed.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the rates and charges, either as originally introduced or as modified. A copy of the schedule of rates and charges 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 for service to property located outside the corporate

boundaries of the municipality as compared to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges.

(e) The rates and charges 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.

(f) The municipal legislative body may change or readjust the rates and charges in the same manner as they were established.

(g) Rates and charges collected under this chapter are considered revenues of the utility.

*As added by P.L.77-1991, SEC.1. Amended by P.L.139-2012, SEC.1.*

### **IC 8-1.5-3-8.2**

#### **Objections to rates and charges; bonds; hearings**

Sec. 8.2. (a) As used in this section:

- (1) "utility"; and
- (2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(b) Owners of property connected or to be connected to and served by the works authorized under this chapter may file a written petition objecting to the rates and charges of the utility so long as:

- (1) the petition contains the names and addresses of the petitioners;
- (2) the petitioners attended the public hearing provided under section 8.1 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 8.1 of this chapter;
- (4) the written petition states specifically the ground or grounds of objection; and
- (5) a petition has not been filed with the commission under section 8.3 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges of the utility.

(c) 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.

(d) 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.

(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 the petition 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.2. Amended by P.L.139-2012, SEC.2.*

### **IC 8-1.5-3-8.3**

#### **Objection to extraterritorial rates and charges; review by commission**

Sec. 8.3. (a) This section applies to a utility that provides service to property located outside the corporate boundaries of the municipality.

(b) As used in this section:

(1) "utility"; and

(2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(c) This subsection applies if a municipal legislative body adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifteen percent (15%), but not more than fifty percent (50%), the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality. Not later than September 30, 2012, the municipality may petition the commission to approve the percentage difference between rates and charges established in the ordinance for property within and property outside the corporate boundaries. In the petition, the municipality shall set forth the following:

(1) The date on which the ordinance took effect.

(2) The percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries of the municipality.

(3) Whether the works that is the subject of the ordinance is a

water utility works, a wastewater utility works, or both a water and wastewater utility works.

If the commission determines that a petition filed under this subsection satisfies the requirements of this subsection, the commission shall approve the petition, including the percentage difference between rates and charges described in subdivision (2). If the commission determines that a petition filed under this subsection does not satisfy the requirements of this subsection, the commission shall disapprove the petition. However, if the percentage difference imposed in the ordinance was the subject of an objecting petition that was filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the percentage difference is considered approved without the filing of a petition under this subsection.

(d) If a municipality that files, or that is exempt from filing, a petition under subsection (c) adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved or considered approved by the commission under subsection (c) plus fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
  - (A) ten percent (10%) of all; or
  - (B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition filed under this subsection must be filed not more than fourteen (14) days after the date on which the ordinance referred to in this subsection is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter appealing the same rates and charges.

(e) If a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate

boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
  - (A) ten percent (10%) of all; or
  - (B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition must be filed not more than fourteen (14) days after the date on which the ordinance is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges.

(f) The filing of a petition with the commission under subsection (d), (e), or (m) stays the ordinance adopted under section 8.1 of this chapter or under IC 36-9-23-26. The rates and charges in effect before the adoption of the ordinance remain in effect until:

- (1) the commission approves or disapproves the petition; and
- (2) if applicable, the commission adjusts the rates and charges imposed by the ordinance on users of the works whose property is located outside the corporate boundaries of the municipality.

(g) The commission shall prescribe the form and manner in which a petition must be filed under subsection (d), (e), or (m). A petition filed under subsection (d)(2), (e)(2), or (m)(2) must be signed by:

- (1) each individual user seeking review by the commission; or
- (2) one (1) or more attorneys licensed to practice law in Indiana who represent the individual users seeking review by the commission.

The burden of proof to demonstrate that the proposed rates and charges are nondiscriminatory, reasonable, and just is on the municipality, regardless of who petitions the commission. The commission shall approve or disapprove a petition within one hundred twenty (120) days after the petition is filed in the form and manner prescribed by the commission. However, the commission may extend the one hundred twenty (120) day deadline for up to sixty (60) days for good cause if all parties to the proceeding agree. A petition is automatically disapproved if the petitioner has filed a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance.

(h) For purposes of determining whether the percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission:

- (1) may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality; and
- (2) may not consider any connection fees or capital surcharges imposed on users of the works for service to property that is

located outside the corporate boundaries of the municipality that are specifically designated to pay for the costs associated with main extensions to the users of the works.

(i) If the commission determines that the percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is not nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission may:

- (1) establish nondiscriminatory, reasonable, and just rates and charges for users of the works for service to property located outside the corporate boundaries of the municipality; and
- (2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges.

However, with respect to rates and charges imposed in an ordinance that was the subject of an objecting petition filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the commission may not establish rates and charges such that the percentage difference between rates and charges established by the commission is less than the percentage difference between rates and charges imposed in the ordinance.

(j) This section does not:

- (1) authorize the commission to review or revise rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality; or
- (2) otherwise return or subject a utility to the jurisdiction of the commission for the approval of rates and charges.

(k) The commission may adopt rules under IC 4-22-2 to implement this section.

(l) The commission may not impose a fee with respect to proceedings under this section.

(m) This subsection applies if a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifty percent (50%) the rates and charges imposed on users of the works for service to property located anywhere within the corporate boundaries of the municipality. Not later than December 31, 2013, either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) Subject to subsection (n), the lesser of:
  - (A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

(n) At least twenty (20) days before a group of users described in subsection (m)(2) may petition the commission under subsection (m), the group of users must file the petition with the municipal legislative body. The municipal legislative body and the group of users shall attempt to resolve the issues set forth in the petition concerning the rates and charges imposed on the group of users. If the group of users and the municipal legislative body are unable to resolve the issues within ten (10) days, the group of users may petition the commission under subsection (m).

*As added by P.L.139-2012, SEC.3. Amended by P.L.163-2013, SEC.1; P.L.270-2013, SEC.8.*

### **IC 8-1.5-3-9**

#### **Removal of utility from jurisdiction of commission for approval of rates and charges; procedure**

Sec. 9. (a) This subsection applies to a municipally owned utility that before June 1, 1987, was taken out of the jurisdiction of the commission for the approval of rates and charges. A utility to which this subsection applies is removed from the jurisdiction of the commission for approval of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(b) Except as provided in subsection (a), a municipal legislative body that wants to be taken out of the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3 and submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor taking the municipally owned utility out of the jurisdiction of the commission, the utility:

(1) is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness; and

(2) shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the utility's withdrawal.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.124-1987, SEC.1; P.L.23-1988, SEC.62; P.L.10-1988, SEC.217; P.L.12-1995, SEC.101.*

#### **IC 8-1.5-3-9.1**

#### **Removal of utility from jurisdiction of commission for approval of rates, charges, and evidences of indebtedness; alternative procedure**

Sec. 9.1. (a) This section applies to the following:

- (1) Water utilities that are owned or operated by second class cities.
- (2) Third class cities.
- (3) Towns.

(b) In addition to section 9 of this chapter, a municipally owned utility to which this section applies may be removed from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, if the municipal legislative body adopts an ordinance removing the utility from commission jurisdiction. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to all ratepayers of the utility and to the commission. For a second class city the municipal legislative body must hold two (2) public meetings before the final vote on an ordinance removing the utility from commission jurisdiction may be adopted. An explanation of the removal process must be provided at each public meeting under this section. Each public meeting must be held in a different location.

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

(d) The question of removal from commission jurisdiction shall be submitted to the registered voters of the municipality if, within the sixty (60) day period described in subsection (c), the legislative body receives a petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and
- (2) that requests the legislative body to submit the question of removal from commission jurisdiction to the registered voters of the municipality at the next election.

The municipal legislative body shall certify the public question in subsection (e) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(e) If the legislative body receives a petition described in subsection (d) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by

IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(f) If a majority of those voting on the question described in subsection (e) favor taking the municipally owned utility out of the jurisdiction of the commission, the utility is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidences of indebtedness.

(g) If the legislative body receives a petition in proper form under subsection (d), the ordinance does not take effect until after removal is approved by a majority of those voting. If a majority of those voting vote against removal, the utility remains under the jurisdiction of the commission and the ordinance does not take effect.

(h) In addition to the notice required by subsection (b), if the municipal legislative body adopts the ordinance, described in subsection (b), the municipal legislative body shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the ordinance becomes effective.

(i) Notwithstanding this section or section 9 of this chapter, the commission may require a municipally owned utility that generates electric power to provide information to the permanent forecasting group under IC 8-1-8.5-3.5.

(j) This section does not affect the obligations of a municipally owned utility under IC 8-1-2.3, IC 8-1-8.5, IC 8-1-22.5, or IC 8-1.5-3-14.

(k) Notwithstanding subsection (a) and the procedure set forth in section 9 of this chapter, if a city adopts an ordinance under this section before January 1, 2013, to remove the city's municipally owned electric utility from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, the removal of the city's municipally owned electric utility from the commission's jurisdiction for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness is effective for all purposes and is legalized and validated.

*As added by P.L.82-1988, SEC.6. Amended by P.L.77-1991, SEC.3; P.L.12-1995, SEC.102; P.L.163-2013, SEC.2.*

**IC 8-1.5-3-9.5**

**Return of utility to commission jurisdiction following removal**

Sec. 9.5. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9 of this chapter, including a municipally owned utility described in section 9(a) of this chapter.

(b) A municipal legislative body that wants to return a municipally owned utility to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(e) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(f) If a municipally owned utility is returned to the jurisdiction of the commission under this section, the municipal legislative body shall mail written notice to the commission.

*As added by P.L.82-1988, SEC.7. Amended by P.L.12-1995, SEC.103.*

#### **IC 8-1.5-3-9.6**

##### **Return of utility to commission jurisdiction following removal under alternative procedure**

Sec. 9.6. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9.1 of this chapter.

(b) The municipal legislative body may adopt an ordinance returning the municipally owned utility to the jurisdiction of the

commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness if it receives a petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and
- (2) that requests the legislative body to adopt an ordinance returning the municipally owned utility to the jurisdiction of the commission.

If the municipal legislative body fails to adopt an ordinance under this subsection within ninety (90) days after receipt of the petition, a petition requesting the adoption of an ordinance to return to commission jurisdiction may not be submitted for four (4) years from the date the last petition was submitted under this subsection.

(c) If the municipal legislative body fails to adopt the ordinance described in subsection (b) within ninety (90) days after receipt of the petition, the public question of the return to commission jurisdiction shall be submitted to the registered voters of the municipality if the legislative body receives a second petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot;
- (2) that requests the legislative body to submit the question of the return to commission jurisdiction to the registered voters of the municipality at the next election; and
- (3) that is submitted to the legislative body after the expiration of the ninety (90) day period described in this subsection.

The municipal legislative body shall certify the public question described in subsection (d) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(d) If the legislative body receives a petition described in subsection (c) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(e) If a majority of those voting on the question described in subsection (d) favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning

to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(f) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction. In addition, a petition requesting the adoption of an ordinance under subsection (b) may not be submitted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(g) If a municipally owned utility is returned to commission jurisdiction under this section, the municipal legislative body shall mail written notice to the commission.

*As added by P.L.82-1988, SEC.8. Amended by P.L.12-1995, SEC.104.*

### **IC 8-1.5-3-10**

#### **Rates and charges; electric service outside corporate boundaries**

Sec. 10. Whenever a municipality operates an electric utility that provides service outside the corporate boundaries of the municipality, the charges for service outside the corporate boundaries may not differ from the charges for service inside the corporate boundaries unless the utility clearly demonstrates significant cost factors that make different charges nondiscriminatory, reasonable, and just.

*As added by Acts 1982, P.L.74, SEC.1.*

### **IC 8-1.5-3-11**

#### **Funds; management**

Sec. 11. (a) The money belonging to each municipally owned utility shall be kept by the municipal fiscal officer as separate funds as required by any bond ordinance or accounting procedures established by the commission or the state board of accounts. The municipal legislative body, with the approval of the board, may transfer surplus earnings of the utility to the general fund. The money may not, however, be transferred unless the terms and conditions of any bond ordinance, resolution, indenture, contract under IC 8-1-2.2, or similar instrument binding upon the utility are complied with.

(b) A cash reserve fund shall be created by ordinance and carried on the records of the utility or utilities by providing for monthly contributions or transfers to the cash reserve fund of surplus earnings of the utility or utilities.

(c) "Surplus earnings" are those cash earnings remaining after provision has been made to take care of current obligations, including:

- (1) operating expense;
- (2) depreciation or replacement fund;
- (3) bond and interest sinking fund;
- (4) retirement fund; or
- (5) any other priority fund requirements fixed by law.

(d) After creation of the cash reserve fund, the legislative body

may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund.

(e) If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30.

(f) A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-3-12**

##### **Loan from utility to municipality; loan requirements; limitation on amount**

Sec. 12. (a) A municipality may, by ordinance of its legislative body, borrow money from a utility owned by the municipality for any of the following purposes:

- (1) Current purposes in anticipation of taxes levied and to be collected during the current or following year.
- (2) Carrying out an eligible efficiency project (as defined in IC 36-9-41-1.5) within the municipality.

(b) The board may by resolution lend money to the municipality if the utility has on hand:

- (1) a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year;
- (2) the amount necessary to meet current expenses during the year; and
- (3) the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.

(c) A loan made under subsection (a)(1) may not be made for a sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes.

(d) A loan under this section:

- (1) must be evidenced by an obligation of the municipality;
- (2) must be signed by the executive;
- (3) is due:
  - (A) on or before thirty (30) days after the last day for the payment of anticipated taxes, in the case of a loan made

- under subsection (a)(1); and
- (B) on a date determined by the board (but not more than six (6) years after the date of the loan), in the case of a loan made under subsection (a)(2); and
- (4) may bear interest at any rate as determined by the board, payable at maturity.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.88-2009, SEC.2.*

### **IC 8-1.5-3-13**

#### **Investments of surplus money; authorization of officers**

Sec. 13. The municipal legislative body may, by ordinance, authorize officers charged by law with custodial care, expenditure, and investment of utility money to invest or reinvest surplus money of a utility in the manner prescribed by IC 5-13-9.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.20.*

### **IC 8-1.5-3-14**

#### **Annual report; exemption; examination of accounts**

Sec. 14. (a) A municipally owned utility under the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness shall file with the commission an annual report of the operation of the plant on forms prescribed by the commission. The annual reports shall be kept in the office of the commission as a public record. A municipally owned utility that has withdrawn from commission jurisdiction under IC 8-1-2-100 (before its repeal on January 1, 1983) or section 9 or 9.1 of this chapter is not required to file the annual report required by this section.

(b) The state board of accounts shall examine all accounts of every municipally owned utility at regular intervals. In the examination, inquiry shall be made as to:

- (1) the financial condition and resources of the utility;
- (2) whether the laws of the state have been complied with; and
- (3) the methods and accuracy of the accounts and reports of the utilities examined.

The examination shall be made without notice, and its cost shall be paid out of the funds of the utility.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.68-1990, SEC.2.*

### **IC 8-1.5-3-15**

#### **Utilities operated under IC 8-1-11.1; rights and powers**

Sec. 15. A utility operated under IC 8-1-11.1 retains the rights and powers conferred by IC 8-1-11.1-3.1, notwithstanding section 1 of this chapter.

*As added by Acts 1982, P.L.74, SEC.1.*

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

#### **Chapter 3.5. Water Bill Adjustments for Undetected Leaks**

##### **IC 8-1.5-3.5-1**

###### **"Unusually large bill"**

Sec. 1. As used in this chapter, "unusually large bill" means a residential water bill that reflects monthly water usage, in whatever units measured, that is at least two (2) times the customer's average monthly usage at the premises.

*As added by P.L.53-2004, SEC.1. Amended by P.L.2-2005, SEC.26.*

##### **IC 8-1.5-3.5-2**

###### **"Utility"**

Sec. 2. As used in this chapter, "utility" refers to a water utility owned or operated by a municipality.

*As added by P.L.53-2004, SEC.1. Amended by P.L.2-2005, SEC.27.*

##### **IC 8-1.5-3.5-3**

###### **Utility's discretion to adjust unusually large bill when excess usage caused by undetectable damage to equipment**

Sec. 3. Notwithstanding IC 8-1-2-103(a), a utility may adjust an unusually large bill if the excess usage reflected in the bill is caused by physical damage to any facility or equipment supplying water to the premises and the damage:

- (1) is not visible or detectable on the customer's premises except upon excavation or some other disturbance of the property; and
- (2) is not the result of an act of the customer, or of any agent or contractor hired by the customer.

*As added by P.L.53-2004, SEC.1.*

##### **IC 8-1.5-3.5-4**

###### **Adjustments to be in accordance with policies adopted by utility**

Sec. 4. A utility that elects to adjust unusually large bills must do so in accordance with policies adopted by the utility. The utility's policies must specify the procedures by which a customer may request an adjustment and prove the damage described in section 3 of this chapter.

*As added by P.L.53-2004, SEC.1.*

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

### **Chapter 4. Department of Waterworks in Certain Municipalities**

#### **IC 8-1.5-4-0.3**

#### **Effective date of certain amendments made to section 14 of this chapter**

Sec. 0.3. Notwithstanding the amendments made to section 14 of this chapter by P.L.93-1993, in the case of a public utility that is described in IC 8-1-2-103(c), as amended by P.L.93-1993, the effective date for the implementation of the amendments made to section 14 of this chapter by P.L.93-1993 is July 1, 1993.

*As added by P.L.220-2011, SEC.188.*

#### **IC 8-1.5-4-1**

#### **Application of chapter**

Sec. 1. This chapter applies to all municipalities that:

- (1) own or operate waterworks; and
- (2) adopt the provisions of this chapter by ordinance.

*As added by Acts 1982, P.L.74, SEC.1.*

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

#### **Certain municipalities operating a waterworks through a department before January 1, 1982**

Sec. 1.5. (a) A municipality having and operating a waterworks through a department of waterworks before January 1, 1982, under IC 19-3-15 (before its repeal on January 1, 1983) or under IC 19-3-27 (before its repeal on January 1, 1983) shall be deemed to have established a department of waterworks, as authorized by section 2 of this chapter, having the same number of board members as the board operating before January 1, 1982, and having the same powers, obligations, and duties as would be the case if the legislative body of the municipality had adopted an ordinance doing so before January 1, 1983, in accordance with Acts 1982, P.L.74, SECTION 5(b).

(b) Except as provided in subsection (c), the board of directors of the department of waterworks shall operate as both the board and the municipal legislative body for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.

(c) This subsection applies to water utilities that have been removed from the jurisdiction of the Indiana utility regulatory commission under IC 8-1.5-3-9.1 after June 30, 1991. The board of directors of the department of waterworks shall operate as the board for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.

*As added by P.L.105-1983, SEC.3. Amended by P.L.16-1984, SEC.7; P.L.3-1990, SEC.29; P.L.56-1992, SEC.1.*

#### **IC 8-1.5-4-2**

#### **Department of waterworks; establishment; board of directors**

Sec. 2. (a) If the legislative body of a municipality, by ordinance, adopts the provisions of this chapter, there is established a department

of waterworks to be controlled by a board of directors (referred to as "the board" in this chapter). The board consists of either three (3) or five (5) directors, as determined by ordinance, who shall be appointed by the municipal executive.

(b) In case there are three (3) directors, not more than two (2) may be of the same political party. In case there are five (5) directors, not more than three (3) may be of the same political party.

(c) The terms of directors shall be prescribed by ordinance, but initial terms must be prescribed so that the directors' terms will be staggered. Each director shall give a bond, which shall be fixed by the municipal fiscal officer and is subject to his approval.

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

*As added by Acts 1982, P.L.74, SEC.1.*

### **IC 8-1.5-4-3**

#### **Special taxing district**

Sec. 3. The department of waterworks has jurisdiction over a special taxing district (referred to as "the waterworks district" in this chapter) that consists of:

- (1) in the case of a second class city located 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), all the territory within that county; or
- (2) in the case of any other municipality, all the territory within the corporate boundaries of the municipality, or the territory served by the waterworks if larger or smaller than the corporate boundaries.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.12-1992, SEC.59; P.L.170-2002, SEC.60; P.L.119-2012, SEC.84.*

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

#### **Board; powers and duties**

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

- (1) may hold hearings following public notice;
- (2) may make findings and determinations;
- (3) may design, order, contract for or construct pumping plants or stations, filtration plants, reservoirs, water mains, hydrants, and other equipment, structures, and appurtenances and rebuild, equip, improve, extend, and repair plants, equipment, and structures;
- (4) may build or have built all roads, levees, walls, or other structures that may be necessary or desirable in connection with waterworks;
- (5) make all necessary or desirable improvements of the grounds and premises under its control;
- (6) may issue and sell bonds for the construction, alteration, addition, or extension to the waterworks, in the manner prescribed by law, including the provisions of IC 8-1.5-2; and

(7) shall furnish an adequate supply of water to consumers within the waterworks district.

*As added by Acts 1982, P.L.74, SEC.1.*

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

##### **Water filtration and service facilities; acquisition, construction, and operation; financing methods**

Sec. 5. The acquisition, construction, installation, operation, and maintenance of facilities and land for water filtration and water service may be financed through proceeds from tax levies, proceeds of special taxing district bonds of the waterworks district, service rates, revenue bonds, or any other available funds.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-6**

##### **Authority to set aside revenues for operation and maintenance, a depreciation account, and payment of bonds**

Sec. 6. The board may fix and set aside:

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

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-7**

##### **Revenues set aside for operation and maintenance**

Sec. 7. (a) In fixing the proportion of the revenues of the waterworks department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the waterworks, and may not set aside into the special fund a greater amount of the revenues and proceeds than, in its judgment, is required for the operation and maintenance.

(b) If a surplus is accumulated in the operating and maintenance fund, and that surplus is equal to the cost of maintaining and operating the waterworks system during the remainder of the current calendar, operating, or fiscal year and during the next calendar, operating, or fiscal year, any excess over that surplus may be transferred by the board to either the depreciation account, to be used for any improvements, extensions, or additions to the waterworks, or to the bond and interest redemption account.

*As added by Acts 1982, P.L.74, SEC.1.*

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

##### **Revenues set aside for payment of bonds**

Sec. 8. (a) The fixed proportion set aside for the payment of the principal and interest of the authorized bonds shall, from month to month, as accrued and received, be set apart and paid into a special account identified as "the bond and interest redemption account".

(b) In fixing and 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, together with a surplus or margin of ten percent (10%) in excess.

(c) If a surplus created in the bond and interest redemption account exceeds the interest and principal of any bonds becoming payable during the current calendar, operating, or fiscal year and during the next calendar, operating, and fiscal year, the board may transfer any excess over the surplus to either the operation and maintenance account, or the depreciation account, as the board may designate.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-9**

##### **Revenues set aside for depreciation account**

Sec. 9. (a) The proportion set aside to the depreciation account shall be expended in making good depreciation in the waterworks or in new construction, extensions, or additions to the property of the waterworks.

(b) Any accumulations in the depreciation account may be invested by the board, and if invested, the income from the investment shall be carried in the depreciation account. The board may invest the funds in accordance with IC 5-13-9.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.21.*

#### **IC 8-1.5-4-10**

##### **Secured debt or charge**

Sec. 10. (a) The board may authorize and set apart bonds equal to the amount of any secured debt or charge subject to which a waterworks may be purchased or acquired in any proceeding, and shall set aside for interest and sinking fund from the income and revenue of the waterworks a sum sufficient to comply with the requirements of the instrument creating the lien or securing the charge.

(b) If the instrument does not make any provision, the board shall set aside into the secured-debt account from month to month for interest on the secured debt or charge an amount sufficient to provide for the payment of the interest on the secured debt or charge, and at the option of the board either an annual amount sufficient to retire the secured debt or charge at maturity or bonds issued under this chapter equal to the secured debt or charge. Any surplus after satisfying the secured debt or charge may be transferred to the bond and interest redemption account.

(c) Waterworks bonds set aside for a debt may, from time to time, be issued in an amount sufficient with the amount then in the sinking fund to pay and retire the debt or any part thereof. The bonds may not

be issued at less than par value in exchange for, or satisfaction of, the secured debt or charge, or may be sold in the manner provided by this chapter, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. A municipality acquiring a waterworks does 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.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-11**

##### **Bonds and interest issued against special redemption fund**

Sec. 11. (a) The bonds and the interest issued against the special redemption fund:

(1) are a valid claim of the holders only against that fund and the fixed proportion or amount of the revenues pledged to that fund; and

(2) are 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 bearer. Coupons and bearer bonds may be registered as to principal in the holder's name on the books of the municipality, registration being noted on the bond by the municipal clerk or other designated officer, after which no transfer is valid unless made on the books of the municipality by the registered holder and similarly noted on the bonds. 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 be again registered as to principal as before. The registration of the bonds as to the principal does not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and the interest made payable only to the registered holder of the bonds. If the coupons are surrendered, the surrender and cancellation shall be noted on the bond, and interest on the bond is then payable to the registered holder on order in cash or at his option by check or draft payable at the place or one (1) of the places where the coupons were payable.

(c) Bonds shall be sold in accordance with IC 5-1-11.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-12**

##### **Bonds; additional issue or issues for extension, addition, or improvement**

Sec. 12. A board acquiring waterworks and paying for them and for extensions and betterments authorized at the time of acquisition may provide for the extension, addition, or improvement of the waterworks by an additional issue or issues of bonds. A board may issue new bonds in the manner provided in this chapter and secured in the same manner, to provide funds for the payment of the principal and interest of any bonds then outstanding.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-13**

### **Bonds; application of proceeds; default**

Sec. 13. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition of the waterworks and the cost of the issuance of the bonds.

(b) Any holder of the bonds or of any of the coupons attached to them may, by action or other proceeding, compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the making and collecting of reasonable and sufficient rates lawfully established for service rendered by the waterworks, the segregation of the income and revenues of the utility, and the application of 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 waterworks on behalf of the municipality and the bondholders, with power to:

(A) charge and collect rates lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the waterworks; 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 waterworks.

Under a sale ordered as provided by subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the waterworks to supply water to the municipality and its citizens.

*As added by Acts 1982, P.L.74, SEC.1.*

### **IC 8-1.5-4-14**

#### **Services rendered to municipality; payment**

Sec. 14. (a) This subsection applies to a municipality that is not subject to IC 8-1-2-103(c) or has not adopted an ordinance to become subject to IC 8-1-2-103(d). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes or by maintaining hydrants and other facilities for fire protection shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(b) This subsection applies to a municipality that is subject to IC 8-1-2-103(c), that has adopted an ordinance to become subject to IC 8-1-2-103(d), or that has adopted a plan described in IC 8-1-2-103(d) as prescribed in IC 8-1-2-103(e). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes shall be:

- (1) charged against the municipality; and
- (2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

Except as provided in subsection (d), the cost and value of maintaining hydrants and other facilities for fire protection shall be excluded from the charges against the municipality and shall be recovered from the other customers of the waterworks beginning on January 1, 1994, in a municipality subject to IC 8-1-2-103(c) and beginning on a date provided in the ordinance for a municipality that adopts an ordinance under IC 8-1-2-103(d). The change in the recovery of current revenue authorized by this section shall be reflected in a schedule of new rates to be filed with the commission at least thirty (30) days before the time the schedule of new rates is to take effect.

(c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be paid into the separate and special fund created by setting aside the income and revenues of the waterworks and is subject to apportionment to the operating, maintenance, depreciation, and bond and interest redemption accounts.

(d) This subsection applies to a city having a population of more than forty-seven thousand (47,000) but less than forty-nine thousand (49,000). The cost and value of maintaining hydrants and other facilities for fire protection may be recovered from customers of the waterworks residing in either of the following, beginning on a date determined by the city:

- (1) In a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).
- (2) In a township having a population of more than nine thousand (9,000) but less than nine thousand five hundred (9,500) located in a county having a population of more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000).

The city shall file a new schedule of rates with the commission as set forth in subsection (b), but is not subject to commission approval of the rates.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.93-1993, SEC.2; P.L.80-1997, SEC.18; P.L.133-1998, SEC.1; P.L.170-2002, SEC.61; P.L.119-2012, SEC.85.*

#### **IC 8-1.5-4-15**

##### **Construction, extension, or improvement; procedure**

Sec. 15. (a) If, upon investigation, the board finds:

- (1) that the waterworks, plant, system, or equipment is insufficient to furnish the necessary supply of water to properly protect the public health and welfare and safeguard the property within the waterworks district; or

(2) that it is necessary to rebuild, repair, extend, and improve the waterworks, plant, systems, and equipment and to acquire lands, construct, erect, or acquire other plants, reservoirs, 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 lands that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution:

(1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the waterworks 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, the resolution, and 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 their public utility and benefit. Notice shall be mailed to the owners of all lands appropriated by the resolution. If a landowner is a nonresident and his 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 he is considered notified of the pendency of the proceedings by the publication of notice.

(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 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 waterworks 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 land an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land surveyors. Such an option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-16**

##### **Lands, rights-of-way, or other property; ownership in name of municipality; remonstrances**

Sec. 16. (a) All lands, rights-of-way, or other property, when acquired, either by purchase or appropriation, shall be taken and held in the name of the municipality.

(b) 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 land, 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 waterworks district.

(c) The board shall hear all persons interested in the proceedings, hear all the remonstrances that have been filed, and take final action on the resolution. The final action shall be recorded.

*As added by Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-17**

##### **Appeals**

Sec. 17. (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 waterworks district is located.

(b) A remonstrator desiring to appeal from 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 him.

(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 to 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 Acts 1982, P.L.74, SEC.1.*

#### **IC 8-1.5-4-18**

##### **Special taxing district bonds of the waterworks district; issuance**

Sec. 18. (a) To procure money to pay for the required property and the 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 municipality, the special taxing district bonds of the waterworks district. The bonds may exceed the total 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 municipal fiscal officer, who shall then prepare the bonds. The bonds shall be executed by the municipal executive and attested by the fiscal officer. The bonds are exempt from taxation as provided by IC 6-8-5. All bonds issued by the board shall be sold by the fiscal officer under IC 5-1-11.

(c) The board may not issue bonds of the waterworks district, payable by special taxation, when the total of the outstanding bonds of the district, 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.

(d) The bonds are not a corporate obligation or indebtedness of the municipality, but are an indebtedness of the waterworks district. The bonds and interest are payable out of a special benefit tax levied upon all of the property of the waterworks district, or 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. An action to question the validity of the bonds issued for the waterworks district or to prevent their issuance may not be brought after the date fixed for the sale of the bonds.

*As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.6-1997, SEC.131.*

#### **IC 8-1.5-4-19**

##### **Tax levy**

Sec. 19. (a) To raise the necessary revenues to pay for the bonds issued, and interest on the bonds, the board:

(1) may levy a special benefit tax upon all the property of the waterworks 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 officers of the municipality and of the county in which the waterworks district is located, at the same time the levy of the municipality is 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, collected, 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 waterworks plant and system under its

jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the waterworks plant and 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 accumulated and kept in a separate fund to be known as the "waterworks district bond fund", and applied to the payment of the district bonds and interest as they severally mature and are payable. All accumulations in the fund before their use for the payment of bonds and interest shall be deposited at interest with the depository of other public funds of the municipality, and all interest collected belongs to that fund.

(d) If the board adopts the resolution, the board may not use any part of the amount set aside out of its net revenues for any purpose other than the monthly payment of the bonds and interest to the sinking fund. Any amount of net revenues derived from the operation of the waterworks plant and system under the jurisdiction of the board, not required for the payment of the principal and interest on the outstanding waterworks district bonds, shall be paid over to the municipality and deposited in the sinking fund established for the purpose of redeeming and retiring outstanding bonds that the municipality may have issued for the benefit of its waterworks plant. This section does not relieve the municipality from the obligation to pay outstanding bonds according to their terms and conditions.

*As added by Acts 1982, P.L.74, SEC.1.*

## **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 of the county where the majority of the systems are located to divide the costs. The circuit 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.*

#### **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.*

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

### **Chapter 6. Utility Service in Regulated Territories**

#### **IC 8-1.5-6-1**

##### **"Municipal utility"**

Sec. 1. As used in this chapter, "municipal utility" refers to a municipally owned:

- (1) water utility;
- (2) wastewater utility; or
- (3) combined water and wastewater utility;

regardless of whether the municipal utility is under the jurisdiction of the commission for the approval of rates and charges.

*As added by P.L.213-2014, SEC.7.*

#### **IC 8-1.5-6-2**

##### **"Regulated territory"**

Sec. 2. As used in this chapter, "regulated territory" means the area outside the corporate boundaries of a municipality described in:

- (1) IC 36-9-2-18;
- (2) IC 36-9-2-19; or
- (3) IC 36-9-23-36.

*As added by P.L.213-2014, SEC.7.*

#### **IC 8-1.5-6-3**

##### **"Regulatory ordinance"**

Sec. 3. As used in this chapter, "regulatory ordinance" means an ordinance adopted by a municipality that:

- (1) asserts the exclusive authority of a municipal utility to provide service within a regulated territory; or
- (2) prohibits another utility from providing utility service in the regulated territory.

*As added by P.L.213-2014, SEC.7.*

#### **IC 8-1.5-6-4**

##### **"Utility"**

Sec. 4. As used in this chapter, "utility" means a utility that provides:

- (1) water service;
- (2) wastewater service; or
- (3) combined water and wastewater service;

regardless of whether the utility is under the jurisdiction of the commission for the approval of rates and charges. The term includes a municipal utility.

*As added by P.L.213-2014, SEC.7.*

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

##### **"Wholesale sewage petition"**

Sec. 5. As used in this chapter, "wholesale sewage petition" refers to a petition filed under IC 8-1-2-61.7 for review of rates and charges for wholesale sewage service.

*As added by P.L.213-2014, SEC.7.*

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

##### **Jurisdiction of commission**

Sec. 6. Notwithstanding any other provision in this title or IC 36, the offering or provision of service by a utility in a regulated territory is under the jurisdiction of the commission as set forth in sections 7, 8, 9, and 10 of this chapter.

*As added by P.L.213-2014, SEC.7.*

#### **IC 8-1.5-6-7**

##### **Resolution of service dispute**

Sec. 7. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance before January 1, 2013;
- (2) a dispute arises or exists between a utility owned by the municipality and another utility as to which utility provides service to customers that connected to service provided by one (1) of the utilities:
  - (A) after the date on which the regulatory ordinance was adopted; and
  - (B) before March 15, 2014; and
- (3) the utilities are unable to resolve a dispute described in subdivision (2) through mutual agreement.

(b) Not later than October 1, 2014, a utility shall petition the commission for resolution of the dispute. The petition must be in the form and manner prescribed by the commission. Upon the filing of the petition, the commission shall assume immediate and exclusive jurisdiction over the utilities for purposes of resolving the dispute.

(c) Upon assuming jurisdiction under subsection (b) and after notice and hearing, the commission shall issue an order resolving all issues presented in the petition described in subsection (b), including determining the manner in which the utilities shall provide service to the customers that are the subject of the dispute, in the manner that the commission determines is in the public interest. In making the determination, the commission shall consider the criteria set forth in section 8(g) of this chapter. The commission shall issue the order within three hundred (300) days after the petition described in subsection (b) is filed.

*As added by P.L.213-2014, SEC.7.*

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

##### **Enforcement of regulatory ordinance by municipality whose utility has filed a wholesale sewage petition**

Sec. 8. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
  - (2) a utility owned by the municipality files a wholesale sewage petition.
- (b) A municipality may not enforce a regulatory ordinance until

all the following conditions are satisfied:

(1) There is a final judgment on the wholesale sewage petition that concludes all administrative and judicial proceedings. For purposes of this subdivision, a final judgment includes an order of the commission under subsection (f).

(2) The commission has issued an order under subsection (f) that resolves all issues included in a petition filed under subsection (d) in a manner that the commission determines is in the public interest.

(3) The municipality has modified the regulatory ordinance to comply with the order of the commission described in subdivision (2), if necessary.

(c) A utility may file with the commission a petition alleging that the final judgment of a court on the wholesale sewage petition does not resolve all issues included in the wholesale sewage petition that are related to:

(1) the service territory of the municipality; or

(2) rates and charges for wholesale sewage service.

The commission shall assume immediate and exclusive jurisdiction over the municipal utility upon the filing of the petition for purposes of resolving the remaining issues. After notice and hearing, the commission shall issue an order within three hundred (300) days after the petition is filed resolving all issues presented in the petition in the manner that the commission determines is in the public interest. In making a determination of the public interest, the commission shall consider the factors set forth in subsection (g). The commission may combine a hearing under this subsection with a hearing under subsection (f) and issue a single order on the combined hearing.

(d) Not later than October 1, 2014, a municipal utility shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

(1) A description of the service territory established in the regulatory ordinance.

(2) Proposed rates and charges for the services to be provided in the service territory.

(3) A list of any administrative or judicial proceedings involving the regulatory ordinance or the wholesale sewage petition.

(4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(e) Upon the filing of a petition described in subsection (d), the commission shall do the following:

(1) Encourage all utilities listed under subsection (d)(4) to reach a mutual agreement that apportions the provision of service in the regulated territory among the utilities. A mutual agreement described in this subdivision is the preferred method of establishing service territories in a regulated territory. To take effect, a mutual agreement must be approved by the commission in an order issued under subsection (f), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(2) If the utilities are unable to reach a mutual agreement under subdivision (1), the commission shall assume immediate and exclusive jurisdiction over the municipal utility, including the wholesale sewage petition if there is no final judgment from a court on the wholesale sewage petition.

(f) Upon assuming jurisdiction under subsection (e)(2) and after notice and hearing, the commission shall issue an order resolving:

- (1) all issues presented in the petition described in subsection (d), including the enforceability of the regulatory ordinance; and
- (2) any applicable issues presented in the wholesale sewage petition;

in the manner that the commission determines is in the public interest. The commission shall issue the order within three hundred (300) days after the petition described in subsection (d) is filed.

(g) In making a determination under subsection (f), the commission shall consider the following:

- (1) The ability of another utility to provide service in the regulated territory.
- (2) The effect of a commission order on customer rates and charges for service provided in the regulated territory.
- (3) The effect of the commission's order on present and future economic development in the regulated territory.
- (4) The history of utility service in the regulated territory, including any contracts for utility service entered into by the municipality that adopted the regulatory ordinance and any other municipalities, municipal utilities, or utilities.
- (5) Any other factors the commission considers necessary.

*As added by P.L.213-2014, SEC.7.*

### **IC 8-1.5-6-9**

#### **Enforcement of regulatory ordinance in absence of wholesale sewage petition**

Sec. 9. (a) This section applies if:

- (1) a municipality adopts a regulatory ordinance after December 31, 2012; and
- (2) a utility owned by the municipality does not, or is not eligible to, file a wholesale sewage petition.

(b) A municipality may not enforce a regulatory ordinance until the commission issues an order under subsection (c). The municipality shall petition the commission for approval of the regulatory ordinance. The petition must include the following:

- (1) A description of the service territory established in the regulatory ordinance.
- (2) Proposed rates and charges for the services to be provided in the service territory.
- (3) A list of any administrative or judicial proceedings involving the regulatory ordinance.
- (4) A list of any utilities actually or potentially affected by the regulatory ordinance.

(c) After notice and hearing, the commission shall issue an order

resolving all issues presented in the petition described in subsection (b), including the enforceability of the regulatory ordinance in the manner that the commission determines is in the public interest. In making a determination of the public interest, the commission shall consider the factors set forth in section 8(g) of this chapter. The commission shall issue the order within three hundred (300) days after the petition described in subsection (b) is filed.

(d) If the commission does not approve the petition, the municipality may modify and resubmit the petition in the manner prescribed by the commission. After notice and hearing, the commission shall review the petition as set forth in subsection (c). If the commission does not approve the resubmitted petition, the regulatory ordinance is void.

(e) The municipality may petition the commission to rescind or modify an order issued under subsection (c) not earlier than five (5) years after the date on which the order was issued.

*As added by P.L.213-2014, SEC.7.*

### **IC 8-1.5-6-10**

#### **Service disputes between utilities in regulated territories**

Sec. 10. (a) This section applies to a dispute, other than a dispute described in section 7, 8, or 9 of this chapter, that:

- (1) arises between two (2) or more utilities as to which utility will provide utility service in a regulated territory; and
- (2) is not the subject of an action initially filed in a court before January 1, 2014.

A dispute shall be resolved by the commission under this section.

(b) A proceeding under this section may be initiated:

- (1) by a utility that is a party to a dispute described in subsection (a); or
- (2) by the commission on its own initiative.

(c) Throughout a proceeding under this section, the commission shall, where feasible, promote the resolution of the dispute described in subsection (a) through a mutual agreement between the utilities that apportions the provision of utility service in the regulated territory. A mutual agreement described in this subsection is the preferred way of resolving a dispute described in subsection (a). However, to resolve the dispute, a mutual agreement must be approved by the commission in an order issued under subsection (e), and the commission may approve a mutual agreement only if the commission determines that the mutual agreement is in the public interest.

(d) If the utilities are unable to reach a mutual agreement under subsection (c), the commission shall determine the manner in which utilities shall provide service in the regulated territory. In making the determination, the commission shall consider the criteria set forth in section 8(g) of this chapter.

(e) After notice and hearing, the commission shall issue an order:

- (1) approving a mutual agreement under subsection (c); or
- (2) making a final determination under subsection (d).

*As added by P.L.213-2014, SEC.7.*

**IC 8-1.5-6-11**

**Expansion of service territory after adoption of regulatory ordinance**

Sec. 11. This section applies to a municipality that:

(1) after December 31, 2012, adopts a regulatory ordinance that establishes a service territory that is smaller than the regulated territory; and

(2) either:

(A) amends the ordinance described in subdivision (1); or

(B) adopts a new ordinance;

to establish a service territory that is larger than the service territory described in subdivision (1).

Before an ordinance described in subdivision (2) may take effect, the municipality shall submit the ordinance to the commission for approval under section 10 of this chapter.

*As added by P.L.213-2014, SEC.7.*

**IC 8-1.5-6-12**

**Order of commission is final order**

Sec. 12. An order issued by the commission under this chapter is a final order for purposes of IC 8-1-3 and is enforceable in court.

*As added by P.L.213-2014, SEC.7.*

**IC 8-1.5-6-13**

**Petition not subject to certain requirements**

Sec. 13. A petition filed under this chapter is not subject to the following:

(1) IC 8-1.5-3.

(2) IC 36-9-23.

(3) IC 36-9-25.

*As added by P.L.213-2014, SEC.7.*