

IC 14-33-5

Chapter 5. Board of Directors

IC 14-33-5-0.5

Repealed

(Repealed by P.L.95-2006, SEC.10.)

IC 14-33-5-1

Appointment of initial board of directors

Sec. 1. (a) Within twenty (20) days after an order establishing a district, the board of commissioners of the county shall appoint the initial board of directors. A director shall be appointed for each of the areas in the district established by the court.

(b) A director must have the following qualifications:

(1) Be:

(A) a freeholder of the area of the district for which appointed; or

(B) an officer or a nominee of a corporate freeholder of the area of the district for which appointed.

(2) Be qualified by knowledge and experience in matters pertaining to the development of the district.

(c) A majority of the directors must be:

(1) resident freeholders of the district if available and qualified; and

(2) petitioners for the establishment of the district. For this purpose an officer or a nominee of a corporate freeholder of the district, if the corporation is a petitioner, is considered a petitioner.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-2

Election to fill vacancies; number of votes to elect

Sec. 2. (a) At each annual meeting of the district, directors shall be elected to fill vacancies on the board due to expiration of terms, resignation, or otherwise. The election shall be conducted by written ballots. Except as provided in subsection (c), to be elected an individual must receive a majority of the votes of the freeholders of the district who are:

(1) present and voting in person; or

(2) absent but have mailed or delivered a written ballot vote.

(b) A written ballot vote must be signed and mailed or delivered to the district office. A ballot is valid if delivered or received before the scheduled date of the annual meeting.

(c) Upon receipt of a petition from the board of directors of a conservancy district, the circuit court may modify the order establishing the district under IC 14-33-2-27 to provide that each director representing an area established under IC 14-33-2-27 shall be elected by a majority of the votes of the freeholders of the respective areas.

As added by P.L.1-1995, SEC.26. Amended by P.L.88-2003, SEC.2.

IC 14-33-5-3

Nominations

Sec. 3. (a) Beginning October 24 and not later than November 1, the board shall invite nominations to fill vacancies on the board at the next annual meeting by one (1) publication in a newspaper of general circulation in each county in the district. Each publication must do the following:

- (1) Contain the names of the directors whose terms are expiring and the area of the district involved.
- (2) Invite nominations to fill vacancies.
- (3) State the qualifications for the office as prescribed by section 1 of this chapter, except for the following:
 - (A) A nominee does not have to have been a petitioner for the establishment of the district.
 - (B) A nominee does not have to be a resident of the area of the district for which nominations are invited.

(b) Nominations for director must:

- (1) be submitted to the office of the district in writing before December 1 following notice of vacancies; and
- (2) be signed by at least five (5) freeholders from the areas designated by the secretary's notice.

(c) Nominations that are mailed are valid if:

- (1) delivered or postmarked before December 1;
- (2) the envelope has sufficient United States postage; and
- (3) the envelope is addressed to the district's office.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-4

Annual meeting

Sec. 4. (a) The annual meeting of the district must be held at the time designated by the court:

- (1) at the district's office; or
- (2) at a place in or near the district as determined by resolution of the board adopted before December 1 of the year.

(b) Notice of the annual meeting of the district must be given by one (1) publication in a newspaper of general circulation in each county in the district at least fourteen (14) and not more than thirty-one (31) days before the annual meeting. The notice must contain the following:

- (1) The names of the nominees.
- (2) The place where the election will be held.
- (3) The time of the election.
- (4) The fact that this is the annual meeting of the district.
- (5) The purposes of the meeting.
- (6) The time during which ballots may be cast.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-5

Ballots; certification

Sec. 5. (a) Before the annual meeting, the board shall prepare the

ballots and a list of the freeholders of the district, which must be certified by the county auditor and placed in the district's files. A deficiency in this process or an omission of the names of any freeholders does not void action taken at an annual meeting.

(b) Only one (1) vote may be cast per freehold.

As added by P.L.1-1995, SEC.26. Amended by P.L.16-2010, SEC.1.

IC 14-33-5-6

Voting procedures

Sec. 6. (a) At each annual meeting and before the election of directors, the chairman shall appoint three (3) freeholders of the district who are present at the annual meeting to act as clerks of and conduct the election.

(b) Before the casting of a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the secretary of the district. If the clerks find that a freeholder's name is erroneously omitted from the list, the clerks shall place the name on the list. The omitted freeholder is then entitled to cast a ballot.

(c) The clerks shall note the fact of receipt of a valid written ballot vote opposite the freeholder's name who cast that vote. At this time the written ballot vote is considered cast.

(d) At the close of the election poll, the clerks shall count the cast ballots and make a report of the results. The secretary of the district shall record the results in the records of the district. The chairman shall then declare the successful nominees elected, and the elected directors are entitled to and shall assume all the duties of the office for which elected.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-7

Oath of director

Sec. 7. Promptly after appointment or election a director shall take the following oath:

"I solemnly swear that I shall, to the best of my ability, strive to accomplish the purposes for which the district is established and properly to operate and maintain its works of improvement."

As added by P.L.1-1995, SEC.26.

IC 14-33-5-8

Petition to fill vacancies

Sec. 8. If a district fails to conduct an election of directors as provided by this chapter, any interested person of the district may petition the board of commissioners of the county to appoint a director to fill vacancies. The board of commissioners of the county shall make an appointment within fifteen (15) days from the date the petition is filed.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-9

District composed of land from more than one county

Sec. 9. For the purposes of this chapter, if the district is composed of land from more than one (1) county, the board of commissioners of each county may participate in the following:

- (1) The appointment of the initial board.
- (2) The filling of vacancies on the board.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-10

Advisory members of board; area directors

Sec. 10. (a) Notwithstanding other provisions of this chapter, this section applies to all districts described in IC 14-33-9-4.

(b) The following shall serve as advisory members of the board and have all privileges of membership except the right to vote:

- (1) The city engineer of each second class city in the district.
- (2) The county surveyor of the county.
- (3) The chairman of the county soil and water conservation district.

(c) On the same day as the primary election held in even-numbered years, the voters shall select the area directors. At the initial election held under this section, the authority that makes the initial appointment of directors under section 1 of this chapter shall designate the initial terms of the directors elected as follows:

- (1) One-half (1/2) plus one (1) of the directors serve for two (2) year terms.
- (2) The other directors serve for four (4) year terms.

After the first election, all directors serve for four (4) year terms. Area directors take office on June 1 after election.

(d) The initial appointments of directors under section 1 of this chapter shall be made so that the directors serve until the election in the first even-numbered year following the year of appointment.

(e) Nominations for director signed by at least five (5) freeholders shall be filed with the county election board during the period when filing for other county offices takes place, and the board shall publicly invite nominations at least five (5) days before this filing period begins.

(f) Each director must be a freeholder and a resident of the district from which elected. Only one (1) director may be elected from each district.

(g) When a vacancy occurs on the board:

- (1) the chairman of the board; or
- (2) five (5) freeholders from the district where the vacancy exists;

may petition the appointing authority to have the appointing authority make an appointment to fill the vacancy for the remainder of the unexpired term.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-11

Terms for initial directors

Sec. 11. (a) The board of commissioners of the county shall appoint the initial directors for the following terms:

(1) If there are three (3) or five (5) directors, the terms are as follows:

- (A) One (1) term expires at the next annual meeting.
- (B) One (1) term expires at the second annual meeting.
- (C) One (1) term expires at the third annual meeting.
- (D) Any other terms expire at the fourth annual meeting.

(2) If there are seven (7) or nine (9) directors, the terms are as follows:

- (A) Two (2) terms expire at the next annual meeting.
- (B) Two (2) terms expire at the second annual meeting.
- (C) Two (2) terms expire at the third annual meeting.
- (D) All other terms expire at the fourth annual meeting.

(b) As the terms expire, each new director shall be elected for a term of four (4) years.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-11.5

Single nominee considered elected; no election required when only one nominee in each district

Sec. 11.5. (a) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board to represent an area, the nominee for election to the board to represent that area is considered elected.

(b) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board for each area for which a director is to be elected, the following apply:

- (1) The election otherwise required to be held under this chapter is not required to be held.
- (2) Each of the nominees for election to the board is considered elected as if the election had been held and each nominee was elected as provided in this chapter.

As added by P.L.16-2010, SEC.2.

IC 14-33-5-12

Vacancies

Sec. 12. (a) If a vacancy occurs on the board, the board shall vote to appoint a member to serve until the next annual meeting.

(b) If the vote held under subsection (a) results in a tie, a judge of the circuit court of the county in which the district was established shall designate a person to serve as a member until the next annual meeting.

(c) At the next annual meeting a director shall be elected to complete the term.

As added by P.L.1-1995, SEC.26. Amended by P.L.4-2004, SEC.2.

IC 14-33-5-13

Meetings

Sec. 13. The board shall by resolution fix the time for holding

regular meetings, but the board shall meet at least quarterly each year.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-14

Special meetings

Sec. 14. (a) Special meetings of the board may be called by the chairman or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least three (3) days before a special meeting, a written notice fixing the time and place of the meeting.

(b) Written notice of a special meeting is not required if:

- (1) the time of the special meeting has been fixed in a regular meeting; or
- (2) all members were present at a meeting at which a special meeting was called.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-15

Quorum

Sec. 15. A majority of the board constitutes a quorum. An action of the board is official, however, only if authorized by a majority of the board at a regular or properly called special meeting.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-16

Compensation

Sec. 16. As compensation the directors are entitled to an amount that the court orders, but not to exceed:

- (1) one hundred dollars (\$100) for not more than two (2) regular or specially called board meetings per month; and
- (2) fifty dollars (\$50) for not more than five (5) days per month devoted to the work of the district in addition to any day for which payment is received under subdivision (1).

In addition, the directors shall be reimbursed for actual expenses, including traveling expense at a rate equal to the rate paid to state officers and employees. Claims for expense reimbursement must be accompanied by an itemized written statement approved by a recorded motion of the board.

As added by P.L.1-1995, SEC.26. Amended by P.L.78-2007, SEC.2.

IC 14-33-5-17

Chairman and vice chairman

Sec. 17. Immediately following appointment and immediately following each annual meeting of the district, the directors shall meet and elect a chairman and a vice chairman. The vice chairman may act as chairman during the absence or disability of the chairman. The chairman shall promptly notify the commission in writing of the names and addresses of the officers and directors of the district, and the same information, together with the executed oaths, shall be filed

with the circuit court.
As added by P.L.1-1995, SEC.26.

IC 14-33-5-18

Employees; contracts and leases

Sec. 18. (a) The board may appoint, prescribe the duties, and fix the compensation of the following:

- (1) A secretary.
- (2) A financial clerk.
- (3) An engineer.
- (4) Employees that are necessary for the discharge of duties and responsibilities of the board.

(b) A financial clerk shall execute a surety bond in the manner prescribed by IC 5-4-1.

(c) The board may make contracts for the following:

- (1) Special and temporary services, including professional counsel.
- (2) Leases of land to a provider of commercial mobile service (as defined in 47 U.S.C. 332) that allows for the construction, use, and maintenance of a tower that is used for telecommunications purposes.

As added by P.L.1-1995, SEC.26. Amended by P.L.16-2010, SEC.3.

IC 14-33-5-19

Office; location

Sec. 19. (a) At the first meeting of the first board, the board shall adopt by majority vote a resolution designating the location in or near the district where the district will maintain an office. The board may adopt a resolution by majority vote at any meeting of the board to change the location of the district's office. The board shall report the location of the office and a change in location to the court establishing the district.

(b) The board shall do the following:

- (1) Arrange for office space.
- (2) Keep a record of all transactions and minutes of all meetings in the office.
- (3) Keep all records and minutes available for inspection by any interested person of the district during the hours that the district office is open for business.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-20

Duties of board

Sec. 20. The board shall do the following:

- (1) Exercise general supervision of and make regulations for the administration of the affairs of the district.
- (2) Prescribe uniform rules pertaining to investigations and hearings.
- (3) Supervise the fiscal affairs and responsibilities of the district.

- (4) Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the district. The compensation must be reasonable and similar in amount to the compensation allowed employees performing similar service for the state and political subdivisions of the state. The board may delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.
- (5) Keep an accurate and complete record of all district proceedings and record and file all bonds and contracts, assuming responsibility for the custody and preservation of all papers and documents of the district.
- (6) Make an annual report to the court of income and expenses. The report must be submitted not later than thirty (30) days after the annual meeting and may include any of the following:
 - (A) A statement of the progress in accomplishing each purpose for which the district is established.
 - (B) Recommendations for amendment to the district plan.
 - (C) Any matter that the board believes should be brought to the attention of the court for instructions or approval.
- (7) Adopt a seal and certify all official acts.
- (8) Sue and be sued collectively by the legal name " _____ Conservancy District", with service of process made on the chairman of the board. However, costs may not be taxed against the directors individually in an action.
- (9) Invoke any legal, equitable, or special remedy for the enforcement of this article or of any proper action of the board in a court.
- (10) If advisable, establish an advisory committee.
- (11) Exercise the powers granted under this article to accomplish each purpose for which the district is established.
- (12) If a purpose of the district is the construction or maintenance of a levee in cooperation with the United States Secretary of the Army, divide, by resolution, the levee into maintenance sections and make assignment of each section to a director who must be a resident freeholder near the maintenance section. The director shall, upon assignment, supervise and assist in the maintenance of the assigned maintenance section.
- (13) Protect against encroachment by a stream. The board may, alone or in cooperation with state or federal agencies, do whatever is necessary to provide bank stabilization for the protection of the works of improvement of the district.
- (14) Insure property, personnel, and operations of the district against risks and in amounts that the board determines necessary to protect the district.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-20.5

Prior approval of expenses; review of claims

Sec. 20.5. (a) A board may adopt a resolution allowing money to

be disbursed for lawful district purposes under this section.

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board, the financial clerk of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted a resolution under subsection (a):

- (1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.
- (2) License or permit fees.
- (3) Insurance premiums.
- (4) Utility payments or utility connection charges.
- (5) General grant programs for which advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.
- (6) Grants of state funds authorized by statute.
- (7) Maintenance or service agreements.
- (8) Leases or rental agreements.
- (9) Bond or coupon payments.
- (10) Payroll.
- (11) State or federal taxes.
- (12) Expenses that must be paid because of emergency circumstances.
- (13) Expenses described in a resolution.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the financial clerk of the district.

(d) The board shall review and allow the claim at its next regular or special meeting following the preapproved payment of the expense.

As added by P.L.129-2011, SEC.7.

IC 14-33-5-21

Powers relating to sewage and liquid waste

Sec. 21. (a) If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

- (1) Subject to sections 21.1 and 21.2 of this chapter, establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29.
- (2) Collect and enforce the rates, beginning with the commencement of construction as provided in IC 36-9-23.
- (3) Establish rules and regulations.
- (4) Require connection to the board's sewer system of any property producing sewage or similar waste and require discontinuance of use of privies, cesspools, septic tanks, and similar structures. The board may enforce this requirement by civil action in circuit or superior court as provided in IC 36-9-23-30.
- (5) Provide for and collect a connection charge to the board's sewer system as provided in IC 36-9-23-25 through IC 36-9-23-29.

- (6) Contract for treatment of the board's sewage and pay a fair and reasonable connection fee or rate for treatment, or a combination of both, as provided in IC 36-9-23-16.
- (7) Secure the bonds by a trust indenture as provided in IC 36-9-23-22.
- (8) Create a sinking fund for the payment of principal and interest and accumulate reasonable reserves as provided in IC 36-9-23-21.
- (9) Issue temporary revenue bonds to be exchanged for definite revenue bonds as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (10) Issue additional revenue bonds as part of the same issue if the issue does not meet the full cost of the project for which the bonds were issued as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (11) Issue additional revenue bonds for improvements, enlargements, and extensions as provided in IC 36-9-23-18.
- (12) Covenant with the holders of the revenue bonds for the following:
 - (A) Protection of the holders concerning the use of money derived from the sale of bonds.
 - (B) The collection of necessary rates and charges and segregation of the rates and charges for payment of principal and interest.
 - (C) Remedy if a default occurs.

The covenants may extend to both repayment from revenues and other money available to the district by other statute as provided in IC 36-9-23.

(b) In the same manner as provided by IC 36-9-23, the rates or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works by or through any part of the sewage system of the district. The liens:

- (1) attach;
- (2) are recorded;
- (3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and
- (4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

As added by P.L.1-1995, SEC.26. Amended by P.L.168-2009, SEC.1.

IC 14-33-5-21.1

Campgrounds; rates for sewage service

Sec. 21.1. (a) This section applies to a campground that:

- (1) is connected with the sewage works of a district established for the purpose described in IC 14-33-1-1(a)(5); or
- (2) uses or is served by the sewage works of a district established for the purpose described in IC 14-33-1-1(a)(5).

(b) Beginning September 1, 2009, if a campground is billed for

sewage service at a flat rate under section 21(a)(1) of this chapter, the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the district's sewers. If a campground elects to be billed by use of a meter:

(1) the rate charged by the district's board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by the board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:

(A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or

(B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under section 21(a)(1) of this chapter, for a calendar year beginning after December 31, 2009, each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground under subsections (b) and (c) if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) concentrations of biochemical oxygen demand (BOD) that exceed federal pollutant standards.

As added by P.L.168-2009, SEC.2.

IC 14-33-5-21.2

Campgrounds; sewage service rate disputes; utility regulatory commission

Sec. 21.2. (a) As used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) This section applies to an owner or operator of a campground described in section 21.1(b) or 21.1(c) of this chapter who disputes:

(1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 21.1(b)(1) of this chapter;

(2) the number of resident equivalent units determined for the campground under section 21.1(c) of this chapter; or

(3) that any additional charges imposed on the campground under section 21.1(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

(1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:

(A) any grievance or complaint procedure prescribed by the board; or

(B) other negotiations with the board; and

(2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

(1) the owner or operator of the campground; and

(2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

(1) a copy of the appeals division's and commission's decision

- under subsection (f) for each dispute filed; and
- (2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

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

As added by P.L.168-2009, SEC.3.

IC 14-33-5-22

Agreements with people or entities; debt agreements

Sec. 22. (a) The board may do the following:

- (1) Enter into agreement with and accept money from a federal or state agency or department.
- (2) By the agreement provide the manner in which resulting debt is evidenced, with:
 - (A) the term;
 - (B) the interest rate; and
 - (C) the method and time of repayment;

subject to statutes governing the federal or state agency or department, without regard to other limitations of this article.

(b) The board may also enter into an agreement with a person, municipality, county, or special taxing district, whether or not the person, municipality, county, or special taxing district is in the district, for any purpose compatible with the purposes for which the district exists. The municipality, county, or special taxing district may enter into the agreement.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-23

Gifts of money or property

Sec. 23. The board may accept gifts of money or other property to be used for certain aspects of a general purpose for which the district is established.

As added by P.L.1-1995, SEC.26.

IC 14-33-5-24

Petition to enjoin or mandate board

Sec. 24. An interested person adversely affected by an action committed or omitted by the board in violation of this chapter may petition the court having jurisdiction over the district to enjoin or mandate the board.

As added by P.L.1-1995, SEC.26.