

## **IC 36-10-4**

### Chapter 4. Parks Department in Certain Cities

#### **IC 36-10-4-1**

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

Sec. 1. (a) This chapter applies to each second class city in which the legislative body has adopted all or part of this chapter by ordinance.

(b) This chapter applies to each third class city in which the legislative body has adopted all or part of this chapter by ordinance.

(c) In addition, in a consolidated city sections 9(a) and 12 through 40 of this chapter apply to the department of parks and recreation and the board of parks and recreation, subject to IC 36-3-4-23.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.10; Acts 1982, P.L.33, SEC.48.*

#### **IC 36-10-4-2**

##### **Definitions**

Sec. 2. As used in this chapter:

"Board" refers to a board of park commissioners, or board of parks and recreation of a consolidated city.

"Department" refers to a department of public parks, or department of parks and recreation of a consolidated city.

"District" means the area within the jurisdiction of a department.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-3**

##### **Department of public parks; establishment; membership; compensation; oath**

Sec. 3. (a) A department of public parks is established as an executive department of the city.

(b) The department is under the control of a board of park commissioners. The board consists of four (4) commissioners appointed by the city executive. Each commissioner must be a freeholder residing in the city, and no more than two (2) commissioners may have the same political affiliation.

(c) A second class city may pay each commissioner an annual salary in an amount fixed by the fiscal body. The commissioners shall be paid their actual expenses upon approval by the city executive.

(d) Before beginning his duties each commissioner shall take and subscribe the usual oath of office. The oath shall be indorsed upon the certificate of appointment and filed with the city clerk. If a commissioner has not filed his oath:

(1) within thirty (30) days after the beginning of his term; or

(2) by the date of his appointment if he was appointed after the beginning of the term;

he is considered to have refused to serve and the office becomes vacant.

*As added by Acts 1981, P.L.309, SEC.111. Amended by*

*P.L.176-2002, SEC.10.*

#### **IC 36-10-4-4**

##### **Commissioner; appointment; removal**

Sec. 4. (a) By February 1 each year, the executive shall appoint a commissioner to fill the vacancy caused by the expiration of a term. Each commissioner appointed holds office for a term of four (4) years, beginning with January 1 in the year of appointment. If a vacancy occurs on the board, the executive shall appoint a commissioner for the remainder of the term.

(b) A commissioner may not be removed from office except upon charges preferred in writing before the executive, with a hearing held on them. If the executive is bringing the charges, the fiscal body shall appoint a hearing officer. The only permissible reasons for removal are as follows:

- (1) Inefficiency.
- (2) Neglect of duty.
- (3) Malfeasance in office.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.11.*

#### **IC 36-10-4-5**

##### **Second class city; resolution to extend boundaries; remonstrance; referendum; election; effective date of extension; operation of parks**

Sec. 5. (a) In a second class city, the board may adopt a resolution to extend the boundaries of the district to the county boundaries unless the county has already established a park district under IC 36-10-3. The board must file a certified copy of the resolution with the county auditor and county treasurer. Notice of the adoption of the resolution shall be given by publication once each week for two (2) weeks in accordance with IC 5-3-1.

(b) Whenever the board has adopted a resolution under subsection (a), remonstrances may be filed by the affected voters within ninety (90) days after the last publication under subsection (a). Remonstrances must be signed in ink by the voter in person and state the address of each signer and that the signer is a registered voter. A person who signs a remonstrance when he is not a registered voter commits a Class D felony. More than one (1) voter may sign the same remonstrance.

(c) A vote on the public question shall be held if at least the number of the registered voters of the county required under IC 3-8-6-3 to place a candidate on the ballot file remonstrances under subsection (b) with the county clerk protesting the extension of the district.

(d) The county clerk shall certify to the county election board in accordance with IC 3-10-9-3 whether or not the required number of registered voters of the county have filed remonstrances. If sufficient remonstrances have been filed, the county election board shall publish a notice of the election once a week for two (2) consecutive

weeks in accordance with IC 5-3-1-4, the first publication to be at least thirty (30) days before the date of the election. The question presented to the voters at the election shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the county park district be established?"

The election is governed by IC 3 whenever not in conflict with this chapter. The county election board shall make a return of the votes cast at the referendum.

(e) If a majority of the votes cast are against the extension of the district, the district is not extended. If sufficient remonstrances are not filed or if a majority of the votes cast support the extension of the district, the district is extended.

(f) The extension of the district is effective on January 1 of the year following the adoption of the resolution or, if an election is held, on January 1 of the year following the date of the election.

(g) A municipality that becomes part of a district by reason of the extension of the district under this section may continue to establish, maintain, and operate parks and other recreational facilities under any other law. The parks and other recreational facilities shall be operated by the municipality separate from the parks and other recreational facilities under the jurisdiction of the board in the same manner as they would be operated by the municipality if it was not within the district.

(h) The operation of separate parks or recreational facilities by a municipality does not affect the obligation of property owners within the municipality to pay all taxes imposed on property within the district.

(i) The legislative body of a municipality may elect that the separate parks or other recreational facilities of the municipality be maintained or operated as a part of the district by adopting a resolution or an ordinance to that effect. The separate park or other recreational facility comes under the jurisdiction of the board at the time specified in the resolution or ordinance.

*As added by Acts 1981, P.L.309, SEC.111. Amended by P.L.358-1987, SEC.3; P.L.3-1987, SEC.569; P.L.12-1995, SEC.133.*

#### **IC 36-10-4-6**

##### **Extended districts in certain counties; board of park commissioners; term; vacancy**

Sec. 6. (a) This section applies whenever a district is extended under section 5 of this chapter and such district is not located in a county having a population of more than one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000).

(b) After the district is extended under section 5 of this chapter, the board consists of five (5) commissioners. Two (2) commissioners shall be appointed by the city executive, two (2) commissioners shall be appointed by the county executive of the county in which the city is located, and one (1) commissioner shall be appointed by a majority vote of the presidents of the school boards of the school corporations

in the county in which the city is located. The commissioners appointed by the county executive must be residents of the area of the district outside the corporate boundaries of the city. The commissioners appointed by the county executive may not be members of the same political party, and the commissioners appointed by the city executive may not be of the same political party.

(c) A commissioner of an extended district may hold office for an unlimited number of terms.

(d) After the initial terms have expired, all of the commissioners after the extension of the district shall be appointed for terms of four (4) years, beginning on January 1. The terms of office of the three (3) commissioners in office at the time of the extension terminate January 1, and the terms of office of the new commissioners begin January 1. The city executive shall appoint one (1) commissioner for an initial term of two (2) years and one (1) for an initial term of four (4) years. The county executive shall appoint two (2) commissioners, one (1) commissioner for an initial term of two (2) years and the other commissioner for an initial term of four (4) years. The presidents of the school boards shall appoint one (1) commissioner for an initial term of four (4) years.

(e) A vacancy in the office of a commissioner shall be filled for the remainder of the term by the appointing authority.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.12; P.L.358-1987, SEC.4; P.L.12-1992, SEC.191; P.L.170-2002, SEC.172.*

#### **IC 36-10-4-6.1**

##### **Extended districts in other counties; board of park commissioners; term; vacancy**

Sec. 6.1. (a) This section applies whenever a district is extended under section 5 of this chapter and such district is located in a county having a population of more than one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000).

(b) After the district is extended under section 5 of this chapter, the board consists of five (5) commissioners. Three (3) commissioners shall be appointed by the city executive, and two (2) commissioners shall be appointed by the county executive of the county in which the city is located. The commissioners appointed by the county executive must be residents of the areas of the district outside the corporate boundaries of the city. No more than two (2) of the three (3) commissioners appointed by the city executive may be members of the same political party, and the commissioners appointed by the county executive may not be of the same political party.

(c) A commissioner of an extended district may hold office for an unlimited number of terms.

(d) All commissioners after the extension of the district shall be appointed for terms of four (4) years, beginning on January 1. The three (3) commissioners whose terms of office have not expired

continue in office and are considered appointees of the city executive until the expiration of the four (4) year terms for which they each were originally appointed. The county executive shall appoint two (2) commissioners, one for a term of two (2) years and the other for a term of four (4) years. As the term of each commissioner expires, a new commissioner shall be appointed for a term of four (4) years so that at all times the board consists of three (3) commissioners appointed by the city executive and two (2) commissioners appointed by the county executive.

(e) A vacancy in the office of a commissioner shall be filled for the remainder of the term by the appointing authority.

*As added by P.L.358-1987, SEC.5. Amended by P.L.12-1992, SEC.192; P.L.170-2002, SEC.173.*

### **IC 36-10-4-7**

#### **Board of park commissioners; election of officers; quorum; regular meetings; office; report; disposition of money received**

Sec. 7. (a) The board shall elect at its first regular meeting in February each year one (1) of the commissioners president and another vice president. The vice president shall perform the duties of the president during the absence or disability of the president.

(b) A majority of the commissioners constitutes a quorum. Action of the board is not binding unless authorized by a majority of the commissioners at a regular or duly called special meeting of the board. If there is a tie vote on any question, the city executive shall cast the deciding vote.

(c) The board shall fix a time for holding regular meetings. Special meetings of the board may be called at any time by its president, or by any two (2) of the commissioners, upon a written request to the secretary. If a special meeting is called, the secretary shall notify the commissioners by mailing written notices of the time of the meeting at least one (1) day before the meeting. All meetings are open to the public.

(d) The proper authorities of the city shall provide a suitable office for the board where its maps, plans, documents, records, and accounts shall be kept, subject to public inspection at all reasonable times.

(e) By February 1 of each year the board shall make a report to the city executive of:

- (1) its proceedings, including a full statement of its receipts and disbursements for the preceding calendar year;
- (2) the acquisition of lands by the board;
- (3) improvements made by the board; and
- (4) general character of the work of the board during the preceding year.

(f) Money received by the board shall immediately be paid into the city treasury and credited to the department. All expenditures relating to the parks, parkways, public grounds, public ways, and other places of the city under the control of the department shall be provided for by a special levy of taxes. The money shall be paid from

the city treasury when ordered by the board.  
*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-8**

##### **Taxing district for levying special benefit taxes**

Sec. 8. All of the area:

- (1) within the corporate boundaries of a city; and
- (2) in unincorporated areas of the county to which the district has been extended;

constitutes a taxing district for levying special benefit taxes for park purposes as provided in this chapter. Area added to the district under section 5 of this chapter is considered to have received a special benefit from the park facilities of the district equal to or greater than the special taxes imposed on the area by this chapter in order to pay all or a part of the cost of the facilities.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-9**

##### **Control of property within district; public ways passing through park property; powers of board**

Sec. 9. (a) The board has, subject to statute and to the right given by section 5 of this chapter to other municipalities within the district to operate separate parks and recreational facilities, exclusive control of all property within the district used for park purposes.

(b) In addition, the part of all public ways that pass through park property is considered to be a part of this property and is also under the control of the board.

(c) The board may do the following:

- (1) Acquire, lay out, and improve land for park purposes in the district and may equip, operate, maintain, and regulate the public use of that property.
- (2) Appoint a secretary, and, in his absence a secretary pro tempore, landscape architects, engineers, surveyors, attorneys, clerks, guards, laborers, playground directors, and other employees, prescribe their duties and authority, and fix their compensation. If a superintendent of the department is appointed, he shall be appointed under IC 36-4-9-2.
- (3) Make rules not in conflict with statutes or the ordinances of the city for the management of the property under its control.
- (4) Require the department of public safety of the city to detail police officers to execute the orders and enforce the rules made by the board and to be subject to the board, with the city executive deciding any disagreement between the two (2) departments as to the number and duration of the details of police officers.
- (5) Locate, erect, and maintain fountains in parks, as well as in the public ways that form the boundaries of parks, or intersect with them.
- (6) Erect and maintain suitable fences around parks.
- (7) Seize and impound animals found running at large in any of

the parks, including establishing suitable places for the impounding.

(8) Lease or sell any buildings, grounds, materials, equipment, or any parts of them owned by the city that are under the control of the department and that the board determines are not required for park purposes, permitting any other department of the city or the school city to occupy or use the property upon terms that are approved by the executive. All sums realized from the lease, sale, or other disposition of property shall be deposited in the city treasury to the credit of the department and expended for park purposes. All buildings and structures erected upon land under the control of the board are under the control of the board, and the board may not permit the erection of any building or structure upon land unless it becomes the property of the city. A lease or sale of minerals, mineral rights, or royalties for minerals for more than one (1) year from land owned by a second class city or a lease for more than one (1) year in a city that adopted this chapter by ordinance under IC 19-7-9 (before its repeal on September 1, 1981) may be made only to the highest and best bidder after notice of the sale or lease has been given by publication in accordance with IC 5-3-1.

(d) The board may also do the following:

(1) Vacate public ways, or parts of them, on land under the control of the board in the same manner as the city works board may vacate them.

(2) Take over and control public ways, or parts of them, within the city and convert them into boulevards or pleasure driveways if they connect with or run into or through a park, parkway, or boulevard or are necessary for the establishment of a park or boulevard system in the city, including grading, improving, and beautifying them and relinquishing to other departments of the city the control of a public way or parkway in streets taken over that are not necessary or desirable for maintenance as part of the park system of the city.

(3) Petition the proper board of the city to construct any necessary drainage or sanitary sewers and connections in a public way or parkway bordering park property and require a public service corporation to lay, install, and connect water and gas mains and electric light conduits in and along a boulevard or park drive when reasonably necessary.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.45, SEC.97; Acts 1981, P.L.320, SEC.13; P.L.3-1990, SEC.139.*

#### **IC 36-10-4-10**

##### **Powers of board extended five miles outside corporate city boundaries**

Sec. 10. In a city that adopted this chapter by ordinance under IC 19-7-9 (before its repeal on September 1, 1981), the powers granted the board by section 9(a) extend five (5) miles outside the

corporate boundaries of the city.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.14; P.L.3-1990, SEC.140.*

#### **IC 36-10-4-11**

##### **Shade trees and lawns along public ways; resolution assessing cost; hearing; assessments; playgrounds; public school grounds or buildings**

Sec. 11. (a) The board has exclusive control over the planting, trimming, and maintenance of shade trees along the public ways of the city. The board may:

(1) take over and control the improvement, maintenance, and embellishment of all lawns and street centers in and along the public ways of the city; or

(2) compel the owners of lots and parcels of land bordering on the public ways to plant, trim, protect, and maintain shade trees and to sod, plant, and maintain lawns and centers after first adopting a resolution showing the public necessity and assessing the cost against the abutting lots and parcels of land.

(b) After adopting a resolution under subsection (a), the board shall give notice and provide a hearing, with right of remonstrance, in the same manner as is provided for street and sidewalk improvements by the works board of the city. However, instead of letting a contract to the highest and best bidder, the board may carry out the improvement with its own employees and charge the actual cost in the same manner as if a contract was let. The cost may include a reasonable guaranty, but may not, however, exceed the estimate to be made and placed on file at the time of the adoption of the resolution.

(c) All assessments levied for the improvements are payable in one (1) payment, without notice, at the next regular taxpaying time after the completion of the improvement. The assessments are liens against the separate lots and parcels of land abutting the improvement. If they are not paid when due, they may be enforced by foreclosure, after giving notice, in the same manner as assessments for street and sidewalk improvements.

(d) The board has exclusive control over the establishment and maintenance of public playgrounds, public playfields, public swimming pools, public baths, community centers, and recreation centers in the city. The board shall select directors, assistants, and employees to manage and control the facilities and shall prescribe their duties and fix their compensation. The board may expend the sums from the general park fund for recreation purposes that it considers advantageous to the city.

(e) The governing body of the school corporation of the city may permit the use of public school grounds or buildings under its control that are required or adaptable for recreation purposes when that use will not interfere with use for school purposes.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-12**

##### **Open spaces for park, recreational, or civic purposes**

Sec. 12. The board may develop open spaces for park, recreational, or civic purposes in cities where areas have become blighted or require redevelopment for the public welfare in cooperation with the redevelopment commission and the plan commission for the city, providing out of park funds, by bond issue, from other available funds, or by the receipt of grants or donations for such purposes the money necessary for the redevelopment commission to acquire the areas for the department and paying the money to the redevelopment commission for the project.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-13**

##### **Law governing adoption of plans, giving of notice, and receiving of bids in letting of contract**

Sec. 13. The board is subject to IC 36-1-12 governing similar action by the works board when adopting plans, giving notice, and receiving bids in the letting of a contract for public improvements or repairs.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.57, SEC.43.*

#### **IC 36-10-4-14**

##### **Actions to recover damages for breach of agreement, penalties for violation of ordinance, damages for injury to property, and possession of property**

Sec. 14. The board may bring an action in the name of the city to recover:

- (1) damages for the breach of an agreement, expressed or implied, relating to or growing out of the establishment, management, or improvement of the parks, public ways, and other property used for park purposes under its control;
- (2) penalties for the violation of an ordinance;
- (3) damages for injury to the personal or real property relating to the parks, public ways, and other property used for park purposes; or
- (4) possession of property.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-15**

##### **Publication of rules adopted by board**

Sec. 15. All rules that the board adopts under this chapter shall be published in accordance with IC 5-3-1.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.45, SEC.98.*

#### **IC 36-10-4-16**

##### **Taxes; disbursements; borrowing; general park fund; special funds; fees; deposits; withdrawals**

Sec. 16. (a) A tax on the taxable property in the district, as it appears on the tax duplicate, shall be levied annually by the city legislative body for park purposes.

(b) The tax shall be collected the same as other city taxes are collected, and the city fiscal officer shall, between the first and fifth days of each month, notify the board of the amount of taxes collected for park purposes during the preceding month. At the date of notification, the city fiscal officer shall credit the park fund with the amount.

(c) The board may expend on behalf of the city all sums of money collected from:

- (1) taxes;
- (2) the sale of privileges in the parks of the city;
- (3) the sale of bonds of the city for park purposes; and
- (4) any other source.

All gifts, donations, or payments that are given or paid to the city for park purposes belong to the general park fund, the special nonreverting operating fund, or the special nonreverting capital fund to be used by the board as provided by this chapter. Warrants for expenditures shall be drawn by the city fiscal officer upon a voucher of the board signed by the president or vice president and secretary.

(d) The city legislative body may borrow money for the use of the department and may issue the bonds of the city to pay back the borrowed money in the manner provided by statute for the issue of bonds for the general purposes of the city. However, the board may not contract debts beyond the amount of its annual income and the amount available from the sale of bonds or other sources.

(e) All money remaining in the treasury to the credit of the board at the end of the calendar year belongs to the general park fund, the special nonreverting operating fund, or the special nonreverting capital fund for use by the board for park purposes.

(f) Park and recreation facilities and programs shall be made available to the public free of charge as far as possible. However, if it is necessary in order to provide a particular activity, the board may charge a reasonable fee.

(g) The city legislative body may establish by ordinance upon request of the board:

- (1) a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance, either by appropriation by the board or by the city legislative body; or
- (2) a special nonreverting capital fund for the purpose of acquiring land or making specific capital improvements from which expenditures may be made by appropriation by the city legislative body.

The city legislative body shall designate the fund or funds into which the city fiscal officer shall deposit fees from golf courses, swimming pools, skating rinks, or other major facilities requiring major expenditures for management and maintenance. Money received from fees other than from major facilities or received from the sale

of surplus property shall be deposited by the city fiscal officer either in the special nonreverting operating fund or in the nonreverting capital fund, as directed by the board. However, if neither fund has been established, money received from fees or from the sale of surplus property shall be deposited in the general park fund. Money from either special fund may be disbursed only on approved claims allowed and signed by the president and secretary of the board.

(h) Money placed in the special nonreverting capital fund may not be withdrawn except for the purposes for which the fund was created, unless the fiscal body repeals the ordinance establishing the fund. The fiscal body may not repeal the ordinance under suspension of the rules.

(i) Money procured from fees or received from the sale of surplus property shall be deposited at least once each month with the city fiscal officer.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.15; P.L.372-1983, SEC.2; P.L.173-2003, SEC.40.*

#### **IC 36-10-4-17**

##### **Granting of public utility franchise**

Sec. 17. A franchise may not be granted by the city for the construction or maintenance of railways or telephone, telegraph, pipe, or conduit lines upon, across, over, or through a park, parkway, park boulevard, boulevard, or driveway under the control of the board without the consent of the board.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-18**

##### **Ordinance authorizing sale of park lands; disposition of proceeds**

Sec. 18. If a board decides to sell a part of the park lands owned by the city, it shall prepare an ordinance authorizing the sale and submit it to the city legislative body. If the legislative body passes the ordinance, the land shall be sold as other land of the city is sold and the proceeds of the sale credited to the department. The proceeds shall be expended for the improvement of the remaining park land or for the purchase of other land for park purposes, as the board considers best for the city.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-19**

##### **Building lines; establishment by resolution; nature of rights in land between building line and park property; procedure; regulation of use of property; conflict of interest**

Sec. 19. (a) The board may, by resolution, establish a building line determining the distance at which all structures erected upon any premises fronting a park, parkway, or boulevard may be erected. Upon the adoption of the resolution, the board shall acquire, in the name of the city, by donation, condemnation, or purchase, the land between the building line and the park, parkway, or boulevard, or an interest in the land that will secure to the board the right to prevent

the erection of or to require the removal of all structures outside of the line, or both. After the adoption of the resolution, a permit may not be issued by a department or officer of the city authorizing the erection of a structure outside of the established line unless approved by the board.

(b) The establishment of a building line outside of a park, parkway, or boulevard in connection with the donation, condemnation, or purchase of land or an interest in it is a perpetual annihilation of all rights of the owners of property over and across which the building line runs to erect a structure or a part of one between the building line and the park, parkway, or boulevard. However, the perpetual and irrevocable free license to use and occupy the land between a building line and the park property is reserved to the property owner for purposes other than the erection of structures.

(c) If the board decides to establish a building line, the board has the same powers and shall proceed in the same manner in the condemnation, assessment, and collection of benefits, awards of damages, remonstrances, hearings, appeals, rehearings, and other matters as it does in the acquisition of real property. Benefits may not be assessed against property other than that abutting on the park, parkway, or boulevard along which the building line is established and within the limits of the building line. However, the total amount of benefits assessed against lots and parcels of land fronting on the park, parkway, or boulevard and located within the limits of the building line must equal the total cost of the establishment of the building line.

(d) A subdivision of lots or parcels of land lying within five hundred (500) feet of park, parkway, or boulevard may not be accepted for record and is not valid without the approval of the board. If the board considers it necessary, in order to promote public health, safety, morals, or general welfare, the board may, by general order or resolution, regulate:

- (1) horse racing; and
- (2) the location of trades, industries, commercial enterprises, buildings, or devices designed for uses that, in the order or resolution, are specified as injurious to the public health, safety, morals, or general welfare;

within five hundred (500) feet of a park, parkway, or boulevard. The right to regulate the use of this property for these purposes is considered to be included in a gift, donation, acquisition, or condemnation under this chapter. However, a lawful business being conducted upon adjacent property when jurisdiction is acquired over the property may not be prohibited or abated without a fair valuation and due compensation.

(e) Commissioners, and clerks, assistants, appointees, or employees of the board may not hold an interest, either directly or indirectly, in any kind of enterprise conducted for profit within one thousand (1,000) feet of a park, parkway, or boulevard under the jurisdiction of the board. The possession or ownership of an interest

operates to vacate the officer or position held by the person and makes him ineligible to hold an office or position under the board while the interest is, either directly or indirectly, possessed or retained by him.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-20**

##### **Acquisition of property for various purposes; holding property in trust; establishment of museums; contracts for management and maintenance of facilities**

Sec. 20. (a) Real and personal property may be granted, devised, leased, bequeathed, or conveyed to a city for park purposes or for the establishment, improvement, maintenance, or ornamentation of a park, playground, boulevard, pleasureway, parkway, wheelway, garden for horticulture and floriculture, museum, zoological garden, collection of natural history, observatory, library, fountain, monument, work of art, art gallery, or other public ground.

(b) The city may take and hold the property in trust or upon conditions that are approved by the board. The property and the rents, issues, and profits from it are subject to the exclusive control of the board.

(c) The board shall also provide accommodations and take the steps that the money at its disposal will justify for securing and preserving collections of natural history and the establishment of museums in the parks of the city.

(d) The property may be improved, added to, and changed at the board's discretion and shall be protected, preserved, and arranged by the board for the public use and enjoyment under the rules that the board prescribes.

(e) The public may use and enjoy the facilities, although the board may impose an admission charge for entrance into the gardens, museums, and other collections.

(f) The board may also contract for the management and maintenance of gardens, museums, art galleries, or other institutions with a society incorporated under statute, as long as the public has the right to use and enjoy the facilities. The board may also impose an admission charge for entrance into these facilities, which remain subject to the control of the board.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-21**

##### **Eminent domain; damages; prior public use**

Sec. 21. (a) The board may exercise the power of eminent domain:

- (1) within the corporate boundaries of the city; and
- (2) outside of the city within ten (10) miles, or five (5) miles if the city adopted this chapter by ordinance under IC 19-7-9 (before its repeal on September 1, 1981), of the corporate boundaries of the city and within the county in which the city is located;

for the purposes of this chapter. The board may award damages to

landowners for real property and property rights appropriated or injuriously affected and assess benefits to property beneficially affected. If the board cannot agree with the owners, lessees, or occupants of any real property selected by the board for the purposes of this chapter, the board may condemn the property as provided in this chapter, and, when not inconsistent with this chapter, may proceed under statutes governing the condemnation of land and rights-of-way for other public purposes.

(b) If the land or surface of the ground on, over, or across which it is necessary or advisable to establish, construct, or improve a boulevard, parkway, or pleasure driveway is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute and is being used for that purpose by the entity appropriating it, the public use or prior condemnation does not bar the board from condemning the use of the ground for park purposes. However, the use by the board does not permanently prevent the use of the land or the surface of the ground for the prior public use or by the entity condemning or appropriating it. In a proceeding prosecuted by the board to condemn the use of land or the surface of the ground for purposes permitted by this chapter, the board must show that its proposed use will not permanently or seriously interfere with the continued use of the land or the surface of the ground.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.16; P.L.3-1990, SEC.141.*

#### **IC 36-10-4-22**

##### **Authority concerning rivers, streams, and waterways**

Sec. 22. (a) This section applies only to the parts of rivers, streams, and waterways that are within or bordering park land and boulevards under the control of the board.

(b) The board may:

- (1) keep open rivers, streams, and waterways and prevent the deposit of unsightly or obnoxious materials in or along them;
- (2) take over, improve, control, and provide for the protection of the banks of rivers, streams, and waterways, including building levees and taking over levees already built;
- (3) control the flow of water;
- (4) make rules and regulations concerning rivers, streams, and waterways and their banks as is necessary for these purposes;
- (5) dam or change the course of a river, stream, or waterway to provide water for sprinkling, boating, or other purposes;
- (6) provide pools or artificial lakes in parks; and
- (7) construct bridges and viaducts over or tunnels under rivers, watercourses, or railroads.

(c) The board may also require the owners of real property abutting along and upon rivers, streams, and waterways to remove unsightly or obnoxious materials, filth, and unhealthy and unsanitary substances in or along them. Five (5) days' written notice shall be given to the owners that states the materials, filth, or substances to be

removed. If a property owner fails to comply with the notice the board may remove the materials, filth, or substances. The expense of removal shall be certified by the board to the county treasurer and shall be collected by the treasurer in the same manner as assessments by the board for the improvement of boulevards are collected under this chapter and other statutes, including the sale of the property by the treasurer to pay delinquent expenses.

*As added by Acts 1981, P.L.309, SEC.111.*

### **IC 36-10-4-23**

#### **Improvement of parkway, pleasure driveway, or boulevard; orders; assessment of costs; remonstrance; changing and fixing grade**

Sec. 23. (a) The board may, in a proceeding separate from the acquisition of land by purchase or appropriation, order the improvement of a parkway, pleasure driveway, or boulevard, or part of any of these, under the control of the board by surface grading, paving, curbing, or constructing sidewalks in the same manner as the works board of the city may improve a public way or sidewalk within the city. The powers, rights, and duties of the board in carrying out this work are the same as the powers, rights, and duties of the works board in the performance of similar work under general procedures. In addition, the board may determine the kind of pavement to be used. The powers, rights, and duties of the persons to be assessed are the same as those provided under general procedures for doing similar work by the works board, with the cost of improvements assessed to the same extent as property is assessed.

(b) When costs are assessed, they become a lien upon the property to the same extent, are enforceable in the same manner, and have the same rights to payment by installments and appeal as are provided for street and sidewalk improvements ordered by the works board.

(c) If a majority of the resident freeholders affected by the proposed improvement remonstrate in writing against the improvement, the board may, after giving ten (10) days' notice to the remonstrators, petition the circuit court to specifically order the improvement. If at the hearing on the petition the board establishes the public necessity of the proposed improvement and demonstrates that the benefits will equal the assessments against the separate lots or parcels of land, the order shall be made.

(d) If land along one (1) side of a parkway, pleasure driveway, or boulevard is owned by the city or used by it for park purposes, one-half (1/2) of the cost of the improvements under this section, as well as any part of the other one-half (1/2) of the cost of the improvements that cannot be met by special assessments against abutting property, is considered to be benefits accruing to all of the property, real and personal, not exempt from taxation under this chapter and located within the boundaries of the district. The cost shall be paid out of the proceeds of the bonds of the taxing district that are issued and sold for those purposes. Payment shall be made as provided in sections 35 and 37 of this chapter.

(e) The board may provide for the rough grading of a parkway, pleasure driveway, or boulevard at the same time as the acquisition of the property or after the property, or a necessary part of it, has already been secured under section 21 of this chapter.

(f) The board may change and fix the grade of a boulevard, park boulevard, public driveway, or public ground under its control to the same extent as the works board of the city may change and fix the grade of a public way or public place within the city.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-24**

##### **Appropriation of property; purposes**

Sec. 24. The board may appropriate property for:

- (1) establishing a park, parkway, pleasure driveway, or boulevard;
- (2) widening or extending a park, parkway, pleasure driveway, or boulevard;
- (3) opening, widening, or extending a route or right-of-way for a sewer or channel of a watercourse connected with or necessary for the protection of a park, parkway, pleasure driveway, or boulevard;
- (4) constructing an embankment or levee along a watercourse for the protection of a park, parkway, pleasure driveway, or boulevard;
- (5) constructing a bridge or viaduct upon or connected with a park, parkway, pleasure driveway, or boulevard; or
- (6) converting a public way connecting a park, parkway, or boulevard in the city into a boulevard or pleasure driveway.

The board may also, in the same proceeding, provide for the construction of improvements to the property for the purposes for which the property is appropriated. In addition, the board may provide for the construction of any of the improvements when the property or a part of it has been secured by contract or other means.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-25**

##### **Resolution to acquire property; adoption; contents; notice of adoption; appraisal; title; hearing; remonstrance, final action**

Sec. 25. (a) This section applies only to:

- (1) the acquisition of real property; or
- (2) a work of improvement;

that will be financed by the issuance of bonds.

(b) If a board decides to:

- (1) acquire land for any of the purposes of this chapter, either by purchase or appropriation, and to proceed with an improvement authorized by this chapter, other than surface grading and paving under section 23 of this chapter; or
- (2) acquire property without proceeding at that time with an improvement; or
- (3) proceed with an improvement when the property has been

already secured by purchase or otherwise;  
it shall adopt a resolution under subsection (c).

(c) The resolution must:

- (1) declare the purpose;
- (2) describe the land to be acquired, the manner of acquisition, and, in case of appropriation, other land that may be injuriously affected; or describe the land already acquired and intended to be used for the proposed improvement; and
- (3) if the improvement is provided for in the resolution, require that preliminary plans and specifications and an estimate of the cost of the proposed improvement be prepared by the engineer selected to do the work.

The resolution must be open to inspection by all persons interested in or affected by the appropriation of the land or the construction of the work.

(d) Upon the adoption of the resolution, the board shall have notice of the adoption and content of it published in accordance with IC 5-3-1. The notice must name a date on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings and determine the public utility and benefit of the proposed project.

(e) Notice shall be sent by certified mail to each owner of land to be appropriated under the resolution, using the owner's address as shown on the tax duplicates. In addition, notice of the land to be appropriated shall be published in accordance with IC 5-3-1. All persons affected in any manner by the proceedings, including all taxpayers in the district, are considered to be notified of the pendency of the proceedings and of all subsequent acts, hearings, adjournments, and orders of the board by the original notice by publication.

(f) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased, to be purchased, or to be appropriated or damaged to give a description of the entire tract by metes and bounds. It does not matter if the property is composed of one (1) or more lots or parcels or owned by one (1) or more persons.

(g) If the land or a part of it is to be acquired by purchase, the resolution must also state the maximum proposed cost. The board may, at any time before the adoption of the resolution:

- (1) obtain from the owner or owners of the land an option for its purchase; or
- (2) enter into a contract for its purchase upon the terms and conditions that the board considers best.

The option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution and to the condition that the land shall be paid for only out of the special fund resulting from the sale of district bonds and from local assessments, as provided in this chapter.

(h) If the board decides to acquire any lots or parcels of land by purchase, the board shall appoint three (3) qualified appraisers to

appraise the land. The appraisers may not be interested, directly or indirectly, in any land to be acquired under the resolution or that may be injured or incur local benefits. The appraisers shall take an oath that they have no interest in the matter and that they will honestly and impartially make the valuation. They shall then immediately view the land and determine the true market value of it at that time. They shall report the appraisal in writing, which shall be filed with and becomes a part of the record of the proceeding. The board may not take an option on the land or enter into a contract to purchase it at a higher price than the value named in the report.

(i) The title to any land to be acquired under the resolution, whether by purchase or appropriation, does not vest in the city until it is paid for out of the special fund created by the sale of bonds and from local assessments of special benefits as provided in this chapter. Any indebtedness or obligation incurred by the board due to the acquisition of land or to construction of a work shall be paid out of the funds under the control of the board and is not an indebtedness or obligation of the city.

(j) At or before the time fixed for the hearing, an owner of land to be appropriated or injuriously affected under the resolution, or a person owning real or personal property located within the corporate boundaries of the city, may file a written remonstrance with the secretary of the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances that have been filed. After considering this evidence, the board shall take final action determining the public utility and benefit of the proposed project by either confirming, modifying, or rescinding the resolution. The action shall be recorded and is final and conclusive upon all persons.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.17.*

#### **IC 36-10-4-26**

##### **Letting of contract for construction; bidder's deposit; payment; limitation of cost; validity of contract**

Sec. 26. (a) If the board orders acquisition and construction and has advertised for bids for the construction after final adoption of the resolution, it shall require each bidder to deposit with his bid a certified check for an amount not less than two and one-half percent (2 1/2%) of the engineer's estimate of the cost of the improvement to insure the execution of the contract for which the bid is made.

(b) The contract must state that payments for all work under the contract shall be made only from the special fund derived from the proceeds of bonds and special assessments. A contract may not be let for a higher amount than the estimated cost of the work, and the board may let parts of the proposed work under different contracts. The board may, at any time before the execution of a contract for the work, rescind any acts or orders in relation to the proposed work or take the supplementary proceedings that the board considers necessary.

(c) The validity of a contract may not be subsequently questioned by any person except in an action to enjoin the performance of the contract instituted within fifteen (15) days after the execution of the contract. After that fifteen (15) day period, all proceedings and orders of the board preliminary to the contract are valid, conclusive, and binding upon all persons and are not subject to attack. The amount of the benefits resulting to all property in the city and the special tax shall be levied only for the balance.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-27**

##### **Properties subject to special tax; lands subject to special assessment for benefits; determination of benefits to all property in city**

Sec. 27. (a) After final action of the board confirming the resolution in its original form, all property located within the corporate boundaries of the city is subject to a special tax to provide money to pay the total cost of acquiring land, of an improvement, or of both, including all necessary incidental expenses. The special tax constitutes the amount of benefits resulting to the property from the proceedings and shall be levied as provided in this chapter.

(b) If the board determines that any lots or parcels of land, exclusive of improvements, lying within two thousand (2,000) feet of either side of property to be acquired for a work of construction will incur a particular benefit because of proximity to the property to be acquired or the work of construction, the lots and parcels of land are subject to a special assessment for benefits in addition to the benefits received by them in common with all other property located in the city. The special assessment shall be determined in accordance with this chapter, but the total amount of the additional benefits assessed may not exceed twenty-five percent (25%) of the total cost of acquiring land, of the improvement, or of both.

(c) The total amount of additional benefits assessed and finally confirmed or adjudged against lots and parcels of land, exclusive of improvements, lying within two thousand (2,000) feet shall be deducted from the total cost of acquiring new park land, of the improvement, or of both. The balance of the total cost constitutes the amount of the benefits resulting to all property in the city, with the special tax levied only for the balance.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-28**

##### **Lists of property sought to be taken, certain property incurring particular benefit, and persons affected injuriously or beneficially**

Sec. 28. (a) When the resolution has been finally confirmed by the board, the board shall have prepared a list of all the owners or holders or property sought to be taken or that will be injuriously affected either by the appropriation of the land or the improvement. The board shall also have prepared a list of all of the owners or holders of lots or parcels of land lying within two thousand (2,000)

feet on either side of the land to be acquired for park or boulevard purposes, for an improvement, or for both that will incur a particular benefit as provided in section 27 of this chapter by the acquisition, location, establishment, construction, or improvement of a park, playground, parkway, pleasure driveway, boulevard, improvement, or structure provided in the resolution.

(b) In addition to the names, the list must show with reasonable certainty a description of the property belonging to each person that will be appropriated or affected either injuriously or beneficially. A greater certainty in names and description is not necessary for the validity of an award or assessment than is required in the assessment of taxes.

*As added by Acts 1981, P.L.309, SEC.111.*

### **IC 36-10-4-29**

#### **Exempt personal and real property; exception**

Sec. 29. All real and personal property that is exempt from taxes by statute is exempt from all taxes and assessments under this chapter, except assessments against abutting property for improvements constructed by the board under section 23 of this chapter.

*As added by Acts 1981, P.L.309, SEC.111.*

### **IC 36-10-4-30**

#### **Awards; determination; notice describing location of land appropriated or acquired**

Sec. 30. (a) After completion of the list, the board shall proceed to determine and award:

- (1) the amount of damages sustained by the owners of the parcels of land required to be appropriated, if any, as provided in the resolution or that will be injuriously affected; and
- (2) the amount of particular benefits that will accrue to the lots or parcels of land, exclusive of improvements, lying within two thousand (2,000) feet on either side of the property to be acquired, of the improvement, or of both because of proximity to the land to be acquired and the establishment or construction of a project for park purposes as provided in the resolution and in addition to the benefits received by the lots or parcels of land in common with all property located in the city.

However, the total amount of benefits assessed against the lots and parcels of land, exclusive of improvements, located within two thousand (2,000) feet may not exceed twenty-five percent (25%) of the total cost of land acquisition or of the improvement.

(b) When the list has been completed, the board shall have published in accordance with IC 5-3-1 a notice describing the location of the land appropriated or acquired by the purchase or the land on which the improvement is to be made. The notice must also state:

- (1) the general character of the improvement;
- (2) what assessments have been made against land within two

thousand (2,000) feet of park property; and  
(3) that the assessment list, with the names of the owners to whom damages have been awarded and against whom assessments have been made, a description of property affected, and the amounts of preliminary awards or assessments for each parcel of property affected is on file and can be seen in the board's office.

(c) In addition, the board shall have a written notice served upon the owner of each parcel of land taken or injuriously affected, by leaving a copy at his last and usual place of residence in the city or by delivering a copy to the owner personally. The notice must show separately each item of the determination regarding property owned by him.

(d) The board shall also have mailed a notice to the residence, if known, of persons owning land or parts of land against which special assessments have been made, showing each item of the determination as it affects those persons. If a person is a nonresident or his residence is not known, then he is considered to have been notified by the publication. The notice must name a day, not earlier than ten (10) days after service of the notice, the last day of publication, or the date of mailing, on which the board will receive and hear remonstrances from persons regarding the amount of their respective awards or assessments. Persons not included in the lists, assessments, or awards who claim to be entitled to an assessment or award are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board and by the publication as provided in this section.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.45, SEC.99.*

### **IC 36-10-4-31**

#### **Notice to mentally incompetent persons or minors; defects or irregularities in proceedings**

Sec. 31. (a) If a person having an interest in land affected by the proceedings is mentally incompetent or under eighteen (18) years of age, the board shall certify this fact to its attorney. The attorney shall then apply to the court and secure the appointment of a guardian for the person. The board shall give notice to the guardian, who shall appear and protect the interest of the protected person. However, if the protected person already has a guardian, the notice may be served upon that guardian. The requisites of notice to the guardian are the same as for other notices.

(b) If there are defects or irregularities of any kind in the proceedings with respect to one (1) or more interested persons, they do not affect the proceedings as to any other person. In case of a defect, supplementary proceedings of the same general character as those already prescribed may be had in order to cure it.

*As added by Acts 1981, P.L.309, SEC.111. Amended by P.L.33-1989, SEC.129.*

### **IC 36-10-4-32**

#### **Remonstrance against award or assessment; hearing; decision; appeal; procedure; costs**

Sec. 32. (a) A person notified or considered to be notified under the preceding sections of this chapter may remonstrate in writing against an award or assessment and appear before the board on the day fixed for hearing remonstrances. Every person appearing before the board having an interest in the proceedings shall be given a hearing. After the remonstrances have been received and the hearings held, the board shall either sustain, increase, or decrease the awards or assessments.

(b) A person remonstrating in writing who is aggrieved by the decision of the board may take an appeal to the circuit or superior court in the county in which the city is located. The appeal affects only the amount of the assessment or award of the person appealing.

(c) The appeal may be taken by filing an original complaint in court against the board within ten (10) days after the board's decision. The complaint must set forth the action of the board regarding the assessment or award and the facts relied upon as showing an error of the board. The court, or if requested by a property owner or the board, a jury, shall rehear the matter of the assessment or award de novo and either confirm, decrease, or increase the amount. The cause shall be tried as a civil case. All remonstrances upon which an appeal is taken may be consolidated and heard as one (1) cause of action and shall be heard and determined as soon as practical.

(d) If the amount of benefits assessed against the property is decreased by ten percent (10%) or more, or if the amount of damages is increased by ten percent (10%) or more, the plaintiff is entitled to recover costs.

*As added by Acts 1981, P.L.309, SEC.111.*

### **IC 36-10-4-33**

#### **The local assessment duplicate; collection by county treasurer; payment date; foreclosure; installment payments; law governing; assessment bonds; expense of notices**

Sec. 33. (a) Upon completion of the assessment roll by the board, the board shall immediately prepare a duplicate of the assessment roll of benefits, to be known as "The Local Assessment Duplicate", and deliver it, duly certified, to the county treasurer. The amounts of benefits assessed are then liens superior to all other liens, except taxes, against the respective lots or parcels of land upon which they are assessed. The duties of the treasurer are the same as are prescribed by law for the collection of assessments for street improvements.

(b) The assessments of benefits are due and payable to the treasurer from the time of the delivery of the assessment duplicate to the treasurer. If the assessments are not paid within sixty (60) days after delivery, the board, through its attorney, shall proceed to foreclose the liens in a court of competent jurisdiction as mortgages

are foreclosed, with similar rights of redemption and the right to sell the property to pay the assessments. The board may recover costs, reasonable attorney's fees, and interest from the expiration of the sixty (60) day period at the rate of six percent (6%) per year. If the person against whom the assessment is made is a resident of the city, demand shall be made by delivery to him personally or mailing to his last and usual place of residence a notice of the assessment and demand for payment.

(c) A person assessed for special and local benefits may, within thirty (30) days after confirmation of the assessments, decide to pay the assessment in installments in the same manner as provided for the payment of assessments for the improvement or paving of streets in the city.

(d) Statutes concerning the payment of street improvement assessments by installments, the issuance of bonds and coupons to anticipate assessments, and the rights of bondholders and landholders apply to assessments made under this chapter when consistent with this chapter. If assessment bonds are issued, they shall promptly be sold by the board in the same manner as park district bonds are authorized to be sold under section 35 of this chapter. Assessment bonds are exempt from taxation for all purposes. The expense of all notices with respect to assessments and delinquencies shall be paid by the board and all interest on delinquencies shall be deposited into the general fund of the board.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-34**

##### **Damage awards; certificates; payment; disputes as to claimants**

Sec. 34. (a) The board shall, upon completion of a damage award or upon the determination of an appeal, make out certificates for the proper amounts and in favor of the proper persons. When a person presents a certificate to the city fiscal officer, the person is entitled to a warrant on the city treasury. The warrant shall be countersigned by the president or vice president and the secretary of the board.

(b) The city shall pay the persons the amounts due them as shown by the certificates. The certificates or vouchers shall, whenever practical, be actually tendered to the person entitled to them, but if this is impractical they shall be kept for the persons in the office of the board. The making and filing of the certificates is a valid effectual tender to the person entitled to them when there is sufficient money to pay them. The certificates shall be delivered to the person on request.

(c) If a dispute or doubt arises as to which person shall be paid the money, the board shall make out the certificate in favor of the attorney appointed by the board for the use of the person entitled to it. The attorney shall then draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined. If an injunction is obtained because damages have not been paid or tendered, the board shall tender the amount of them, with interest from the time of the entry of

the property, if entry has been made, and all accrued costs. The injunction shall then be disposed of, if there is sufficient money to pay the certificate. The pendency of an appeal to the circuit or superior court of a county does not affect the validity of a tender made under this section, but the board is entitled to proceed with its appropriation of the property in question.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-35**

**Bonds; issuance; purpose; deduction of benefits from cost; inclusion of estimated costs in one bond issue; denomination; issuance and sale procedure**

Sec. 35. (a) In order to pay for:

- (1) land to be acquired for any of the purposes of this chapter;
- (2) an improvement authorized by this chapter; or
- (3) both;

the board shall issue the bonds of the district in the name of the city in anticipation of the special benefits tax to be levied under this chapter. The amount of the bonds may not exceed the estimated cost of all land to be acquired and the estimated cost of all improvements provided in the resolution, including all expenses necessarily incurred in the proceedings and a sum sufficient to pay the estimated costs of supervision and inspection during the period of construction. Expenses include all expenses actually incurred preliminary to acquisition of the land and the construction work, such as the estimated cost of the necessary record, engineering expenses, publication of notices, preparation of bonds, and other expenses necessary to letting the contract and selling the bonds.

(b) The total amount of any benefits that have been assessed by the board and confirmed against lots and parcels of land, exclusive of improvements, lying within two thousand (2,000) feet on either side of the land to be acquired or of the improvement, however, shall be deducted from the estimated cost.

(c) If more than one (1) resolution or proceeding of the board under section 25 of this chapter is confirmed whereby different parcels of land are to be acquired or more than one (1) contract for work is let by the board at approximately the same time, the estimated cost involved under all of the resolutions and proceedings may be contained in one (1) issue of bonds.

(d) The bonds shall be issued in any denomination up to five thousand dollars (\$5,000) each. The bonds are negotiable instruments and bear interest at a rate established by the board and approved by the city legislative body.

(e) After adopting a resolution ordering the bonds, the board shall certify a copy of the resolution to the fiscal officer of the city. The fiscal officer shall then prepare the bonds, which shall be executed by the city executive and attested by the fiscal officer. The bonds are exempt from taxation for all purposes and are subject to IC 6-1.1-20 concerning:

- (1) the filing of a petition requesting the issuance of bonds; and

(2) the right of:

(A) taxpayers to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or

(B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a).

(f) All bonds shall be sold at not less than par value plus accrued interest to date of delivery by the city fiscal officer to the highest bidder after giving notice of the sale of the bonds by publication in accordance with IC 5-3-1.

(g) The bonds are subject to approval by the city legislative body, in the manner it prescribes by ordinance or resolution.

(h) The bonds are not corporate obligations or indebtedness of the city, but are an indebtedness of the district as a special taxing district. The bonds and interest are payable only out of a special tax levied upon all property of the district. The bonds must recite these terms upon their face, together with the purposes for which they are issued.

(i) An action to question the validity of bonds of the district or to prevent their issue may not be brought after the date set for the sale of the bonds.

(j) The board may, instead of selling the bonds in series, sell the bonds to run for a period of five (5) years from the date of issue for the purposes of this chapter at any rate of interest payable semiannually, also exempt from taxation for all purposes. The board may sell bonds in series to refund the five (5) year bonds.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.320, SEC.18; P.L.27-1986, SEC.8; P.L.2-1989, SEC.55; P.L.146-2008, SEC.794.*

#### **IC 36-10-4-36**

##### **Cumulative building and sinking fund; establishment; levy of tax**

Sec. 36. (a) To raise money for any of the purposes for which bonds may be issued under section 35 of this chapter, the board may request that the city legislative body adopt an ordinance establishing a cumulative building and sinking fund. The legislative body may establish a cumulative building and sinking fund under IC 6-1.1-41. The tax may not exceed three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of taxable personal and real property in the district.

(b) The tax, when collected, shall be held in a public depository in a special fund to be known as the park district cumulative building and sinking fund.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.45, SEC.100; P.L.17-1995, SEC.43; P.L.6-1997, SEC.233.*

#### **IC 36-10-4-37**

##### **District bond fund; proceeds from sale of bonds; disposition of fund**

Sec. 37. (a) All proceeds from the sale of bonds issued under section 35 of this chapter shall be kept as a separate fund to pay for:

- (1) the cost of land and other property acquired;
- (2) the cost of improvement; and
- (3) all costs and expenses incurred in connection with the project.

(b) The fund may not be used for any other purpose. The fund shall be deposited, at interest, with the depository or depositories of other public funds of the city, and all interest collected on it belongs to the fund. A surplus remaining from the proceeds of the bonds after all costs and expenses are fully paid shall be paid into and becomes a part of the district bond fund.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-38**

##### **Special tax to pay principal of bonds and accruing interest; collection; accumulations of fund before use for payment**

Sec. 38. (a) To raise money to pay all bonds issued under section 35 of this chapter, including interest, the board shall levy each year a special tax upon all of the real and personal property located in the district to pay the principal of the bonds as they mature, together with all accruing interest. The board shall have the tax levied each year certified to the auditor of the county in which the district is located by October 1 each year.

(b) The tax levied and certified shall be collected and enforced in the same manner as other city taxes are collected and enforced. As the tax is collected, it shall be accumulated and kept in a separate fund to be known as the park district bond fund. The tax shall be used to pay the bonds and interest as they mature and may not be used for any other purpose.

(c) All accumulations of the fund before use for the payment of bonds and interest shall be deposited, at interest, with one (1) of the depositories of other public funds of the city, with interest collected belonging to the fund.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-39**

##### **Payment for land taken or purchased or work done by contract; recording of land description and purpose of acquisition**

Sec. 39. (a) The board shall pay to the parties the amounts respectively due them for land taken or purchased or work done by contract or otherwise from the fund derived from the sale of bonds and from assessments of benefits. No other source may be used for this payment. If the land or a part of it is secured by purchase or contract, the payment shall be made according to the terms of the contract. If land is taken by condemnation, the amount of damages assessed shall be paid or tendered within ninety (90) days after the final determination of the condemnation proceedings, or as soon after that as the bond fund is available. The title to the land, or that part paid for or otherwise acquired for these purposes, then vests in the city in the manner, to the extent, for the purposes, and subject to the limitations provided.

(b) Within sixty (60) days after land or an interest in it is acquired or taken under this chapter, the board shall file and have recorded in the recorder's office in the county in which the land is situated a description of it sufficiently accurate for its identification, including a statement of the purposes for which it is required or taken signed by a majority of the board.

*As added by Acts 1981, P.L.309, SEC.111.*

#### **IC 36-10-4-40**

##### **Separate contracts with another party for public improvements or repairs; violation of section**

Sec. 40. (a) Unless the board publicly declares an emergency, it may not during any six (6) month period make separate contracts with another party for public improvements or repairs under section 13 of this chapter on the same construction or repair site or on the same construction or repair project involving more than one (1) site, without advertising for and accepting public bids, if the aggregate cost of the separate contract is more than fifteen thousand dollars (\$15,000).

(b) A commissioner who knowingly violates subsection (a) commits a Class D felony.

(c) A person who accepts a contract with the board, knowing that subsection (a) was violated in connection with the contract, commits a Class D felony and may not be a party to or benefit from any contract with an Indiana governmental entity for two (2) years after the date of his conviction.

*As added by Acts 1981, P.L.309, SEC.111. Amended by Acts 1981, P.L.57, SEC.44.*