

IC 5-1-5

Chapter 5. Refunding Bonds Generally

IC 5-1-5-1

Definitions

Sec. 1. The following terms as used in this chapter have the following meanings:

(a) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, or other legislative body in which the legislative powers of the issuing body are vested.

(b) "Issuing body" means the state of Indiana, its agencies, commissions, universities, colleges, institutions, political subdivisions, counties, school corporations, hospital associations, municipal and quasi-municipal corporations, special taxing districts, and any corporation which has issued bonds payable directly or indirectly from lease rentals payable by any of the foregoing issuing bodies, now or hereafter existing under the laws of the state.

(c) "Bond" means any revenue bond, general obligation bond, or advance refunding bond.

(d) "Revenue bond" means any bond note, warrant, certificate of indebtedness, or other obligation, including a certificate or other evidence of participation in the lessor's interest in and rights under a lease, for the payment of money issued by an issuing body or any predecessor of any issuing body which is payable from designated revenues, rental payments, special benefits, taxes, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation and any obligation payable solely from special assessments or special assessments and a guaranty fund.

(e) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of an issuing body which constitutes an indebtedness within the meaning of the constitutional debt limitation.

(f) "Advance refunding bonds" means bonds issued for the purpose of refunding bonds first subject to redemption or maturing after the date of the advance refunding bonds.

(g) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the issuing body exercising any power hereunder takes formal action and adopts legislative provisions and matters of some permanency.

(h) "Corporation which has issued bonds" means a corporation organized under IC 20-47-2 or IC 20-47-3, the laws of any state of the United States of America or of the United States of America, including any bank, trust company, or national association serving as a trustee under an indenture providing for issuance of bonds.

(i) "Local issuing body" means an issuing body that is:

- (1) a political subdivision (as defined in IC 36-1-2-13);
- (2) a district (as defined in IC 6-1.1-21.2-5); or
- (3) a corporation or other entity that:

(A) is not a body corporate and politic established as an instrumentality of the state; and

(B) has issued bonds that are payable directly or indirectly from lease rentals payable by a political subdivision or district described in subdivision (1) or (2).

(j) "Special benefit taxes" means a special tax levied and collected on an ad valorem basis on property for the purpose of financing local public improvements that:

(1) are not political or governmental in nature; and

(2) are of special benefit to the residents and property of the area.

(k) "Tax increment revenues" means an allocation of:

(1) ad valorem property taxes;

(2) state or local adjusted gross income taxes; or

(3) state or local gross retail and use taxes;

to a redevelopment district that is based on an increase in the assessed value, wages, sales, or other economic activity occurring in a designated area. The term includes allocations described in IC 5-28-26-9, IC 6-1.1-21.2-10, IC 36-7-26-10, IC 36-7-27-8, IC 36-7-31-6, and IC 36-7-31.3-4.

(l) "Redevelopment district" refers to the following:

(1) An airport development zone under IC 8-22-3.5.

(2) A redevelopment district established under:

(A) IC 36-7-14; or

(B) IC 36-7-15.1.

(3) A special taxing district described in:

(A) IC 36-7-14.5-12.5(d); or

(B) IC 36-7-30-3(b).

(4) Another public entity to which tax increment revenues are allocated.

(m) Words used in this chapter importing singular or plural number may be construed so that one (1) number includes both.

(Formerly: Acts 1973, P.L.28, SEC.1; Acts 1975, P.L.36, SEC.1.) As amended by P.L.2-2006, SEC.8; P.L.146-2008, SEC.23.

IC 5-1-5-2

Issuance of bonds to refund outstanding bonds

Sec. 2. (a) The governing body of any issuing body may by ordinance provide for the issuance of bonds to refund outstanding bonds issued at any time by such issuing body or its predecessor, and to pay redemption premiums and costs of refunding to effect a saving to the issuing body. Issuance of bonds to refund outstanding bonds may also be made in order to pay or discharge all or any part of such outstanding series or issue of bond, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available or to modify restrictive covenants in outstanding bonds impeding additional financing. To determine whether or not a savings will be effected, consideration shall be given to the estimated or known interest payable to the fixed maturities of the refunding bonds, the interest payable on the bonds to be refunded, the costs of

issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the probable earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded.

(b) The provisions of subsection (a) requiring a savings to be effected do not apply to:

(1) the issuance of bonds to refund previously issued refunding bonds, if the statute under which the refunding bonds are issued expressly exempts such an issue from this savings requirement;

or

(2) the issuance of refunding bonds by a school corporation that is an eligible school corporation under section 2.5 of this chapter.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.2; P.L.23-1984, SEC.1; P.L.229-2011, SEC.62.

IC 5-1-5-2.5

Eligible schools; refunding bonds; referenda

Sec. 2.5. (a) As used in this section, "eligible school corporation" means a school corporation (as defined in IC 36-1-2-17) that satisfies all the conditions required by this section.

(b) As used in this section, "increment" means the annual difference between:

(1) the annual debt service payment for the bonds proposed to be retired or refunded; and

(2) the annual debt service payment for the proposed refunding bonds;

for each year that the bonds that are being retired or refunded would have been outstanding.

(c) In order for a school corporation to be an eligible school corporation under this section, the school corporation must determine that the percentage computed under this subsection for the school corporation is at least thirty percent (30%) regarding the year for which the latest certified levies have been determined. A school corporation shall compute its percentage as follows:

(1) Compute the amount of credits granted under IC 6-1.1-20.6 against the school corporation's combined levy for the school corporation's:

(A) debt service fund, as described in IC 20-46-7-15;

(B) capital projects fund;

(C) transportation fund;

(D) school bus replacement fund; and

(E) racial balance fund.

(2) Compute the school corporation's combined levy for the school corporation's:

(A) capital projects fund;

(B) transportation fund;

(C) school bus replacement fund; and

(D) racial balance fund.

(3) Divide the amount computed under subdivision (1) by the

amount computed under subdivision (2) and express it as a percentage.

(d) A school corporation that desires to be an eligible school corporation under this section must satisfy the following conditions:

(1) The school corporation shall conduct a public hearing and provide notice of the time, date, and place of the hearing, published as required by IC 5-3-1, before the school corporation may adopt an ordinance under this section. At the public hearing, the governing body must provide the following information:

(A) The annual debt service payments, applicable debt service tax rate, and total debt service payments for the bonds proposed to be retired or refunded.

(B) The annual debt service payments, applicable debt service fund tax rate, and total debt service payments for the proposed refunding bonds.

(C) The annual increment for each year that the bonds that are being retired or refunded would have been outstanding and any other benefits to be derived from issuing the refunding bonds.

(2) If the amount determined under subsection (c)(3) is:

(A) more than forty-five percent (45%), notwithstanding IC 6-1.1-20-3.1(a) and IC 6-1.1-20-3.2(a), the school corporation shall use the petition and remonstrance process prescribed by IC 6-1.1-20-3.1(b) and IC 6-1.1-20-3.2(b) and more individuals must sign the petition for the bond refunding under this section than the number of individuals signing a remonstrance against the bond refunding; or

(B) at least thirty percent (30%) but not more than forty-five percent (45%), the school corporation shall conduct a referendum on a public question regarding the bond refunding using the process for a referendum tax levy under IC 20-46-1 and the bond refunding must be approved by the eligible voters of the school corporation. The question to be submitted to the voters in the referendum must read as follows:

"Shall _____ (insert the name of the school corporation) issue refunding bonds to refund not more than fifty percent (50%) of its outstanding bonds to provide an annual savings to the school's debt service fund that can be transferred from the school's debt service fund to the school's capital projects fund, transportation fund, or school bus replacement fund?"

Except as provided in subdivision (2)(A), IC 6-1.1-20 does not apply to bonds issued under this section.

(e) A school corporation that desires to be an eligible school corporation under this section must, before July 1, 2013, and notwithstanding any other law, adopt an ordinance that sets forth the following:

(1) The determinations made under subsection (c).

- (2) The result of the petition remonstrance process under subsection (d)(2)(A) or the result of the vote on the public question under subsection (d)(2)(B), whichever applies.
- (3) A determination providing for the:
 - (A) issuance of bonds to refund not more than fifty percent (50%) of outstanding bonds or leases issued by or on behalf of the school corporation; and
 - (B) payment of redemption premiums and the costs of the refunding.
- (4) With respect to the refunding bonds, the following:
 - (A) The maximum principal amount.
 - (B) The maximum interest rate.
 - (C) The annual lease or debt service payment.
 - (D) The final maturity date.
 - (E) The estimated amount of the increment that will occur for each year that the bonds that are being retired or refunded by the issuance of refunding bonds would have been outstanding.
 - (F) A finding that the annual debt service or lease payment on the refunding bonds will not increase the annual debt service or lease payment above the annual debt service or lease payment approved by the school corporation for the original project.

If the governing body adopts an ordinance under this section, the governing body must publish notice of the adoption of the ordinance as required by IC 5-3-1.

(f) An eligible school corporation may issue refunding bonds as permitted by this section. In addition, an eligible school corporation may extend the repayment period beyond the repayment period for the bonds that are being retired or refunded by the issuance of refunding bonds. However, the repayment period may be extended only once for a particular bond, and the extension may not exceed ten (10) years.

(g) Property taxes imposed by an eligible school corporation to pay debt service for bonds permitted by this section shall be considered for purposes of calculating the limits to property tax liability under Article 10, Section 1 of the Constitution of the State of Indiana and for calculating a person's credit under IC 6-1.1-20.6-7.5. However, property taxes imposed by an eligible school corporation through December 31, 2019, to pay debt service for bonds permitted by this section may not be considered in an eligible county, as used in Article 10, Section 1(h) of the Constitution of the State of Indiana, for purposes of calculating the limits to property tax liability under Article 10, Section 1 of the Constitution of the State of Indiana or for calculating a person's credit under IC 6-1.1-20.6-7.5.

As added by P.L.229-2011, SEC.63.

IC 5-1-5-3

Exchange for outstanding bonds

Sec. 3. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds being refunded or may be sold in the manner hereinafter provided.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-4

Refunding procedure

Sec. 4. (a) Bonds may be refunded under this chapter when the holders thereof voluntarily surrender them for exchange or payment, or, if they mature, or are subject to redemption prior to maturity within twenty (20) years from the date of the refunding bonds. In any advance refunding plan under this chapter the governing body shall provide in the ordinance authorizing the issuance of the advance refunding bonds for the redemption of the bonds to be refunded on any redemption date prior to maturity or at maturity.

(b) The ordinance authorizing the issuance of advance refunding bonds pursuant to this chapter may provide for a maximum interest rate, payable annually or at shorter intervals, and shall provide for the maturities at such time or times as may be determined by the ordinance. The bonds may be made redeemable before maturity at the option of the issuing body at such times and with such premiums, and under such terms and conditions as may be fixed in the ordinance.

(c) The principal and interest of the bonds may be made payable in any lawful medium. The ordinance shall determine the form of the bonds, including the interest coupons if any to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the state.

(d) Subject to registration provisions, all such bonds shall have all the qualities and the incidents of negotiable instruments under the negotiable instruments law of the state. The bonds shall be exempt from all taxation, state, county, and municipal, as provided in IC 6-8-5. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone, or as to both principal and interest, but fully registered bonds shall be made convertible to coupon bonds at the option of the registered owner. The bonds shall be executed in the same manner as other bonds issued by the issuing body are executed.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by P.L.23-1984, SEC.2.

IC 5-1-5-5

Principal amount; reserves to secure bonds

Sec. 5. Refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the retirement or

redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded may be applied at the time the bonds to be refunded are paid to the redemption or retirement of such bonds, or if other available funds are sufficient and are used to retire and redeem such bonds, such reserves may be pledged as security for the refunding bonds.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-6

Proceeds of refunding bonds; disposition

Sec. 6. The proceeds of the refunding bonds issued pursuant to this chapter shall be placed in escrow and applied, with any other available funds, to the payment on the date selected for redemption of the principal, accrued interest and any redemption premiums of the bonds being refunded, and, if so provided or permitted in the ordinance authorizing the issuance of such refunding bonds or in the trust indenture securing the same, may also be applied to the payment of any interest on such refunding bonds, and any costs of refunding. Pending such application, such escrowed proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America, which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. In lieu of such investments, all or part of such proceeds may be placed in interest bearing time certificates of deposits with such eligible financial institutions in the state of Indiana as the governing body shall determine or other similar arrangements may be made with such eligible financial institutions with regard thereto which will assure that such proceeds, together with the interest accruing thereon, will be available when required for the purposes intended, provided that prior written approval of the Director of the Department of Financial Institutions shall be required whenever such time certificates of deposits or other similar arrangements shall be secured to the full amount thereof by direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America of the type permitted for direct investment of the escrow fund. All interest or other income earned on such investments shall first be used to pay the interest on the refunding bonds as it becomes due. Any excess shall become a part of and held in the escrow fund. Any balance remaining in the escrow fund after redemption of all the bonds being refunded shall be deposited in the sinking fund after redemption of all the bonds being refunded shall be deposited in the sinking fund established for the payment of the principal and interest on the refunding bonds.

(Formerly: Acts 1973, P.L.28, SEC.1; Acts 1974, P.L.12, SEC.1.)

IC 5-1-5-7

Safekeeping and application of bond proceeds

Sec. 7. The governing body may contract with respect to the safekeeping and application of the advance refunding bond proceeds and other funds included therewith and the income therefrom. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire revenue bonds to be refunded, the refunding bond proceeds and other available funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the advance refunding bonds. The governing body may additionally pledge for the payment of such refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type being refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-8

Trust indenture to secure bonds

Sec. 8. (a) The governing body may secure the bonds by a trust indenture by and between the issuing body and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state of Indiana, and may convey or mortgage property to the same extent as is authorized by statutes applicable to:

- (1) the bonds being refunded; or
- (2) the bonds that the bonds being refunded had previously refunded.

(b) The ordinance authorizing the bonds and fixing the details thereof may provide that the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the issuing body.

(c) The trust indenture may set forth the rights and remedies of the bondholders or trustee, restricting the individual right of action of bondholders as is customary in trust indenture securing bonds and debentures of corporations. Except as is in this chapter otherwise provided, the governing body may provide by ordinance or in the trust indenture for any other terms or conditions pertaining to the refunding bonds as is authorized by statutes applicable to:

- (1) the bonds being refunded; or
- (2) the bonds that the bonds being refunded had previously refunded.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.3.

IC 5-1-5-9

Payment of bonds; sources of revenue

Sec. 9. When an issuing body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded, advance refunding bond proceeds and other moneys in amounts which

together with known earned income from the investment thereof are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the advance refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the advance refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the outstanding revenue bonds being refunded.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-10

Irrevocable pledge to general obligation bond; effect

Sec. 10. When funds and investments and the known earned income therefrom in amounts sufficient to pay the principal of and interest and any premium on bonds to be refunded as they become due at their respective maturities or at the date fixed for redemption have been irrevocably pledged to the bonds to be refunded, such bonds shall not constitute an indebtedness of the issuing body within the meaning of any constitutional or statutory debt limitation.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by P.L.44-1987, SEC.1.

IC 5-1-5-11

Issuance; separate or in combination

Sec. 11. Bonds for refunding and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one (1) or more series or issues by the same issuer.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-12

Law governing issuance

Sec. 12. Except as specifically provided in this chapter, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable, either at the time of the issuance of the refunding bonds or at the time of issuance of the bonds to be refunded, to:

- (1) the type of bonds being refunded; or
- (2) the type of bonds that the bonds being refunded had previously refunded.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.4.

IC 5-1-5-13

Sale of bonds

Sec. 13. Refunding bonds issued under the provisions of this chapter may be sold in such manner and upon such terms and conditions as the issuer of such refunding bonds shall deem to be in

the best interests of the issuing body, notwithstanding the provisions of IC 21-32-3, nor the provisions of IC 5-1-11, nor the provisions of any other law to the contrary. However, if such refunding bonds are sold to any person, limited liability company, firm, or corporation that has been rendering financial advisory services to the issuing body in connection with the proceedings and necessary fiscal arrangements related to such refunding bonds, then and in that event the issuing body shall not pay to such purchaser of the refunding bonds any fee or compensation for services rendered or as reimbursement for expenses incurred in connection therewith.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1981, P.L.11, SEC.15; P.L.8-1993, SEC.45; P.L.2-2007, SEC.67.

IC 5-1-5-14

Cumulative effect of chapter

Sec. 14. The authority of an issuing body to issue refunding bonds pursuant to this chapter is additional to any existing authority to issue such bonds and nothing in this chapter shall prevent the issuance of such bonds pursuant to any other law, and this chapter shall not be construed to amend any existing law authorizing the issuance of refunding bonds by an issuing body.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-15

Lease modifications

Sec. 15. In connection with the issuance of refunding bonds, an issuing body and the lessee, or lessees, of any building, or buildings, financed from the proceeds of the bonds being refunded may enter into an amendment to the lease modifying or amending the provisions of such lease in any one (1) or more of the following respects:

(a) to provide for a reduction in the amount of lease rental payable by the lessee, or lessees, to be effective upon the redemption of the bonds being refunded; or the happening of the events set forth in section 9 of this chapter if permitted by law and the covenants on the bonds to be refunded;

(b) to provide for extensions or reductions of the times set forth in the lease before the options of the lessee or lessees to purchase may be exercised to such times as may be agreed upon between the issuing body and the lessee or lessees;

(c) to provide that the lease rental payable by the lessee or lessees, after the redemption of all the bonds being refunded may be payable to the trustee under a trust indenture securing such refunding bonds.

The refunding herein authorized shall in no way affect the obligation of the lessee or lessees to pay the lease rental under the lease of the building or buildings, except to the extent such lease rental may be reduced by any amendment as hereinbefore authorized.

(Formerly: Acts 1973, P.L.28, SEC.1.)

IC 5-1-5-16

Advance refunding bonds; issuance

Sec. 16. Notwithstanding any other law, advance refunding bonds may be issued by an issuing body without obtaining the approval of the utility regulatory commission whether such advance refunding bonds are issued under this chapter or any other law.

As added by P.L.44-1987, SEC.2. Amended by P.L.23-1988, SEC.3.

IC 5-1-5-17

Last date for payment of certain refunding bonds

Sec. 17. (a) This section applies to bonds that are:

- (1) issued after June 30, 2008, by a local issuing body; and
- (2) payable from ad valorem property taxes, special benefit taxes on property, or tax increment revenues derived from property taxes;

including bonds that are issued under a statute that permits the bonds to be issued without complying with any other law or otherwise expressly exempts the bonds from the requirements of this section.

(b) Except as provided by section 2.5 of this chapter, the last date permitted under an agreement for the payment of principal and interest on bonds that are issued to retire or otherwise refund other revenue bonds or general obligation bonds may not extend beyond the maximum term of the bonds being refunded.

As added by P.L.146-2008, SEC.24. Amended by P.L.229-2011, SEC.64.

IC 5-1-5-18

Use of savings from refunding of bonds

Sec. 18. (a) This section applies to bonds that are:

- (1) issued after June 30, 2008, by a local issuing body; and
- (2) payable from ad valorem property taxes, special benefit taxes on property, or tax increment revenues derived from property taxes;

including bonds that are issued under a statute that permits the bonds to be issued without complying with any other law or otherwise expressly exempts the bonds from the requirements of this section.

(b) Savings (as computed under section 2 of this chapter) that accrue from the issuance of bonds to retire or otherwise refund other bonds may be used only for the following purposes:

- (1) To maintain a debt service reserve fund for the refunding bonds at the level required under the terms of the refunding bonds, if the local issuing body adopts an ordinance, resolution, or order authorizing that use of the proceeds or earnings.
- (2) To pay the principal or interest, or both, on:
 - (A) the refunding bonds; or
 - (B) other bonds, if the issuing body approves an ordinance authorizing the use of the savings to pay principal or interest on other bonds.
- (3) To reduce the rate or amount of ad valorem property taxes, special benefit taxes on property, or tax increment revenues imposed by or allocated to the local issuing body.

(c) An increment as computed under section 2.5 of this chapter that occurs from the issuance of bonds by an eligible school corporation to retire or otherwise refund other bonds as provided in section 2.5 of this chapter may be used only to make transfers permitted by IC 20-46-7-15 for the eligible school corporation.

As added by P.L.146-2008, SEC.25. Amended by P.L.229-2011, SEC.65.