

IC 5-20-2

Chapter 2. Financing of Housing

IC 5-20-2-1

Legislative findings; declaration of purpose

Sec. 1. Legislative Findings and Declaration of Purpose. It is hereby found and declared that in this state there is a shortage of decent, safe and sanitary housing that most people can afford; that the shortage of such housing is a threat to the health, safety, morals and welfare of Indiana residents and is not transitory and self-curing; that the cost of financing such housing is a major and substantial factor affecting the supply and cost of decent, safe and sanitary housing built by private enterprise; that the purpose of this chapter is to provide a means of lowering the cost of financing ownership by Indiana residents of decent, safe and sanitary housing; that such financing of residential ownership will (a) provide for and promote the public health, safety, morals, and welfare, (b) stimulate construction of new housing and remodeling and improvement of existing housing, thereby relieving conditions of unemployment and encouraging the increase of industry and commercial activity and economic development so as to reduce the evils attendant upon unemployment, (c) assist low and moderate income people in acquiring and owning decent, safe and sanitary housing which they can afford, (d) promote the integration of families of varying economic means, and (e) preserve and increase the ad valorem property tax base in this state; that the foregoing are public purposes; and that the necessity for the provisions of this chapter is a matter of legislative determination.

As added by Acts 1979, P.L.47, SEC.1.

IC 5-20-2-2

Definitions

Sec. 2. As used in this chapter, each of the following shall have the meaning indicated unless a different meaning clearly appears from the context:

- (1) "Bonds" means the revenue bonds authorized to be issued under this chapter and includes notes and any and all other limited obligations of a county or municipality payable as provided in this chapter.
- (2) "Executive officer" of a county, city, or town has the meaning set forth in IC 36-1-2-5.
- (3) "Governing body" of a county, city, or town has the meaning set forth in IC 36-1-2-9.
- (4) "Home" means real property and improvements thereon constructed for human habitation, located within the county or municipality, consisting of not more than four (4) units, and owned by one (1) mortgagor who occupies or intends to occupy one (1) of such units.
- (5) "Home mortgage" means an interest bearing loan for not to exceed thirty (30) years to a mortgagor for the purpose of

purchasing or improving a home, evidenced by a promissory note and secured by a mortgage on this home, but shall not include a loan primarily for the purpose of refinancing an existing loan.

(6) "Lending institution" means any bank, trust company, savings bank, national banking association, savings association, mortgage banker, or other financing institution or governmental agency which customarily provides service or otherwise aids in the financing of mortgages on single family residential housing or multifamily residential housing, which institution, for a county, is located in that county, and for a municipality is located in the county in which the municipality is located, or any holding company for any of the foregoing.

(7) "Mortgagor" means an individual, or two (2) or more individuals acting together, who have received a home mortgage under this chapter.

(8) "Recording officer" means the clerk or clerk-treasurer of a county or municipality.

(9) "Municipality" means a city or town.

(10) "Authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.1; P.L.8-1989, SEC.23; P.L.79-1998, SEC.11; P.L.181-2006, SEC.21.

IC 5-20-2-3

Application

Sec. 3. Application. This chapter applies to counties, cities, towns, and consolidated cities.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.2.

IC 5-20-2-4

Income limits

Sec. 4. Income Limits. (a) The governing body shall establish by ordinance an aggregate acceptable income amount for the year immediately preceding the calendar year in which a mortgage is requested, for the mortgagor and all individuals, except minor children of the mortgagor, who intend to reside with the mortgagor in one (1) dwelling unit. The purpose of this aggregate acceptable income amount is to limit the assistance provided by this chapter to individuals of low and moderate income.

(b) The governing body may consider the following factors before it adopts the ordinance provided in subsection (a) of this section:

- (1) the portion of total income of a person that is available to meet housing needs;
- (2) the number of persons that may share a residential dwelling unit;
- (3) the cost and condition of available housing; and
- (4) the amount of income required to obtain and pay for decent,

safe, and sanitary housing in the regular private housing market.

(c) Mortgage loans under this chapter are limited to persons having adjusted gross income for Indiana individual income tax purposes of law and moderate income. However, at least ninety percent (90%) of the value of home mortgages made from any issue of bonds will be made with respect to mortgagors whose adjusted family income does not exceed one hundred percent (100%) of the median income of all families residing within the metropolitan area of the county or municipality as determined by the governing body. For the purpose of determining the income of a person who was not a resident of the state of Indiana for the prior taxable year, the person's adjusted gross income shall be computed as if he were a resident of the state of Indiana for the prior taxable year.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.3.

IC 5-20-2-5

Other limitations

Sec. 5. (a) Bonds shall not be issued by a county, city, town, or consolidated city for home mortgages under this chapter if at the time of issuance and delivery there remains unexpended or uncommitted more than five percent (5%) of the net proceeds of a prior bond issued by that county, city, town, or consolidated city under this chapter.

(b) Bonds shall not be issued under this chapter for home mortgages in an amount in excess of twenty-five percent (25%) of the average annual amount of mortgage lending in the county or municipality in the most recent three (3) year period for which the governing body shall by ordinance determine from the Home Mortgage Disclosure Act, Public Law 94-200.

(c) No issue shall be approved by the authority if the amount of the issue exceeds the total amount of bond issues permissible under this chapter in the calendar year during which the proposed bonds will be issued. The total amount of bonds permissible under this chapter in any calendar year shall be fifty dollars (\$50) multiplied by the population of the state of Indiana as determined by the most recent federal decennial census.

(d) There is a five percent (5%) down payment requirement. An issue meets this requirement only if seventy-five percent (75%) or more of the owner-occupied financing provided by the issue is ninety-five percent (95%) financing. For purposes of this subsection, financing of a residence is ninety-five percent (95%) financing if such financing is ninety-five percent (95%) or more of the acquisition cost of such residence. A larger down payment is permitted in the case of alternative mortgage instruments as provided by law.

(e) No mortgage shall be made under this chapter the amount of which exceeds two and one-half (2 1/2) times the amount of the annual income of the prospective mortgagor. In addition, no financing shall be provided under this chapter to a prospective

mortgagor who is already a mortgagor with respect to an existing mortgage financed under this chapter.

(f) The effective rate of interest on mortgages provided from a particular bond issue under this chapter may not exceed the yield on the issue by more than one (1) percentage point. For purposes of this subsection, the effective rate of mortgage interest and the bond yield shall be determined in accordance with reasonable procedures adopted by the authority. However, the authority may waive the restriction in this subsection if it determines that:

- (1) waiver of the restriction with respect to a proposed issue is in the best interests of the citizens of the issuing jurisdiction and the state of Indiana; and
- (2) the proposed issue is not marketable without waiver of the restriction.

(g) An issue meets the requirements of this section only if a preliminary official statement of such issue has been submitted to the authority, and:

- (1) such authority has, within thirty (30) days after the date of such submission, issued an opinion that such issue meets the requirements of this section and section 4 of this chapter; or
- (2) thirty (30) days have elapsed since such submission and during this thirty (30) day period the authority has not issued an opinion that the issue does not meet the requirements of this section and section 4 of this chapter.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.4; P.L.1-2006, SEC.107; P.L.181-2006, SEC.22; P.L.1-2007, SEC.30.

IC 5-20-2-6

Administration

Sec. 6. Administration. In cities, the mayor shall designate a trustee institution to administer the proceeds of bond issues under this chapter; in counties and towns, the designation shall be made by the governing body. All lending institutions may participate under this chapter. The proceeds of each bond issue shall be apportioned as provided in this section by the trustee institution among all lending institutions that choose to participate. Those institutions that choose to participate shall furnish the trustee with copies of their submission under the Home Mortgage Disclosure Act during the preceding three (3) years.

(1) For the most recent calendar year for which this information is available, the trustee institution shall compute the percentage that each participating lending institution's total amount of mortgages for homes located in the county bears to that same total amount for all participating lending institutions; this percentage figure is the participating lending institution's percentage share of the proceeds of bonds to be apportioned to it by the trustee institution.

(2) The participating institutions must certify to the trustee that the proceeds will be used as required by the chapter, and that

the institution will attempt to maintain the same proportion of dollar volume of all mortgage loans within the county or municipality during the calendar year in which the proceeds are distributed as in the preceding year. The trustee institution may, in its discretion, reapportion any unused bond proceeds among the participating lending institutions either:

(A) six (6) months after funds are first apportioned to participating lending institutions for mortgage lending purposes; or

(B) after seventy-five percent (75%) of the bond proceeds designated for mortgage acquisition have been used.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.5.

IC 5-20-2-7

Powers

Sec. 7. Powers. A county or municipality to which this chapter applies has all powers necessary to accomplish the purposes of this chapter including, but not limited to, the power:

(1) to purchase, contract and enter into advance commitments to purchase, home mortgages owned by lending institutions at such prices and upon such other terms and conditions as shall be determined by the county or municipality, to make and execute contracts with one (1) or more lending institutions for the origination and servicing of home mortgages, and to pay the reasonable value of services rendered under those contracts;

(2) to make loans to lending institutions under terms and conditions which, in addition to other provisions as determined by the county or municipality, shall require the lending institutions to use substantially all of the net proceeds thereof, directly or indirectly, for the making of home mortgages in an aggregate principal amount substantially equal to the amount of such net proceeds;

(3) to establish, by rules or regulations, in any ordinance relating to the issuance of bonds or in any financing documents relating to such issuance, such standards and requirements applicable to the purchase of home mortgages from or the making of loans to lending institutions as the county or municipality deems necessary or desirable, including but not limited to:

(A) the time within which lending institutions must make commitments and disbursements for home mortgages;

(B) the location and other characteristics of homes to be financed by home mortgages;

(C) the terms and conditions of home mortgages to be acquired;

(D) the amounts and types of insurance coverage required on homes, home mortgages and bonds;

(E) the representations and warranties of lending institutions confirming compliance with such standards and requirements;

(F) restrictions as to interest rates and other terms of home

mortgages or the return realized therefrom by lending institutions;

(G) the type and amount of collateral security to be provided to assure repayment of any loans from the county or municipality and to assure repayment of bonds; and

(H) any other matters relating to the purchase of home mortgages or the making of loans to lending institutions as shall be deemed relevant by the county or municipality; however, no lending institution shall charge and retain an origination fee in excess of three percent (3%) of the principal amount of any such home mortgage;

(4) to require from each lending institution from which home mortgages are purchased or to which loans are made the submission, at the time of the purchase or loan, of evidence satisfactory to the county or municipality of the ability and intention of the lending institution to make home mortgages, and the submission, within the time specified by the county or municipality for making disbursements for home mortgages, of evidence satisfactory to the county or municipality of the making of home mortgages and of compliance with any standards and requirements established by the county or municipality;

(5) to issue bonds to defray, in whole or in part:

(A) the costs of purchasing, or funding the making of home mortgages;

(B) the costs of studies and surveys, insurance premiums, underwriting fees, legal, accounting, and marketing services incurred in connection with the issuance and sale of bonds, including bonds and interest reserve accounts and trustee, custodian and rating agency fees; and

(C) those other costs that are reasonably related to (A) and (B);

(6) to sell or otherwise dispose of any home mortgages, in whole or in part, or to loan sufficient funds to any person to defray, in whole or in part, the costs of purchasing home mortgages, so that the revenues and receipts to be derived with respect to the home mortgages, together with any insurance proceeds, reserve accounts and earnings thereon shall be designed to produce revenues and receipts at least sufficient to provide for the prompt payment at maturity of principal, interest and redemption premiums, if any, upon all bonds issued to finance these costs;

(7) to pledge any revenues and receipts to be received from any home mortgages or other sources provided in this chapter to the punctual payment of bonds authorized under this chapter, and the interest and redemption premiums, if any, thereon;

(8) to mortgage, pledge or grant security interests in any home mortgages, notes or other property in favor of the holder or holders of bonds issued therefor;

(9) to sell and convey any home mortgages for those prices and at those times that the governing body determines;

(10) to issue its bonds to refund in whole or in part at any time bonds previously issued under this chapter, including, without limitation, interest to maturity or earlier redemption date, redemption premiums and costs of the type enumerated in clause (5) of this section; and

(11) to make and execute contracts and other instruments necessary or convenient to the exercise of any of the powers granted in this chapter.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.6.

IC 5-20-2-8

Bonds

Sec. 8. (a) Bonds shall not be issued under this chapter unless these bonds are rated "A" or better by one (1) of the nationally recognized rating agencies or unless these bonds are sold in a transaction not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933, as amended, and rules and regulations thereunder.

(b) The exercise of any or all powers or the issue of bonds under this chapter shall be authorized by ordinance of the governing body. Notwithstanding any law to the contrary, this ordinance may be adopted at the same meeting at which it is introduced and it shall take effect immediately upon adoption. Any ordinance authorizing bonds shall be adopted only after the governing body has held a public hearing on the proposed financing after giving not less than five (5) days notice by publication in at least one (1) newspaper of general circulation in the county or municipality. This ordinance shall also set forth a legislative finding and declaration of the public purpose of the bond issue and that the ordinance is being enacted pursuant to the powers granted by this chapter. No action to contest the validity of any bonds may commence more than thirty (30) days following the adoption of the ordinance approving the bonds. However, if authorized by ordinance, any officer of the county or municipality may bring an action under IC 34-13-5 or file a petition under IC 36-4-4-5 within this thirty (30) day period to determine the validity of any bonds or any agreements in connection with them. In this proceeding, no bond need be filed by the petitioner or plaintiff unless requested by the county or municipality, and any judgment shall be final unless appealed within thirty (30) days after entry of the judgment.

(c) The bonds shall bear interest at the rate or rates, may be payable at the times, may be in one (1) or more series, may bear the date or dates, may mature at the time or times not exceeding forty (40) years from their respective dates, may be payable in the medium of payment at the place or places, may carry the registration privileges, may be subject to the terms of redemption at the premiums, may be executed in the manner, may contain the terms, covenants, and conditions, may be in the form either coupon or registered, and may bear the name that the ordinance or trust

indenture securing the bonds provides. The bonds may be sold at public or private sale in a manner and upon the terms provided in the ordinance. Pending the preparation of definitive bonds, interim receipts, or certificates in the form and with the provisions as provided in the ordinance may be issued to the purchaser of bonds sold pursuant to this chapter.

(d) The bonds and interim receipts or certificates are negotiable instruments under the laws of this state. Bonds and receipts and the authorization, issuance, sale, and delivery thereof are not subject to any general law concerning bonds of municipalities.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.7; P.L.3-1990, SEC.22; P.L.1-1998, SEC.76.

IC 5-20-2-9

Covenants in bonds

Sec. 9. Covenants in Bonds. (a) Any ordinance authorizing the issuance of bonds or related trust indenture may contain covenants as to:

- (1) the use and disposition of the revenues and receipts from any home mortgages for which the bonds are to be issued, including the creation and maintenance of reserves;
- (2) the insurance to be carried on any home, home mortgage, or bonds and the use and disposition of insurance moneys;
- (3) the appointment of one (1) or more banks or trust companies within or outside the state of Indiana, having the necessary trust powers, as trustee or custodian for the benefit of the bondholders, paying agent or bond registrar;
- (4) the investment of any funds held by this trustee or custodian;
- (5) the maximum interest rate payable on any home mortgage; and
- (6) the terms and conditions upon which the holders of the bonds or any portion thereof, or any trustees therefor, are entitled to the appointment of a receiver by a court of competent jurisdiction, and these terms and conditions may provide that the receiver may enter and take possession of the home mortgages, or any part thereof, and maintain, sell or otherwise dispose of such mortgages, prescribe other payments and collect, receive and apply all income and revenues thereafter arising therefrom.

(b) Any ordinance authorizing the issuance of bonds or related trust indenture may provide that the principal of, premium, if any, and interest on any such bonds shall be secured by a mortgage, pledge, security interest, insurance agreement or indenture of trust covering such home mortgages for which the bonds are issued. Such mortgage, pledge, security interest, insurance agreement or indenture of trust may contain such covenants and agreements to safeguard the bonds as is provided for in the ordinance authorizing the bonds and shall be executed in the manner as may be provided for in the ordinance.

(c) The provisions of this chapter and any ordinance and any mortgage, pledge, security interest or indenture of trust shall constitute a contract with the holder of the bonds and continues in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds so issued have been fully paid or provision made therefor. The duties of this county or municipality and its governing body and officers under this chapter, any ordinance, and any mortgage, pledge, security interest or indenture of trust shall be enforceable as provided in it by any bondholder by mandamus, foreclosure, or other appropriate suit, action or proceeding in any court of competent jurisdiction. However, the ordinance or any mortgage, pledge, security interest or indenture of trust under which the bonds are issued may provide that all remedies and rights to enforcement may be vested in a trustee (with full power of appointment) for the benefit of all the bondholders which trustee shall be subject to the control of a specified number of holders or owners of any outstanding bonds.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.8.

IC 5-20-2-10

Signatures of officers on bonds; validity of bonds

Sec. 10. Signatures of Officers on Bonds—Validity of Bonds. The bonds and any coupons shall bear the manual or facsimile signatures of the executive officer and the recording officer of the county or municipality and any coupons shall bear the facsimile signature of one (1) or more of these officers. These signatures shall be the valid and binding signatures of these officers, notwithstanding that before delivery and payment, any or all of the individuals whose signatures appear have ceased to be officers of the county or municipality issuing the bonds. The validity of the bonds is not dependent on nor affected by the validity or regularity of any proceedings relating to the home mortgages for which the bonds are issued. The ordinance authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.9.

IC 5-20-2-11

Lien of bonds

Sec. 11. Lien of Bonds. Bonds issued under this chapter and the interest on them may be secured by a pledge of or lien upon the revenues and receipts derived from or in connection with the home mortgages or from any notes or other obligations of lending institutions with respect to which the bonds have been issued. The governing body may provide in the ordinance authorizing the bonds for the issuance of additional bonds to be equally and ratably secured by a lien upon these revenues and receipts.

As added by Acts 1979, P.L.47, SEC.1.

IC 5-20-2-12

Liability for bonds

Sec. 12. Liability for Bonds. All bonds issued under this chapter and the interest on them are limited obligations of the county or municipality payable solely from the revenues and receipts derived from or in connection with the home mortgages, from any notes or other obligations of lending institutions with respect to which these bonds are issued, or from the proceeds of these bonds or refunding bonds and the investment income from them. No holder of any bonds issued under this chapter has the right to compel any exercise of the taxing power of the county or municipality to pay the bonds or the interest or redemption premium, if any, thereon. The bonds are not an indebtedness of the county or municipality or a loan of its credit within the meaning of any constitutional or statutory limitation. Nor shall the bonds be construed to create any moral obligation on the part of the county or municipality with respect to their payment. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the county or municipality or a loan of its credit within the meaning of any constitutional or statutory limitation.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.10.

IC 5-20-2-13

Exemption from contract and bidding requirements; real property bid submitted by trust

Sec. 13. (a) A requirement of competitive bidding or restriction imposed on the procedure for award of contracts for the sale or other disposition of property of the county or municipality is not applicable to any action taken under this chapter.

(b) This subsection applies if a county or municipality sells or disposes of real property under this chapter by acceptance of bids. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (1) beneficiary of the trust; and
- (2) settlor empowered to revoke or modify the trust.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.11; P.L.336-1989(ss), SEC.17.

IC 5-20-2-14

Tax exemption for bonds

Sec. 14. All bonds and interim receipts or certificates, proceeds received by a holder from the sale of them to the extent of the holder's cost of acquisition, proceeds received upon redemption prior to maturity, proceeds received at maturity, and interest thereon, are exempt from taxation in the state of Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

As added by Acts 1979, P.L.47, SEC.1. Amended by P.L.21-1990, SEC.8; P.L.254-1997(ss), SEC.7.

IC 5-20-2-15

Tax exemption

Sec. 15. Tax Exemption. All home mortgages and notes or other obligations of lending institutions executed pursuant to this chapter and the revenues and receipts derived by a county or municipality therefrom are exempt from all taxation in the state of Indiana.

As added by Acts 1979, P.L.47, SEC.1. Amended by Acts 1981, P.L.62, SEC.12.

IC 5-20-2-16

Securities exemption

Sec. 16. All bonds and interim receipts or certificates authorized pursuant to this chapter are exempt from the provisions of IC 23-19 or other securities registration laws.

As added by Acts 1979, P.L.47, SEC.1. Amended by P.L.27-2007, SEC.5.

IC 5-20-2-17

Antitrust exemption

Sec. 17. Antitrust Exemption. Transactions under this chapter are exempt from the provisions of IC 24-1 or any other antitrust law, present or future, of the state.

As added by Acts 1979, P.L.47, SEC.1.

IC 5-20-2-18

Powers conferred as additional and supplemental; limitations imposed; effect

Sec. 18. Powers Conferred as Additional and Supplemental; Limitations Imposed-Effect. The powers conferred by this chapter are in addition and supplemental to, and the limitations imposed by this chapter shall not affect, the powers conferred by any other law of this state. Mortgages may be acquired, purchased and financed, and bonds may be issued under this chapter, notwithstanding that any other law may provide for the acquisition, purchase and financing of like home mortgages, or the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

As added by Acts 1979, P.L.47, SEC.1.