

## **IC 8-1-11.1**

### Chapter 11.1. Department of Public Utilities of Consolidated City

#### **IC 8-1-11.1-1**

##### **Creation; board of trustees; directors; membership; appointment; qualifications; tenure; proceedings**

Sec. 1. (a) In addition to the other executive departments of a consolidated city, there is hereby created in any such city a department of public utilities, which shall have as its head and be under the general supervision and control of a board of seven (7) members, to be known as the "Board of Directors for Utilities," to be appointed annually by the board herein provided for and designated as the "Board of Trustees for Utilities."

(b) Said board of trustees for utilities shall consist of five (5) members.

(c) All such trustees and all successors thereof shall hold over after the expiration of their terms until their respective successors have been duly appointed and have qualified.

(d) At the expiration of the respective terms of each of the members of the board of trustees, the said board of trustees shall nominate the successors thereof to membership on such board, each of which nominees shall be appointed by the mayor of the consolidated city within ten (10) days after receiving such nominations, and such succeeding members shall serve for a term of four (4) years. In the event any person who has been appointed at any time as a member of such board of trustees shall fail to qualify within ten (10) days after the mailing to him of notice of his appointment; or if any member after qualifying shall die, resign, vacate such office by becoming a nonresident of such city, or be removed as hereinafter provided; new members of such board of trustees shall be chosen to fill such vacancy in the same manner as is provided for the member as to whom such vacancy occurs, and the member so chosen shall serve for the remainder of the term for which the member whose place is so filled was appointed.

(e) No person shall be appointed as trustee who is less than thirty-five (35) years of age, and who has not been a resident of such city for at least five (5) years immediately preceding his appointment. If any such trustee shall cease to be a legal resident of said city his membership on said board shall thereby terminate and become vacant.

(f) Each member of such board of trustees for utilities, before entering upon his duties, shall take and subscribe an oath of office in the usual form, to be indorsed upon the certificate of his appointment, which shall be promptly filed with the clerk of the city-county council.

(g) A majority of all the members of said board of trustees for utilities shall be necessary to constitute a quorum.

(h) Said board of trustees shall elect one (1) member thereof as president, one (1) as vice-president, and one (1) as secretary, who shall serve from the date of their election until one (1) year from the

first day of January next following their election and until their successors are elected and have qualified.

(i) Said board of trustees shall keep a record of their proceedings. The expense of the meetings and proceedings of said board and of keeping a record thereof and the salary of the members thereof shall be paid upon a written request of the presiding officer and secretary thereof by the board of directors for utilities out of the funds belonging to said utility district. Each member of said board of trustees for utilities shall receive as compensation for his services as such a salary in the sum of fifty dollars (\$50) per year.

(j) The board of trustees for utilities shall meet annually on the first Monday of December of each year, at the principal office of said department of public utilities, for the purpose of transacting any business pertaining to their duties, and for the purposes of electing officers of such board of trustees and of selecting and appointing members of the board of directors for utilities, who shall serve for one (1) year from the first day of January following and until their successors are appointed and qualified.

(k) All persons so selected and appointed as such directors and all the successors thereof appointed at any time shall be chosen by a majority vote of all the members of said board of trustees. Said board of trustees shall have power to remove summarily and at any time any director and in such event, or if a vacancy occurs in said board of directors from any cause, said board of trustees shall appoint a successor in like manner who shall serve for the balance of the term for which the member whose place is so filled was appointed.

(l) No person shall be appointed a member of said board of directors for utilities unless he is a bona fide resident of said city and has been such for five (5) years immediately preceding such appointment, and is at least thirty-five (35) years of age. If any such director shall cease to be a legal resident of said city during the term for which he was appointed, his membership on such board shall thereby terminate and become vacant.

(m) Each member of said board of directors for utilities before entering upon his duties shall take and subscribe an oath, to be indorsed upon the certificate of his appointment, which shall be promptly filed with the clerk of the city-county council.

(n) Each of said members of said board of directors, before entering upon his duties, shall execute a bond payable to the state of Indiana, with surety to be approved by the mayor of said city, in the penal sum of fifteen thousand dollars (\$15,000), conditioned upon the faithful performance of the duties of his office and the accounting for all moneys and property that may come into his hands or under his control. The cost of all such bonds shall be paid by the department of public utilities of said city.

(o) Any trustee may be removed from office for neglect of duty, incompetency, disability to perform his duties, or other good cause, by an order and judgment of the circuit or superior court of the county in which such city is located, in the following manner, to wit: An original complaint may be filed by either the mayor, or by a

majority of the city-county council against any such trustee setting forth the charges preferred, and the cause shall be placed on the advanced calendar and be tried as other civil causes are tried, by the court, without the intervention of a jury. If such charges be sustained, the court shall declare such office vacant. The judgment of said court shall be final and no appeal shall lie therefrom by any party.

(p) Said board of trustees shall have power to adopt rules, regulations and by-laws for their own governance, and may meet regularly or specially as often as necessary to transact any business or duties imposed upon them under this chapter or any other statute.

(q) In the event such city shall acquire in any manner herein provided more than one (1) such public utility and the property thereof, said board of trustees may add to such board of directors from time to time one (1) or more additional members, increasing such board to not exceed a total of eleven (11) members; which members shall be appointed and shall serve under all the provisions herein governing the appointment, terms and duties of such board of directors for utilities.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-2**

##### **Board of directors; appointment of officers; compensation; meetings; employee bonds**

Sec. 2. (a) The members of such board of directors for utilities shall hold a meeting on the second Monday of January of each year for the purpose of organization and to elect officers for the ensuing year. They shall choose one (1) of their members president, another vice-president, another secretary, and another treasurer, who shall perform the duties usually pertaining to those offices. Such officers so chosen shall serve from the date of their election until their successors are duly elected and qualified.

(b) The members of such board of directors for utilities shall each be paid a salary for their services as such directors at the rate of six hundred dollars (\$600) per annum during the period of service. A majority of the members of said board of directors shall constitute a quorum, and the concurrence of a majority of such membership shall be necessary to any action of such board. Such board of directors shall hold an annual meeting on the second Monday of January of each year, at the general offices of such board, and such other regular meetings at such times as it may determine, and upon such notice as it may fix, by rule or regulation. It shall be authorized to make such by-laws and regulations as it may deem necessary for the safe, economical and efficient management and protection of the properties entrusted to its care. Such board of directors shall require any officer or employee having custody of funds to give bond in such reasonable amount as the board may prescribe, the expense of which bonds shall be paid by the department of public utilities of such city.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-3**

**Board of directors; powers and duties**

Sec. 3. (a) The board of directors for utilities shall have, within and outside such city as provided in this chapter, the exclusive government, management, regulation, and control of all public utilities consisting of any waterworks, gasworks, electric light works, heating and power plants of any kind or character, telephone and other systems of communication, and local transportation systems of any kind operated upon, above, or below any street or territory within the city, or outside the city within the limits authorized by law, and all property held by and relating or belonging thereto. Any of which public utilities any such city may acquire or construct for the service of the public as consumers, users, or patrons, and including any public utility and all property which such city may hold as trustee for the benefit of the inhabitants of such city. Such board of directors may furnish and sell service and products of and make all necessary construction, reconstruction, repairs, renewals, enlargements, extensions, or additions to any such plant or property of any such public utility so owned or at any time so held in trust, which in the judgment of the board of directors is desirable or necessary for the proper conduct of such business and the proper serving of the inhabitants of the city and adjacent, contiguous, or suburban communities or territory within the county wherein such city is situated and served, or reasonably capable of being served, in any manner by or with respect to any such utility.

(b) The board of directors may lease any such utility property for a term not exceeding thirty-five (35) years to any person, partnership, limited liability company, or corporation, and without the approval of the commission, such lease to be upon such terms and conditions as the board may deem to be to the best interest of such city and the city's inhabitants. No such lease shall be valid or effective until it has been approved by the board of trustees and duly ratified and approved by an ordinance of the city. The board and the city-county legislative body must each vote such approval by a two-thirds (2/3) vote of their total membership. In any such lease an option may be given to such lessee to extend the same for a period not to exceed ten (10) additional years.

(c) In connection with the duties devolving upon such board of directors in the government, management, regulation, control, and operation of all such utilities, it may act as follows:

(1) To condemn, appropriate, lease, rent, purchase, and hold any real estate, rights-of-way, materials, or personal property within such city or within five (5) miles of the corporate limits of the city needed for the proper giving of service by any such utility to the inhabitants of the city and the community contiguous thereto and served from any such utility plant.

(2) To design, order, contract for, and construct any and all necessary or desirable extensions of or additions to any utility plant and property owned or so held in trust by the city, and to enter into all necessary contracts with reference thereto, and with reference to the purchase of materials and supplies needed

for the operation of any such plant or plants, in accordance with such rules as may be adopted by such board of directors, and without the necessity of advertising for bids, or without such other restrictions as are imposed by any law of Indiana with reference to the letting of contracts for work, material, or supplies by municipal bodies or other governmental agencies.

(3) To sell any products or byproducts, and enter into executory contracts for the sale, to anyone whatsoever and without any restriction concerning the taking of bids therefor or otherwise.

(4) To operate any such plant or plants, to receive and collect all money due on account of such operation or otherwise relating to such plant or plants or business and in connection therewith to employ such managers, superintendents, assistant managers, assistant superintendents, engineers, attorneys, auditors, clerks, foremen, and other employees necessary for the proper carrying on and operation of any such utility plant or plants and the business and to fix the compensation of all such employees. No contract of employment shall be made for a longer fixed period than four (4) years. However, a contract of employment may be extended or renewed from time to time thereafter. The directors may elect from their membership an executive committee consisting of not more than three (3), who may be assigned to the supervision of any one (1) or more of such utilities and who shall, in the intervals between the meetings of the directors, exercise all the powers and duties of the directors, all of their acts to be subject, however, to the approval of the directors, and to fix any such additional compensation to the members of the executive committee, in addition to their salaries as directors, as shall be reasonable. The additional compensation shall be fixed by a resolution of the directors entered of record at the time of the appointment of the executive committee. Whenever any such city shall acquire, hold, own, or so hold in trust for the city's inhabitants more than one (1) such public utility and the property of the city, such board of directors shall have power to select additional executive committees from their membership in the same manner and with the same power as the executive committee first selected, which committee may be assigned by such board to any such utilities deemed necessary. In the selection of employees, other than managers, superintendents, assistant managers, assistant superintendents, engineers, attorneys, and auditors, the board of directors shall provide for a merit system of employment to be determined by competitive examination, except as to unskilled and common laborers, in which political, religious, or other personal affiliations may not be considered. In selecting managers the directors shall consider character, training, and general expert and executive fitness and experience for the position in the particular utility to which such manager is to be assigned, as the necessary requirements for appointment.

(5) To rent such offices and other real estate and property for the conduct of the business of such utility or utilities as may be deemed needful and enter into contracts with reference to the rental and use of the offices, real estate, and property. No such contract shall be made for a longer period than ten (10) years.

(6) In the event there be an open mortgage upon any utility property acquired by any such city, either in absolute ownership or in trust, by the terms of which mortgage additional bonds may be taken down from the trustee under such mortgage to meet in whole or in part the cost of extensions and improvements to the mortgaged property, the board of directors may perform all things necessary in order to secure the benefit of such mortgage provisions and to enable the escrow bonds held by the trustee under any such mortgage to be taken down and sold in order to defray the cost of any extensions and betterments to such property and to sell any such bonds so taken down for the purpose of assisting in defraying the costs of any such extensions or betterments to such property.

(7) To take over, adopt, and assume the performance of the provisions of any lease under which any utility property may be held at the time of the acquisition of any utility by any such city, either in absolute ownership or in trust and to take any and all steps necessary to perform and fulfill the terms of any such lease, and to obtain and preserve the benefits from the lease. In the event there be any outstanding open mortgage upon the property covered by such lease so taken over under the provisions of which bonds may be withdrawn from the trustee under such mortgage for the purpose of paying all or part of the cost of additions to the property covered by such mortgage, to do all things necessary in order to secure the benefit of such mortgage provisions and to enable the escrow bonds held by the trustee under any such mortgage to be taken down and sold in order to defray the cost of any extensions and betterments to such leased property and to sell any such bonds so taken down for the purpose of assisting in defraying the costs of any such extensions or betterments to such leased property.

(8) To preserve the corporate organization of any company engaged in the mining of coal, or any other commercial or manufacturing business, the stock of which may be owned by any utility whose property and assets may be taken over by any such city, either in absolute ownership or in trust and in connection with the taking of the property by the city to cause the stock of any such company to be issued in the name of the board of directors for utilities except as to qualifying shares for directors and to cause such qualifying shares to be issued in the names of such individuals as the board of directors may name and to vote any such stock for the election of directors, who may be members of such board of trustees for utilities. However, no member of such board of directors shall receive any compensation, directly or indirectly, as a director, officer,

or employee of any such company, other than the compensation provided in this chapter as a member of the board of directors for utilities. Through the control thus given of any company, the board of directors for utilities shall be authorized to do all things necessary to cause any such coal mining company or other company efficiently to carry on its operations and to conduct its business in the same manner as if its stocks were owned by private individuals.

(9) To adopt rules for service and rates for service in connection with the furnishing of any public utility service by the city to consumers, users, or patrons. However, any such rules and rates for service shall be in effect only after the rules and rates have been filed with and approved by the commission and such approval shall be granted by the commission only after notice of hearing and hearing as provided by IC 8-1-1 and IC 8-1-2, and only after determining compliance of the rates of service with IC 8-1.5-3-8 and IC 8-1.5-3-10 and only after determining compliance of the rules of service with IC 8-1-1 and IC 8-1-2, along with the rules and standards of service for municipal utilities of Indiana approved by the commission.

(10) To take over all contracts and rights of any kind or character, and to fulfill and perform all obligations relating to the property and business of any utility company whose property may be taken over by any such city, either in absolute ownership or in trust.

(11) To make all rules and bylaws customary in private corporations for their own conduct of business and necessary for the proper government and supervision of the utilities under their control. Any such rules and bylaws shall be subject to the approval of the board of trustees.

*As added by Acts 1981, P.L.11, SEC.43. Amended by P.L.23-1988, SEC.42; P.L.3-1989, SEC.57; P.L.8-1993, SEC.122.*

#### **IC 8-1-11.1-3.1**

##### **Board of directors; certain powers and duties pertaining to municipally owned utilities**

Sec. 3.1. In addition to the other powers specified by this chapter and notwithstanding IC 8-1.5-3-1, the board of directors for utilities has all rights and powers conferred on a municipally owned utility by IC 8-1.5-3-4(b), IC 8-1.5-3-6, and IC 8-1.5-3-7. Furthermore, the board of directors for utilities shall operate as both the board and the municipal legislative body for the purposes of IC 8-1.5-3-8.

*As added by Acts 1982, P.L.74, SEC.4.*

#### **IC 8-1-11.1-3.5**

##### **Retirement, survivor, or other benefits; increase**

Sec. 3.5. (a) Every person who is receiving retirement benefits, survivor benefits or other benefits from any fund or funds established by, or under the authority of, the board of directors for utilities of the department of public utilities may have such retirement benefits,

survivor benefits or any other benefits increased by an amount not to exceed two dollars (\$2) per month for each year of active service prior to retirement. Such increase may be made if the board of directors for utilities of the department of public utilities shall by resolution so provide which said board of directors is hereby given power to do.

(b) Any person who is receiving a retirement, survivor or other benefit which commenced prior to January 1, 1976, shall receive such increased retirement benefits, survivor benefits or other benefits as long as he or she shall live.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-4**

##### **Directors or trustees; adverse interest in contracts**

Sec. 4. No contract shall be made for the purchase or sale of any materials or supplies on behalf of said board of directors for utilities with any trustee or director, and no trustee nor director shall have any pecuniary interest in any such contract.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-5**

##### **Actions to protect rights of cities**

Sec. 5. The board of directors for utilities in every such city may, in the name of the city, bring any such action which it deems proper in order to protect the property rights of said city with reference to any such utility property so under the control of such board, or to secure the more effective carrying out of the purposes of this chapter with reference to the erection, maintenance and operation of any such utility property or properties.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-6**

##### **Utility districts; creation**

Sec. 6. All of the territory included within the corporate limits of any said city shall become and constitute a utility district for the purpose of providing for the furnishing of utility service in such lines of utility operation as may be taken over or owned by said city, and thereafter said utility district shall be deemed duly created and established under and pursuant to the provisions of this chapter.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-7**

##### **Expenses; procedure for payment**

Sec. 7. All preliminary expenses actually incurred by such board of directors in providing necessary records, the employment of clerks, engineers, attorneys and other employees, the making of surveys, and all other expenses of whatsoever nature necessary to be paid prior to the actual taking over and operation of any utility plant and the collection of revenues therefrom, shall be met and paid in the following manner: Said board of directors for utilities shall from time

to time certify such items of expense to the controller of such city, directing him to pay the several amounts thereof, and thereupon said controller shall at once draw his warrant or warrants upon the county treasurer, which warrant or warrants shall be paid out of the general funds of such city not theretofore appropriated, without a special appropriation being made therefor by the city-county council; or in case there are no such general funds of said city not otherwise appropriated, the city controller shall recommend to the city-county council the temporary transfer of other funds of such city as is necessary to meet such items of expense, or the making of a temporary loan for such purpose, and such council shall thereupon at once make such transfer of funds or authorize such temporary loan in the same manner that other temporary loans are made by such city: Provided, however, That the fund or funds of such city from which such payments are made shall be fully reimbursed and repaid with six percent (6%) interest by such board of directors for utilities out of the first receipts from the operation of any such utility by said board which are not needed to defray current operating expenses and the expenses of imperative betterments.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-8**

##### **Bonds authorized; purposes; terms; sale procedures; disposition of proceeds; mortgage bonds; temporary loans; execution**

Sec. 8. (a) For the purpose of raising money to pay for the acquisition of any utility property which said city shall have the right to and shall determine to acquire, or which any such city may take over as trustee for the inhabitants thereof, including any money required to be paid for the purpose of redeeming or extinguishing the capital stock of any utility whose property may be so taken over and for the purpose of paying any outstanding obligations of any utility company subject to which the property of any such utility may be taken over by any such city, or held by it in trust for the inhabitants thereof; or for the purpose of making necessary betterments, improvements, extensions or additions to any utility property owned, or so held in trust, by said city, the board of directors for utilities shall cause to be issued in the name of the said city the bonds of said utility district not to exceed in amount the total cost of any such utility so purchased, or so held in trust, and for the outstanding obligations of any utility subject to which the property is to be taken over and which it is desired to pay off and discharge and/or of any such additions, betterments, improvements, extensions or additions to any utility owned, or so held in trust, and including all expenses necessarily incurred in connection with the acquisition of any such property, the paying off of any such indebtedness or the making of any such improvements, extensions or additions thereto. Such bonds shall be issued in any denominations not more than one thousand dollars (\$1,000) each, and shall be payable at such period not longer than thirty (30) years after date, and in such series or series as such board of directors may by resolution determine. Said bonds shall be

negotiable as inland bills of exchange, and shall bear interest at any rate, payable semiannually. On adopting a resolution ordering said bonds, said board of directors shall certify a copy of the same to the city controller of said city, who shall thereupon prepare said bonds and the same shall be executed by the mayor of said city and attested by the city controller. Such bonds shall be exempt from taxation for any and all purposes. All of said bonds so issued by the board of directors shall be sold by the city controller to the highest bidder therefor, but in no event for less than par, after giving notice of sale of such bonds by publication in accordance with IC 5-3-1. Any bonds issued pursuant to the provisions of this chapter, whether bonds of said utility district, or mortgage bonds, certificates of indebtedness, or other obligations, as hereinafter provided for in this chapter, shall be valid and binding without obtaining the approval of the commission or the department of local government finance of the state of Indiana. It shall be unlawful for said board of directors for utilities to cause to be issued under this chapter any bonds of said utility district payable by special taxation when the total issue for that purpose, including the bonds already issued and outstanding and those proposed to be issued, is in excess of two percent (2%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15, and all bonds or obligations issued in violation of this provision shall be void. Said bonds shall not in any respect be a corporate obligation or indebtedness of said city, but shall be and constitute an indebtedness of said utility district as a special taxing district, and said bonds and interest thereon shall be payable out of a special tax levy upon all of the property of said utility district, or from surplus earnings as in this chapter provided; and said bonds shall recite such terms upon their face, together with the purpose for which they are issued. No suit to question the validity of said bonds so issued for said utility district or to prevent their issue and sale shall be instituted after the date set for the sale of said bonds, and all said bonds from and after said date shall be incontestable for any cause whatsoever.

(b) In event any such city shall, pursuant to any contract right so to do, determine to take over the property and business of any utility company by the payment to it of the amount necessary to pay off the stock of such company, the proceeds of any such utility district bonds issued and sold as herein provided may, so far as is necessary, be paid over to any such utility company at the time of the conveyance, transfer, or taking over of its property, for the purpose of enabling such company to discharge its obligations to its stockholders in accordance with the provisions of any such contract.

(c) In addition to the authority granted to issue utility district bonds the board of directors of any such utility district for the purpose of providing necessary funds with which to pay the cost of acquiring any utility property, or paying off any existing indebtedness of or upon any utility property, so acquired, or to pay the expenses of operation of any such utility property, including the cost of any betterments or extensions, may make temporary loans in

the form of certificates of indebtedness, which shall be a charge solely against either the particular utility property or against the earnings thereof, or both, on behalf of which the same is borrowed; or said board of directors may authorize the issuance of mortgage bonds secured by a mortgage upon the property or upon the earnings, or both, of the particular utility for whose benefit such moneys are borrowed; and any such certificates of indebtedness and mortgages shall constitute charges as may be indicated aforesaid by the directors when authorizing the same and shall contain such terms and provisions and shall be sold at such price and shall bear such rate of interest as such board of directors may approve.

(d) Such mortgage indebtedness shall not constitute a general obligation of such city, or of such utility district, but the holders thereof shall be entitled to look solely to the mortgaged property and the revenues derived from the operation thereof for the repayment of such indebtedness.

(e) All such certificates of indebtedness and mortgage bonds shall be signed by the mayor of such city and attested by the city controller, and shall on their face show the purpose for which they are issued and the character of the obligation created thereby. All such certificates of indebtedness and mortgage bonds, or either thereof, shall be exempt from all taxation.

*As added by Acts 1981, P.L.11, SEC.43. Amended by Acts 1981, P.L.45, SEC.6; P.L.23-1988, SEC.43; P.L.6-1997, SEC.130; P.L.90-2002, SEC.310.*

#### **IC 8-1-11.1-9**

##### **Disposition of bond revenues**

Sec. 9. All proceeds from the sale of said bonds under and pursuant to section 8 of this chapter shall be kept as a separate and specific fund to pay the cost of the acquisition of any utility property which said city shall have the right to and shall determine to acquire or the payment of obligations of any such utility subject to which its property is purchased, or the cost of making necessary betterments, improvements, extensions or additions to any utility property owned by said city, as hereinabove provided, and no part of the same shall be used for any other purpose whatsoever. Such funds shall be deposited at interest with the depository or depositories of other public funds of such city, and all interest collected therefrom shall belong to such fund. Any surplus of funds remaining out of the proceeds of said bonds after all of said costs and expenses are fully paid shall be paid into and become a part of the utility district bond fund as hereinbefore referred to.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-10**

##### **Tax levy to pay for bonds; utility district bond fund**

Sec. 10. For the purpose of raising money to pay all bonds issued as provided in section 8 of this chapter, and the interest thereon, to the extent that moneys are not available therefor in the judgment of

the board of directors for utilities from the operations of said utility plant or plants so owned by said city, the board of directors for utilities, as an official board of said utility district, is hereby empowered to levy, and shall levy each year, a special tax upon all the property of said utility district in such manner as to meet and pay the principal of said bonds as they severally mature, together with all accruing interest thereon. Said board of directors shall cause said tax so levied each year to be certified to the city controller of said city and the auditor of the county in which said utility district is located, on or before the first day of October of each year. Such tax so levied and certified shall be estimated and entered upon the tax duplicate by the auditor, and shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected and enforced; and as such tax is so collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the "Utility District Bond Fund," and shall be applied to the payment of the aforesaid utility district bonds and interest as they severally mature, and for no other purpose whatsoever: Provided, That all accumulations of said fund prior to their use for the payment of such bonds and interest shall be deposited, at interest, with the depository or depositories of other public funds in such city, and all interest collected thereon shall belong to such fund.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-11**

##### **Surplus earnings; disposition**

Sec. 11. Within sixty (60) days after the end of each calendar year, if there be at any time any bonds outstanding issued on account of said utility district, payable in whole or in part through a tax levy against the property in said utility district, said board of directors for utilities shall cause any surplus earnings arising from the operation of any such utility property, which are not pledged to secure the payment of any obligation of, or on account of said utility district, and which are not, in the opinion of such board of directors, necessary to provide against possible unfavorable results from operation, or to provide for contemplated betterments, extensions, improvements, or additions, to be paid over to the county treasurer and to be added to and become a part of said utility district bond fund, and to be used for the same purposes and in the same manner as funds derived from levy of taxes, as in this chapter hereinbefore provided. In event there are no such utility district bonds at the time outstanding, any such surplus operating revenues not needed for the purposes aforesaid shall be paid over to and become a part of the general funds of such city.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-12**

##### **Expenditures of current income; vouchers**

Sec. 12. The current receipts and all other moneys derived from the operation of any such utility property shall be expended by said

board of directors upon vouchers in a form to be determined by them, and any such funds shall be deposited in such bank or banks as may be determined by said board to the credit of said board of directors for utilities, and any interest earned on any such deposits shall be added to the principal thereof. No appropriation in any form shall be necessary for the expenditure of any of such current income or for the expenditure of the proceeds of any sale of bonds, or of any other obligations, as hereinbefore authorized, but all funds arising under the provisions hereof shall be deemed appropriated for the respective purposes herein named and shall be under the control of the board of directors for utilities as herein provided, and said board of directors shall have full, complete and exclusive authority to expend such funds for the purposes herein provided.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-13**

##### **Separate books of account for separate utilities**

Sec. 13. In event more than one (1) utility property is operated by said board of directors, separate books of account and records shall be kept for each utility, and the funds of each shall be kept segregated.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-14**

##### **Quarterly accounting and report to city controller**

Sec. 14. The board of directors for utilities shall make quarterly accounting and reports to the city controller of such city, of all funds received and expended by it, and not less than sixty (60) days after the end of each calendar year the city controller shall make publication in not less than two (2) newspapers of general circulation printed and published within said city of the material facts as set forth in the report of said board of directors for the preceding calendar year.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-15**

##### **Board of directors free from control of department of local government finance**

Sec. 15. This chapter being necessary for and intended to secure efficient and economical management and operation of utility properties in any consolidated city taking advantage of the provisions hereof, the said board of directors shall have full power to transact all the business pertaining to said management and operation of each and all such utilities, including the issuance of bonds, mortgages, and other forms of indebtedness, free from all control and supervision of the department of local government finance of Indiana. This chapter shall be liberally construed to effectuate the purpose hereof, and if any one (1) or more sections, clauses, phrases, or parts thereof, of this chapter shall be held invalid, the remaining sections, clauses, phrases, or parts thereof, shall not be affected thereby, and the

legislature declares that it would have enacted all other parts of said chapter even if any or all of the aforesaid portions thereof had not been included therein.

*As added by Acts 1981, P.L.11, SEC.43. Amended by P.L.90-2002, SEC.311.*

#### **IC 8-1-11.1-16**

##### **Budgets; nonapplication of chapters; fixing and review of budgets, tax rates, and levies; limitations on property tax rates or appropriations**

Sec. 16. The provisions of IC 6-1.1-17 and IC 6-1.1-18 shall not apply to the board of directors created by this chapter, but such board of directors shall annually, on or before the thirty-first day of December, furnish to the city controller an estimate of the moneys to be expended by them for the succeeding calendar year.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-17**

##### **Examination and audit of books and accounts**

Sec. 17. The books, accounts, records and transactions of said utility district and of the board of directors thereof shall be subject to examination, audit and supervision by the state board of accounts to the same extent as the books, accounts, records and transactions of other municipal governments or officers or departments of municipal governments are subject thereto.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-18**

##### **Application of chapter to currently held or acquired utilities**

Sec. 18. Whenever in any sections of this chapter any provisions are made applying or relating to any public utility or utility property owned, held, or acquired by said city, all such provisions shall apply and relate also to any public utility and utility property which said city may hold, possess, be entitled to, or in any manner acquire in trust for the use and benefit of the inhabitants thereof.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-19**

##### **"Revenue obligations" defined**

Sec. 19. As used in this chapter, "revenue obligations" shall mean any obligations, including bonds, notes, temporary, interim or permanent certificates of indebtedness, debentures or other obligations payable out of the income and revenues derived from utility property.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-20**

##### **Revenue obligations; issuance; authorized purposes**

Sec. 20. The board of directors for utilities may issue revenue obligations for any one or more of the following purposes:

(1) For the purpose of obtaining funds with which to pay for the acquisition of any utility property which any such city shall have acquired or shall have the right to and shall determine to acquire, or which any such city may have taken over as trustee for the inhabitants thereof, including any money required to be paid for the purpose of redeeming or extinguishing the capital stock of any utility whose property has been or may be so taken over and for the purpose of paying any outstanding obligations of any utility subject to which the property is or may be held in trust for the inhabitants thereof, or for the purpose of making necessary betterments, improvements, extensions or additions to any utility property owned or held in trust by any such city, including all costs necessarily incurred in connection with the acquisition of any such property or taking it over in trust or the paying off of any such indebtedness or the making of any such betterments, improvements, extensions, or additions thereto.

(2) For the purpose of reimbursing the department of public utilities, or its board of directors for utilities for funds borrowed, expended or advanced for interim financing of the cost of any utility property, or any betterments, improvements, extensions or additions thereto.

(3) Subject to covenants and agreements with the holders of outstanding obligations, for the purpose of funding or refunding revenue obligations. If the board of directors for utilities determines that it would be advantageous to the department of public utilities to exchange funding or refunding obligations for the revenue obligations being funded or refunded, such exchange may be made, provided the actual interest cost is not increased.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-21**

##### **Security for revenue obligations; issuance of additional obligations authorized**

Sec. 21. Such revenue obligations shall be secured by a pledge of the unobligated income and revenues of any one (1) or more of the utility properties of the department of public utilities. In addition, the board of directors for utilities may in its discretion secure the payment of such revenue obligations by a mortgage upon the property of the particular utility for whose benefit the proceeds of the revenue obligations are to be used. In authorizing the issuance of such obligations for any particular property or properties, the board of directors for utilities of the department of public utilities may limit the amount of such obligations that may be issued as a first lien and charge against such property or properties and the income and revenues therefrom, or such board of directors for utilities may authorize the issuance from time to time thereafter of additional obligations secured by the same pledge or lien to provide funds for the completion of the property, properties, betterments, improvements, extensions or additions thereto, on account of which

the original obligations were issued, or to provide funds to pay the cost of additional utility properties, betterments, improvements, extensions or additions thereto, or for both such purposes. Such additional obligations shall be issued on such terms and conditions as such board may determine, and may be secured equally and ratably, without preference, priority or distinction, with the original issue of obligations or may be made junior thereto.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-22**

##### **Resolution authorizing revenue obligations; trust indenture; terms of obligations**

Sec. 22. (a) Such revenue obligations shall be authorized by resolution adopted by the board of directors for utilities and the terms, conditions and form thereof shall be set out in such resolution or in a form of trust indenture between the corporation and a designated corporate trustee, or both.

(b) Such revenue obligations shall bear interest, not to exceed a maximum rate to be determined by the board of directors for utilities, payable annually or at shorter intervals and shall mature at such time or times as may be determined in such resolution or indenture. The obligations may be made redeemable before maturity at the option of the board of directors for utilities under such terms and conditions as may be fixed by the resolution or indenture.

(c) The principal and interest of the revenue obligations may be made payable in any lawful medium. The resolution or indenture shall determine the form of obligations, including the interest coupons if any to be attached thereto, and shall fix the denomination or denominations of the obligations 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) Provision may be made for the registration of any of the obligations in the name of the owner as to principal alone, or as to both principal and interest, but fully registered obligations shall be made convertible to coupon obligations at the option of the registered owner. The obligations including interest shall be exempt from all taxation: state, county and municipal.

(e) Such resolution or the indenture may also include provisions for protecting and enforcing the rights and remedies of the holders of the obligations being issued and covenants setting forth the duties of the department of public utilities and its officers in relation to the acquisition, construction, operation and maintenance of and insurance to be carried on the property or properties on account of which the obligations are being issued, and, to the fullest extent permitted by law, the maintenance of rates and charges to be collected on account hereof; also, provisions for the custody, safeguarding and application of all moneys and the rights and remedies of the trustee and the holders of the obligations being issued, and for the issuance of additional parity obligations or junior lien obligations secured by a pledge of the revenues or by a pledge

or mortgage of the revenues and property described in said resolution or indenture; also, such other terms, conditions, limitations and covenants as the board of directors for utilities shall deem proper. Such obligations and any interest coupons appertaining thereto shall be negotiable instruments within the meaning and for all purposes under the laws of this state, subject only to the provisions for registration of the obligations.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-23**

##### **Temporary loans authorized**

Sec. 23. For the purpose of providing necessary funds with which to pay the cost of acquiring any utility property, or paying off any indebtedness of or upon any utility property, so acquired, or to pay for interim costs of construction prior to long term financing, including the costs of any betterments, improvements, additions or extensions, or to pay the expenses of operation of any such utility property the board of directors for utilities may also make temporary loans, which shall mature within one (1) year from date of issuance, in the form of certificates of indebtedness, which shall be a charge solely against the income and revenue of the utility, or upon the proceeds of revenue obligations to be issued, or any combination thereof.

*As added by Acts 1981, P.L.11, SEC.43.*

#### **IC 8-1-11.1-24**

##### **Revenue obligations; approval or validation; facsimile signatures; sale; actions to contest validity; certificates of indebtedness; execution**

Sec. 24. (a) All such revenue obligations shall be valid without the necessity of any approval of or ratification by either the commission or the department of local government finance. The board of directors for utilities, upon adopting a resolution authorizing such revenue obligations, shall certify a copy thereof to the city controller of such city who shall thereupon prepare said revenue obligations, and the same shall be issued in the name of the city and shall be executed by the mayor of said city and attested by the city controller and the clerk of the city-county council. Facsimile signatures may be used in executing such revenue obligations, provided that one or more of the signatures on the revenue obligations shall be manually signed, except that all signatures on interest coupons may be facsimile signatures.

(b) Certificates of indebtedness issued under section 23 of this chapter shall be executed solely by the president of the board of directors without the execution of the mayor. The signature of the president must be attested by the secretary of the board.

(c) Such revenue obligations shall be sold by the city controller of said city subject to the requirements of IC 5-1-11; provided, that any revenue obligations maturing within one (1) year of date of issuance need not be sold at public sale but may be sold in such manner as the

board of directors for utilities may determine; and, provided further, that any revenue obligations may be offered for sale and sold to the United States or to any corporation owned or controlled by the United States without notice by publication. No suit to question the validity of any revenue obligations so issued or to prevent their issuance or sale shall be instituted after the date fixed for the sale of such revenue obligations and all such revenue obligations from and after such date shall be incontestable, except for fraud, forgery, or violation of constitutional provisions.

*As added by Acts 1981, P.L.11, SEC.43. Amended by P.L.23-1988, SEC.44; P.L.90-2002, SEC.312.*

#### **IC 8-1-11.1-25**

##### **Revenue obligations; eligible investments; deposit of securities**

Sec. 25. Any revenue obligations issued pursuant to the provisions of this chapter shall be eligible investments for the funds of any kind or character of every financial institution, insurance company or private trust, and such obligations shall be eligible for deposit by any financial institution, insurance company or trustee under any law of this state providing for the deposit of securities or funds.

*As added by Acts 1981, P.L.11, SEC.43.*