

IC 8-6-2.1

Chapter 2.1. Railroad Grade Crossing Separations

IC 8-6-2.1-1

Separation or alteration of grade levels of public highway

Sec. 1. The board of public works or board of public works and safety, referred to in this chapter as the board, of a city may, by resolution, require the separation or alteration of the grade levels of any public highway in the city and of any railroad crossing the public highway, either by carrying the public highway under or over the railroad, or by carrying the railroad under or over the public highway, or by any combination of these means.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-2

Agreements for removal of railroad facilities; relocation and reconstruction of facilities

Sec. 2. The board may enter into an agreement or agreements with any railroad company for the removal of any track, roadbed, yard, station or other railroad facilities, and provide for the relocation and reconstruction of those facilities or any part of them if the board determines it necessary in connection with an improvement to provide for the abandonment for railroad purposes of any right-of-way, land or other property owned and used or occupied for railroad purposes by any railroad company.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-3

State highway commission powers

Sec. 3. (a) The Indiana state highway commission shall participate in the proceedings and in the cost of any improvements made pursuant to the proceedings provided for by this chapter if any improvements involve a highway which is part of the state highway system or a street or highway selected by the Indiana state highway commission as a route of a highway in the state highway system.

(b) If the Indiana state highway commission participates in any proceedings as set out in this chapter and in the cost of improvements made pursuant to the proceedings, the county in which the city is located shall also participate in the proceedings and in the cost of any improvements that are made pursuant to the proceedings.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-4

Preparation of maps and plans

Sec. 4. (a) Whenever the board of any city determines that public necessity and convenience require the separation or alteration of the grade of any highway and any railroad at their intersection in the city, it shall order the preparation of general maps, and plans and specifications comprehending all work and changes necessary or incidental to the improvement, including the opening, widening,

change, vacation, elevation, depression or reconstruction of any highway, and the elevation, depression, removal, relocation, construction or reconstruction of the track, roadbed, yards, station, or other facilities of any railroad, and also a description of all lands, rights-of-way and other property necessary to be acquired in connection with the improvement, and the manner in which they are to be acquired, whether by purchase or by appropriation, together with an estimate of the total cost to be incurred in connection with the improvement, as the total cost is defined by this chapter.

(b) If the maps, plans and specifications provide for the abandonment for railroad purposes of any right-of-way, land or other property owned or used or occupied for railroad purposes by any railroad company, and the removal of any track, roadbed, yard, station or other facilities, requires the relocation and reconstruction of the facilities, or any part of them, the board, prior to the adoption of the resolution for the improvement, shall enter into an agreement or agreements with the railroad company affected, for adjustment of the costs and losses occasioned by the removal, relocation and reconstruction, and the value of all the property abandoned for railroad purposes and reclaimed for other uses, the apportionment of the adjusted costs, losses and values between the railroads affected and the city, and other matters necessarily related.

(c) Cost adjustments required by this chapter are governed by IC 8-6-3, the provisions of which are incorporated in this chapter by reference.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-5

Parties to agreements; submission of specifications, maps, and plans; approval

Sec. 5. (a) If the Indiana state highway commission and the county in which the city is located participate in the proceedings, the Indiana state highway commission and the county shall become parties to the agreement, and the agreement or agreements shall be included in and be a part of the resolution for the improvement and shall be subject to the final confirmation, or modification and confirmation, or rescission of the resolution, but no modification of the agreement or agreements shall be effective without the written consent of the railroad company affected; and the consent shall be filed with the board.

(b) The maps, plans and specifications shall be submitted by the engineer selected by the board to the Indiana state highway commission and to the board of commissioners of the county in which the city is located, and if the maps, plans and specifications meet the approval of the Indiana state highway commission and the board of commissioners, the approval shall be endorsed in writing on the documents.

(c) No further proceedings may be had pursuant to this chapter until the general maps, plans and specifications have been approved by the Indiana state highway commission and the board of

commissioners of the county.
As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-6

Filing of maps, plans, and specifications; resolution; inspection

Sec. 6. (a) After the general maps, plans and specifications are approved by the Indiana state highway commission and the board of commissioners of the county, they shall be filed with the board by the engineer. The board shall then adopt a resolution ordering the separation or alteration of grades or relocation and reconstruction of the facilities, or any part of them, as provided for in the maps, plans, specifications and agreements and ordering the acquisition of the property described within, and adopting all maps, plans, specifications, agreements, descriptions and the estimate of cost, allocating the portions of work to be done by the various parties, prescribing the time within which the several portions of the work shall be done, and declaring that the improvement provided for will be of public necessity and convenience.

(b) The resolution, including all maps, plans, specifications, agreements, descriptions and estimate, shall be open to inspection at the office of the board by all persons interested in or affected by them.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-7

Acquisition of property; cost agreements

Sec. 7. (a) For the purposes of this chapter, the board may acquire, or order to be acquired, lands, rights-of-way and other property within the city and within five (5) miles outside the corporate limits of the city. All lands, rights-of-way and other property necessary to be acquired in connection with the improvement may be acquired by the board in the name of the city, or the board may, in the resolution, order and require the railroad to acquire any portion of the same as will permanently be occupied or used by the railroad. In the latter event, the railroad shall acquire the lands, rights-of-way, or other property specified in the resolution, either by purchase or by appropriation in the manner prescribed by statute.

(b) If the work and changes provided for in the maps, plans and specifications adopted in the resolution affects the tracks or other facilities of more than one (1) railroad company, the railroad companies affected may, prior to the final confirmation of the resolution, file with the board their written agreement allocating between the companies the cost to be borne by each of them respectively.

(c) If the railroad companies fail to enter into a cost agreement, the board shall incorporate in the resolution, before final confirmation, a provision fixing the relative amount of costs to be borne as between the railroad companies.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-8

Clearance and grade

Sec. 8. Where the highway is carried over the railroad, or where one (1) railroad is carried over another railroad, the clearance from the top of the railroad track to the bottom of the superstructure over the track must be at least twenty-two (22) feet. The plans for the improvement shall not require a permanent grade of any main line railroad track to exceed three-tenths of one percent (.3%) unless a greater grade is agreed upon by the railroad company affected.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-9

Notice of adoption of resolution or alteration of grade; remonstrances

Sec. 9. (a) Upon the adoption of the resolution for separation or alteration of grades, the board shall cause notice of the adoption and intention, and of the fact that the maps, plans, specifications, agreements and estimates have been prepared and can be inspected, to be published in accordance with IC 5-3-1. The notice shall name a day not less than twenty (20) days after the date of the last publication on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings, and when it will determine the public necessity and convenience of the project.

(b) A like notice shall be sent by mail to the owners of all lands to be appropriated under and by the resolution, and in case any landowner is a nonresident and his place of residence is known, a like notice shall be mailed to him, but in event the nonresident owner's residence is unknown by the board, then he is considered to have been notified of the pendency of the proceedings by the publication of notice. A like notice shall also be served on a resident agent or officer of any railroad company or street railway company whose tracks are affected by the proceeding, but failure to serve the notice shall not invalidate the jurisdiction of the board in the premises.

(c) If the Indiana state highway commission and the county in which the city is located participate in the proceedings, then a like notice shall be served upon the state highway commission and upon the board of commissioners of the county.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-10

Parties aggrieved

Sec. 10. All persons affected in any manner by the proceedings, including all owners of real or personal property in the city, are considered to be notified of the pendency of the proceedings, and of all subsequent acts, hearings, adjournments, resolutions and orders of the board, by the original notice by publication. In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is sufficient to describe the property to be purchased or appropriated by giving a description of the entire track

by metes and bounds, whether the track is composed of one (1) or more lots or parcels, and whether owned by one (1) or more persons.
As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-11

Options to purchase land; appraisals

Sec. 11. (a) When the land or any part of it is to be acquired by purchase, the resolution shall also state the maximum proposed cost, and the board may at any time prior to the adoption of the resolution obtain from the owner or owners of the land an option for its purchase, or the board may enter into a contract for the purchase of the land upon the terms and conditions the board considers best. The option or contract is subject to final confirmation or rescission of the resolution, and subject further to the condition that the land be paid for only out of the special fund resulting from the sale of grade separation district bonds and the collection of benefit assessments, or out of funds coming to the city from equitable settlements between the parties. If the board desires to acquire any lots or parcels of land by purchase, it shall appoint:

- (1) one (1) freeholder residing in the city, or in the county in which the city is located; and
- (2) two (2) appraisers licensed under IC 25-34.1;

who are residents of Indiana, who are not interested in any land to be acquired or in land which may incur local benefits under such resolution, to appraise the value of the land. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property. The appraisers shall take an oath that they have no interest in the matter and that they will honestly and impartially make the valuation. The appraisers shall then proceed to view the land and consider and determine its true market value at that time.

(b) The appraisers shall submit a written report of their appraisal to the board and the report shall be filed with and become a part of the record of the proceeding. The board may not exercise any option on the land or enter into a contract to purchase the land at a higher price than the value named in the report.

As added by Acts 1980, P.L.8, SEC.70. Amended by P.L.113-2006, SEC.6.

IC 8-6-2.1-12

Title to acquired property

Sec. 12. The title to any lands, rights-of-way or other property acquired under and pursuant to the resolution, whether by purchase or by appropriation, shall not vest in the city until they are paid for out of the special fund created by the sale of bonds and from benefit assessments, or out of funds coming to the city from equitable settlements between the parties. No indebtedness or obligation of any kind may be incurred by the city in its corporate capacity on account of the acquiring of any lands, rights-of-way or other property.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-13

Remonstrances; appeals

Sec. 13. (a) At the time fixed for the hearing, or at any time prior to that, any owner of land, right-of-way or other property to be appropriated under the resolution, and any railroad company or companies, any street railway company, and any person owning real or personal property situated within the city, may file a written remonstrance with the board.

(b) At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and consider all remonstrances that have been filed, and after considering them, the board shall take final action and determine the public necessity and convenience of the proposed improvement, and confirm, or modify and confirm, or rescind the resolution. The final action shall be duly entered of record, and is conclusive upon all persons, except as provided in sections 4 through 8 of this chapter. Any person who has remonstrated in writing and who is aggrieved by the decision of the board may take an appeal to the circuit court in the county in which the city is located.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-14

Filing of order and bond; hearing

Sec. 14. Within twenty (20) days after the final action of the board, the remonstrator may file in the office of the clerk of the circuit court a copy of the order of the board, not including, unless he so desires, the maps, plans and specifications, and his remonstrance to them, together with his bond conditioned to pay the cost of the appeal if it is determined against him. All appeals shall be consolidated and heard as one (1) cause of action by the court, and the burden of proof is upon the remonstrators. The cause shall be tried and determined summarily by the court without the intervention of a jury, as other civil causes, and shall be given precedence over other matters pending in the court. Upon the trial of the cause, the court shall hear evidence upon the remonstrances and shall confirm the final action of the board on the resolution, or sustain the remonstrance or remonstrances to them, and the court may remand the resolution for further proceedings. If the resolution is confirmed the judgment of the court is conclusive upon all parties, and no appeal lies from the judgment.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-15

Agreements concerning planning and completion of work projects

Sec. 15. The city, by its board of public works or board of public works and safety, the Indiana state highway commission, the county in which the city is located, by its board of commissioners, and the railroad company or companies whose track or tracks the improvement authorized in this chapter concern, may enter into a written agreement as to the plan of proceeding with the work, the

allocation of the portions to be done by the respective parties, the division of cost between railroads, the amount of work to be done annually, the time within which the entire work is to be completed, the method and times of making equitable settlements of the cost between the parties, and any other matters tending to expedite the efficient and economical completion of the improvement. The agreement, however, may not have the effect of increasing the total cost of the improvement above the estimate. The agreement shall be filed with the board and considered a part of the resolution and constitutes the basis of all proceedings on the matters embraced in the agreement.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-16

Costs to be borne by parties in interest

Sec. 16. (a) The total cost of the improvement to be borne by all the parties in interest includes the following:

- (1) The cost of constructing the grade elimination structure and the cost of raising or lowering the grade, or other alteration of any public highway, the construction or reconstruction of the pavement, including sidewalks and curbs, and the alteration, relocation and construction of drains or sewers required by the improvement.
- (2) The cost of elevation, depression, alteration, removal, relocation, construction and reconstruction of any railroad track or tracks and other facilities within or without the city.
- (3) The cost of any land, right-of-way, or other property required for the improvement.
- (4) The amount of damages, if any, recoverable under law by any person due to the improvement.
- (5) The compensation for services of the special engineer and additional engineering force, and of special counsel, if any, employed by the board, all of whom the board may employ.
- (6) The cost of supervision and inspection, the giving of notices, and all other expense necessarily incurred by the board in connection with the proceedings and improvement.

(b) The total cost to be borne by all the parties in interest does not include the expense of opening new or additional highways, or the expense of establishing additional lanes of traffic to any highways, or the expense of providing rights-of-way or other facilities which represent an enlargement of or betterments to the facilities of any railroad affected by the improvement.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-17

Agreements fixing cost of improvements borne by parties in interest

Sec. 17. (a) The total cost of the improvement shall be borne by all of the parties in interest, in accordance with a written agreement or written agreements to be entered into by all the parties, fixing the

portion of the total cost to be borne by each party subject, however, to the cost formula requirements set forth in section 4 of this chapter. The total cost shall be divided among and paid by the parties in accordance with the agreement or agreements. The portion of the total cost to be borne by the city does not constitute an indebtedness or obligation of the city in its corporate capacity, but shall be payable only out of special taxes and benefit assessments as provided by this chapter.

(b) The Indiana state highway commission, any city affected by this chapter and the county in which the city is located, may each respectively enter into a written agreement or written agreements.

(c) The agreement or agreements shall be executed on behalf of the Indiana state highway commission by the members of it and shall be binding upon the Indiana state highway commission. The agreement or agreements shall be executed on behalf of the city by the board and shall be binding on the city. The agreement or agreements shall be executed on behalf of the county by the board of county commissioners and shall be binding on the county.

(d) To the extent that funds of any federal agency may be available to the Indiana state highway commission for use in paying any portion of the total cost which may be chargeable to or assumed by the Indiana state highway commission, the Indiana state highway commission may use the federal funds, if permitted by applicable federal laws, for the payment of the cost or any portion of it, or for the payment of all or any portion of either the city's or county's share of the cost; or the Indiana state highway commission may use the federal funds for any combination of these purposes. The board may apply for, accept, and use grants, loans or other financial assistance from any municipal, county, state, or federal government agency. To the extent any funds of any federal agency may be available to the city or the county for use in paying the costs, the city and county may use the federal funds, if permitted by applicable federal laws, for the payment of any portion of the cost which is chargeable to or assumed by the city and county.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-18

Contracts; bidding; validity of proceedings and orders of board and contract

Sec. 18. Any portion or portions of the work of improvement under the resolution which is allotted to the city shall be done by contract or contracts, and all contracts shall be let under statutes governing the letting of contracts by the city. In event of the execution of a contract for the work, the validity of the contract may not subsequently be questioned by any person, except in a suit to enjoin the performance of the contract instituted within ten (10) days after its execution. All proceedings and orders of the board preliminary and prior to the contract, and the contract, are considered valid, conclusive and binding upon all persons and are not subject to attack for any cause after the ten (10) day period after its execution

has expired.
As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-19

Warrants

Sec. 19. Any part of the city's portion of the total cost of the improvement which is necessary for the city to pay prior to the collection of benefit assessments under this chapter and prior to the issue and sale of bonds under this chapter, shall be paid as follows: the board shall, from time to time, certify the items of expense to the controller or clerk-treasurer, directing him to pay those amounts, and the controller or clerk-treasurer shall draw his warrant or warrants, and the warrant or warrants shall be paid out of the general fund of the city without appropriation being made by the common council; or, in case there is no money in the general fund of the city not otherwise appropriated, the city controller or clerk-treasurer shall recommend to the common council the temporary transfer from other funds of the city a sufficient amount to meet the items of expense, or the making of a temporary loan for this purpose, and the common council shall at once make the transfer of funds, or authorize the temporary loan in the same manner that other temporary loans are made by the city. The fund or funds of the city from which the payments are made shall be fully reimbursed and repaid by the board out of the special fund created by the sale of bonds and from benefit assessments or out of funds coming to the city from equitable settlements between the parties. The board may cause the amount for the temporary advancements on work to be provided for in the budget and tax levy of the city for the year when the funds are anticipated to be needed.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-20

Accounting of improvement costs and disbursements; payments and adjustments

Sec. 20. (a) The board, through its engineer, shall keep an account of the total cost of the improvement, of all disbursements made during the course of the work, and of all equitable settlements between the parties contributing to the cost; but the total cost may not exceed the estimate adopted in the resolution.

(b) From time to time during the progress of the work, and upon completion of the improvement, the board shall make and adjust equitable settlements and payments between the parties contributing to the cost of the improvement so that the total cost of the improvement is apportioned between the parties as determined by the board consistent with this chapter.

(c) The equitable settlements and payments shall be made by the board, either on its own initiative or on petition of any railroad company charged with the work or any part of the work, or on petition of either the Indiana state highway commission or of the county in which the city is located, if the Indiana state highway

commission and the county participate in the cost of the improvement.

(d) Any adjustment or adjustments are binding on all of the parties unless any aggrieved party, within sixty (60) days after the entry of an order of equitable settlement made by the board, files his complaint to review the adjustment in the circuit court of the county in which the city is located. The decree of the court is final. The railroad company or companies, shall, upon the adjustment or decree, pay their portions of the cost as directed. The Indiana state highway commission shall, upon the adjustment or decree, pay its portion of the costs as directed, and the payment shall be made out of the funds of the commission or funds appropriated for the use of the commission. The county council of the county in which the city is located shall provide sufficient funds to pay the county's share of the cost of the improvement, either by appropriating the necessary amount of money from available funds on hand, or by the sale of bonds. Upon each adjustment or decree, the county in which the city is located shall pay the county's portion of the cost as directed by the adjustment or decree out of the funds provided by the county council. Upon each adjustment or decree, the city controller or clerk-treasurer shall draw his warrant or warrants in payment of the city's portion of the cost.

(e) All warrants may be drawn only against the special fund arising from the special tax and special assessments provided for in this chapter and from equitable settlements.

(f) The board may adopt supplemental resolutions and enter orders from time to time as necessary to carry out the purpose of the resolution.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-21

Special tax; taxing district

Sec. 21. (a) Upon final action of the board or circuit court, confirming the resolution, all territory lying within the corporate limits of the city shall become a special taxing district for grade separation and railroad relocation and reconstruction purposes, and all property, real and personal, located within the territorial limits of the district shall be subject to a special tax for the purpose of providing funds to pay the city's portion of the total cost of the improvement.

(b) The special tax shall constitute the amount of benefits resulting to all of the property from the proceedings, and shall be levied in the manner provided for by this chapter. If the board determines that any lots or parcels of land, exclusive of improvements, lying within two thousand (2,000) feet of any grade crossing eliminated or altered by the improvement, or within two thousand (2,000) feet of any lands or rights-of-way abandoned for railroad use or from which railroad facilities are to be removed, will incur a particular benefit by reason of their proximity in addition to the benefits received by them in common with all other property

located in the district, those lots and parcels of land which lie within the corporate limits of the city shall be subject to a special assessment for the benefits.

(c) The special assessment shall be determined in accordance with this chapter, but the total amount of the additional benefits assessed shall not in any case exceed forty percent (40%) of the city's share of the total cost of the improvement; and the total amount of the additional benefits assessed and finally confirmed or adjudged against lots and parcels of land exclusive of improvements lying within two thousand (2,000) feet shall be deducted from the city's share of the total cost and the balance of the city's share of the total cost, is the amount of the benefits resulting to all property in the special taxing district, and the special tax shall be levied only for this balance. Any lot or parcel of land owned and used or occupied for railroad purposes at the time of the adoption of any resolution by any railroad company whose tracks are affected by the resolution, or any lot or parcel of land devoted to railroad purposes in connection with and because of the improvement, is not subject to any special assessment for the particular benefits.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-22

Roll of owners of property sought to be taken

Sec. 22. When the resolution is finally confirmed by the board, the board shall require the preparation of a roll of all the owners or holders of property sought to be taken, or who have incurred damages, and also of all of the owners or holders of lots or parcels of land lying within two thousand (2,000) feet of any grade crossing eliminated or altered by the improvement or within two thousand (2,000) feet of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed, which will incur a particular benefit, as provided in section 21 of this chapter, from the grade separation or alteration and railroad relocation as provided for in the resolution. In addition to the list of names, the roll should show with reasonable certainty a description of the property to be appropriated, or affected either injuriously or beneficially, belonging to that person, and no greater certainty in names and description is necessary to the validity of any award or assessment than is required in the assessment of taxes.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-23

Determination of damages; publication of notice of land appropriated, character of improvement, and preliminary awards; remonstrances; irregularities in proceedings

Sec. 23. (a) Upon the completion of the roll, the board shall consider, determine and award the amount of damages sustained by the owners of the several parcels of land required to be appropriated, if any, as provided for in the resolution, or which will incur damages, and, then the board shall consider, determine and assess the amount

of particular benefits which will accrue to the several lots or parcels of land, exclusive of improvements, lying within two thousand (2,000) feet of any grade crossing eliminated or altered by the improvement, or within two thousand (2,000) feet of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed, as provided for in the resolution, by reason of their proximity, in addition to the benefits received by the lots or parcels of land in common with all property, real and personal, located in the district. The total amount of the particular benefits assessed against the lots and parcels of land, exclusive of improvements, located within the two thousand (2,000) feet, may not in any case exceed forty percent (40%) of the city's share of the total cost of the grade separation improvement.

(b) When the roll is completed, the board shall publish, in accordance with IC 5-3-1, a notice describing the location of the land appropriated and the general character of the improvement, and stating whether assessments have been made against lands within the two thousand (2,000) foot distance. The notice shall also state that the assessment roll, with the names of the owners in favor of whom damages have been awarded and against whom assessments have been made, and descriptions of property affected, with the amounts of preliminary awards or assessments as to each piece or parcel of property affected, is on file and can be seen in the office of the board. The board shall also send by United States mail a notice to the place of residence, if known, of persons owning lands to be taken, or incurring damages, or against which special assessments have been made, showing each item of the determination as to those persons. In case any person affected is a nonresident, or his residence is unknown, he is considered to have been notified by the publication. The notices shall name a day not earlier than ten (10) days after the last date of publication, or after the date of mailing, as above provided, on which the board will receive and hear remonstrances from persons with regard to the amount of their respective awards or assessments. Persons not included in the roll of awards or damages and claiming to be entitled to the same are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board and by the publication required by this section.

(c) If there are defects or irregularities of any kind in the proceedings with respect to one (1) or more interested persons, they do not affect the proceedings, except so far as they may affect the interest or property of the person or persons, and do not avail any other person. In case of any defect, supplementary proceedings of the same general character as those otherwise prescribed by this chapter may be instituted in order to correct the defect.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-24

Interests of mentally incompetent persons or infants; guardianship

Sec. 24. If any person having an interest in land affected by the

proceedings is mentally incompetent or under the age of eighteen (18) years, the board shall certify that fact to its attorney. The attorney shall apply to the proper court and secure the appointment of a guardian for the person under eighteen (18) years of age or mentally incompetent person. The board shall give notice to the guardian, who shall appear and protect the interest of the protected person. If the person under eighteen (18) years of age or mentally incompetent person already has a guardian, the notice shall be served upon the guardian. The requisites of notice to the guardian shall be the same as for other notices.

As added by Acts 1980, P.L.8, SEC.70. Amended by P.L.33-1989, SEC.8.

IC 8-6-2.1-25

Appearance by remonstrators; appeals

Sec. 25. Any person notified or considered to be notified under this chapter may appear before the board on the day fixed for hearing the remonstrances with regard to awards and assessments, and remonstrate in writing against them. All persons appearing before the board having an interest in the proceedings shall be given a hearing. After the remonstrances have been received and the hearings had, the board shall either sustain or modify, by increasing or decreasing, the awards or assessments. Any person remonstrating in writing who is aggrieved by the decision of the board may, within ten (10) days after the decision is made, take an appeal to the circuit court of the county in which the city is located. The appeal affects only the amount of the assessment or award of the person appealing.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-26

Procedure on appeal

Sec. 26. (a) The appeal shall be taken by filing an original complaint in the circuit court of the county in which the city is located against the board within the time named, setting forth the action of the board in respect to the assessment or award, and stating the facts relied upon as showing an error of the board. The court shall rehear the matter of the assessment or award de novo, and confirm, lower or increase the amount. The cause shall be summarily tried by the court without the intervention of a jury, as in other civil cases. A change of venue from the county may not be taken.

(b) All remonstrances upon which an appeal is taken may be consolidated and heard as one (1) cause of action, and all the appeals shall be heard and determined by the court within thirty (30) days after the time of filing of the appeal. If the court reduces the amount of benefit assessed against the land of the property owner by ten percent (10%) or more of the assessment by the board, or increases the amount of the damages awarded in his favor by ten percent (10%) or more of the amount awarded by the board, the plaintiff in the appeal shall recover costs, otherwise not.

(c) The amount of the judgment in the court shall be final, and no

appeal may be taken. However, any party in interest may take an appeal from the judgment to the supreme court of Indiana, upon the sole ground that the property in question has or has not incurred damages recoverable under law.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-27

Assessment liens; payment; tax exemption

Sec. 27. (a) The assessment roll, upon final confirmation by the board, shall be delivered to the controller or clerk-treasurer, and from that time the respective amounts of benefits assessed shall severally be liens, superior to all other liens except taxes, against the respective lots or parcels of land upon which they are assessed. The duties of the controller or clerk-treasurer are those prescribed by statute in cities with regard to assessments for street improvements.

(b) The assessments of benefits are due and payable to the controller or clerk-treasurer from the time of the delivery of the assessment roll to him. If not paid within thirty (30) days, the board's attorney shall proceed to foreclose the liens in a court as mortgages are foreclosed with similar rights of redemption, and have them sold to pay the assessments. The board shall recover costs with reasonable attorney's fees and interest at the rate of six percent (6%) per annum.

(c) In all cases where the party against whom the assessment is made is a resident of the city, a notice of the assessment and demand for payment shall be delivered to him personally or mailed to his last usual place of residence. All persons assessed for local benefits may, within thirty (30) days after the confirmation of the assessments, avail themselves of the right to pay the assessment installments in the same manner as provided for the payment of assessments for street improvements in cities, except that the board may provide that the installments may be extended over a period of twenty (20) years, which privilege shall also be stated in the notice.

(d) Statutes relating to the payment of street improvement assessments by installments, the issuance of bonds and coupons to anticipate assessments, and the rights of bondholders and landowners, when not inconsistent with this chapter, shall apply and be extended to assessments made under this chapter. When assessment bonds are issued, the city controller or clerk-treasurer shall sell the bonds promptly in the same manner and upon the same notice conditions as grade separation district bonds are authorized to be sold as provided in section 29 of this chapter, and the proceeds shall be kept in a separate fund as provided for in section 30 of this chapter. The assessment bonds shall be exempt from taxation for all purposes. All interest and penalties on delinquencies shall go into the special fund.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-28

Payment of damages

Sec. 28. (a) The board, upon the completion of the award of

damages, if any, or upon the determination of the appeals taken, shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the city controller or clerk-treasurer of the city entitles those persons to a warrant drawn on the city treasury. The controller or clerk-treasurer shall pay the persons named the amounts due them respectively, as shown by the certificates, out of the separate and specific funds derived from the sale of bonds and from benefit assessments provided for in section 30 of this chapter, or out of funds coming from equitable settlements between the parties, and these payments may not be made from any other source or funds.

(b) The certificates or vouchers shall, whenever practical, be tendered actually to the person entitled to them, but where this is impractical, they shall be kept for the persons in the office of the board, and the making and filing of the certificates, in all cases, is considered to be valid tender to the person entitled to them at the time or as soon as there are sufficient funds to pay them. They shall be delivered to the person on request. In case of dispute or doubt as to which of various persons the money shall be paid, the board shall make out the certificates in favor of the attorney appointed by the board for the use of the persons entitled to them, and the attorney shall draw the money and pay it into court, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the board shall tender the amount of damages with interest from the time of the entry of the property, if any has been made, and all accrued costs. If there are sufficient funds to pay the certificate, the injunction shall be removed. The pendency of an appeal to the circuit court of a county does not affect the validity of a tender made under this section, but the board may proceed with its appropriation of the property in question.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-29

Bonds

Sec. 29. (a) In order to raise money to pay the city's portion of the total cost of an improvement and in anticipation of the special benefit tax to be levied, the board shall issue, in the name of the city, at one (1) time, or from time to time as the proceeds are needed, the bonds of the grade separation or railroad relocation and reconstruction district not to exceed in aggregate amount the balance of the city's portion of the total cost after deducting from the city's portion the total amount of benefits, if any, which have been assessed by the board and finally confirmed or adjudged against lots and parcels of land exclusive of improvements lying within two thousand (2,000) feet of any grade crossing eliminated or altered by the improvement, or within two thousand (2,000) feet of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed.

(b) The bonds may be issued in any denomination not exceeding

one thousand dollars (\$1,000) each in not less than forty (40) nor more than sixty (60) equal series, as the board determines, and shall be payable one (1) series each six (6) months beginning on the first day of July of the first year following the date of their issue. If the bond issue is ordered in any calendar year after the date of the annual tax levy, then the first series shall mature on the first day of July of the second year and the balance of the bonds at the designated regular intervals. The bonds shall be negotiable as inland bills of exchange and shall bear interest payable on the first days of January and July of each year, the first interest to be payable on the first maturity date of the bonds.

(c) Upon adoption of a resolution ordering bonds, the board shall certify a copy of the resolution to the controller or clerk-treasurer of the city in which the grade separation district is located; that officer shall prepare the bonds, and the mayor of the city shall execute the bonds and the city controller or clerk-treasurer shall attest the execution. The bonds shall be exempt from taxation for all purposes. All bonds issued by the board shall be sold by the city controller or clerk-treasurer to the highest bidder, but not at less than par and accrued interest to date of delivery, after giving notice of sale of the bonds by publication in accordance with IC 5-3-1. The publication shall be made not less than fifteen (15) days prior to the date fixed for the sale of the bonds.

(d) The bonds are not a corporate obligation or indebtedness of the city, but constitute an indebtedness of the district as a special taxing district, and the bonds and interest shall be payable only out of a special tax levied upon all property of the special taxing district, as in this chapter provided, and the bonds shall recite the terms upon their face, together with the purposes for which they are issued.

(e) No suit to question the validity of the bonds issued for the special taxing district, or to prevent their issue, may be maintained after the date set for the sale of the bonds, and all bonds after that date are incontestable for any cause.

As added by Acts 1980, P.L.8, SEC.70. Amended by Acts 1980, P.L.73, SEC.1.

IC 8-6-2.1-30

Proceeds from sale of bonds

Sec. 30. All proceeds from the sale of bonds issued under section 29 of this chapter, together with all money collected from benefit assessments, or from the sale of assessment bonds, shall be kept as a separate and specific fund, entitled grade separation or railroad relocation and reconstruction fund, to pay the city's portion of the total cost of the grade separation improvement, and no part of the fund may be used for any other purpose. The fund shall be deposited with the depository or depositories of other public funds of the city. Any surplus remaining in the fund, after all the city's portion of the total cost is fully paid, shall be paid into and become a part of the grade separation or railroad relocation and reconstruction bond fund as referred to in section 31 of this chapter.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-31

Special tax levy

Sec. 31. (a) In order to raise money to pay all bonds issued under section 29 of this chapter, including interest, the common council of the city shall levy each year a special tax upon all of the taxable property, both real and personal, located within the territorial limits of the special taxing district, in such manner as to pay the principal of the bonds as they severally mature, together with all accruing interest.

(b) The tax levied shall be collected by the county treasurer in the same manner as other taxes are collected. As the tax is distributed to the controller or clerk-treasurer it shall be deposited in a separate fund, to be known as the grade separation or railroad relocation and reconstruction bond fund, and shall be applied to the payment of the special taxing district bonds and interest as they severally mature, and to no other purposes. All accumulation of the fund prior to its use for the payment of the bonds and interest shall be deposited in the depository or depositories of other public funds in the city.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-32

Payment for lands acquired by purchase, contract, or eminent domain; title to lands

Sec. 32. If the lands acquired for the improvement or any part of it are secured by purchase or contract, the payment shall be made according to the terms of the contract. If lands are taken by condemnation, the amount of damages assessed shall be paid or tendered within ninety (90) days after the final determination of the condemnation proceedings, or as soon thereafter as the funds arising from the bonds and the assessment of benefits are available. The title to the lands, or that portion paid for or otherwise acquired for these purposes, then vests in the city.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-33

Filing of description of acquired lands

Sec. 33. Within sixty (60) days after any land or right in it is paid for and acquired under this chapter, the board shall file and have recorded in the recorder's office in the county in which the land is situated a description of it sufficiently accurate for its identification, with a statement of the purpose for which it is acquired or taken. The description shall be signed by a majority of the board. The board may transfer to any railroad company or companies any property acquired in connection with the improvement, but intended for the permanent occupation or use of the railroad or railroads, after proper adjustment in the equitable settlements between the parties.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-34**Limitations upon expenditures and appropriations**

Sec. 34. No part of any of the funds raised by the city or received by the city under this chapter may be expended, except upon warrants drawn by the city controller or clerk-treasurer upon vouchers of the board. No appropriation in any form is necessary, but all funds arising under this chapter are appropriated to the respective purposes named in this chapter, and are under the control of the board, and the board may expend the funds for the purposes stated in this chapter.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-35**Application of IC 8-6-3 to maintenance costs**

Sec. 35. Maintenance costs requirements are governed, to the extent applicable, by IC 8-6-3.

As added by Acts 1980, P.L.8, SEC.70.

IC 8-6-2.1-36**Jurisdiction and authority of board of each city**

Sec. 36. (a) The jurisdiction and authority of the board of each city are complete in relation to all matters provided for in this chapter, except in the levying of taxes. In carrying out this chapter it is not necessary to comply with any other statute, except as specifically provided.

(b) If no procedure is provided for by this chapter for doing anything authorized or contemplated by it, the procedure provided by other statutes in similar cases may be followed.

As added by Acts 1980, P.L.8, SEC.70.