Chapter 25. Water Resources Study Committee

2-5-25

2-5-25-1

Sec. 1. The water resources study committee is established.
As added by P.L.253-1997(ss), SEC.34.

2-5-25-2

Sec. 2. (a) The water resources study committee consists of twelve (12) members of the general assembly appointed as follows:

(1) Six (6) senators appointed by the president pro tempore of the senate in consultation with the minority leader of the senate, not more than three (3) of whom may be members of the same political party.

(2) Six (6) representatives appointed by the speaker of the house of representatives in consultation with the minority leader of the house of representatives, not more than three (3) of whom may be members of the same political party.

(b) The term of a member of the committee expires on December 31 of the even-numbered year following the member's appointment.

(c) A vacancy on the committee shall be filled by appointment of a replacement member for the unexpired term. The president pro tempore of the senate shall appoint a replacement for a senator and the speaker of the house of representatives shall appoint a replacement for a representative.
As added by P.L.253-1997(ss), SEC.34.

2-5-25-3

Sec. 3. The president pro tempore of the senate shall appoint a member of the committee to serve as chairperson of the committee during the first regular session of a general assembly and as vice chairperson during the second regular session. The speaker of the house of representatives shall appoint a member of the committee to serve as vice chairperson during the first regular session of a general assembly and as chairperson during the second regular session.
As added by P.L.253-1997(ss), SEC.34.

2-5-25-4

Sec. 4. Each member of the water resources study committee is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council.
As added by P.L.253-1997(ss), SEC.34.

2-5-25-5

Sec. 5. The water resources study committee shall study and may make recommendations concerning all matters relating to the surface and ground water resources of Indiana, including the following:

(1) The usage, quality, and quantity of water resources.

(2) Issues concerning diffused surface water, the common enemy doctrine of law, and runoff.

As added by P.L.253-1997(ss), SEC.34.

2-5-25-6

Sec. 6. The water resources study committee shall do the following:

(1) Operate under the direction of the legislative council.

(2) Issue reports in an electronic format under IC 5-14-6 when directed to do so by the legislative council.

As added by P.L.253-1997(ss), SEC.34. Amended by P.L.28-2004, SEC.11.

2-5-25-7

Sec. 7. Staff and administrative support for the water resources study committee shall be provided by the legislative services agency.
As added by P.L.253-1997(ss), SEC.34.

4-4-9.7-9

Sec. 9. (a) The rural economic development fund is established for the purpose of enhancing and developing rural communities. The fund shall be administered by the office.

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisers, and legal counsel to assist in the management of the fund and may pay the state expenses incurred under those contracts.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) Money in the fund may be used for the following purposes:

(1) To create, assess, and assist a pilot project to enhance the economic and community development in a rural area.

(2) To establish a local revolving loan fund for:

(A) an industrial;

(B) a commercial;

(C) an agricultural; or

(D) a tourist;

venture.

(3) To provide a loan for an economic development project in a rural area.

(4) To provide technical assistance to a rural organization.

(5) To assist in the development and creation of a rural cooperative.

(6) To address rural workforce development challenges.

(7) To assist in addressing telecommunications needs in a rural area.

(8) To provide funding for rural economic development projects concerning the following issues:

(A) Infrastructure, including water, wastewater, and storm water infrastructure needs.

(B) Housing.

(C) Health care.

(D) Local planning.

(E) Land use.

(F) Other rural economic development issues, as determined by the office.

(9) To provide funding for the establishment of new regional rural development groups and the operation of existing regional rural development groups.

(f) Expenditures from the fund are subject to appropriation by the general assembly and approval by the office.
As added by P.L.144-2006, SEC.8.

Chapter 11. Indiana Finance Authority

4-4-11

4-4-11-0.1

Sec. 0.1. The amendments made to section 15 of this chapter by P.L.2-1987 take effect on January 1, 1987, and apply to taxable years beginning after December 31, 1986.
As added by P.L.220-2011, SEC.15.

4-4-11-0.3

Sec. 0.3. (a) As used in this section, "entity" means the following:

(1) The Indiana development finance authority.

(2) The state office building commission.

(3) The Indiana transportation finance authority.

(4) The recreational development commission.

(b) On May 15, 2005, all powers, duties, and liabilities of each entity are transferred to the authority, as the successor agency.

(c) On May 15, 2005, all records and property of each entity, including appropriations and other funds under the

control or supervision of the entity, are transferred to the authority, as the successor agency.

(d) After May 14, 2005, any amounts owed to an entity before May 15, 2005, are considered to be owed to the authority, as the successor agency.

(e) After May 14, 2005, a reference to an entity in a statute, rule, or other document is considered a reference to the authority, as the successor agency.

(f) All powers, duties, and liabilities of an entity with respect to bonds issued by that entity in connection with any trust agreement or indenture securing those bonds are transferred to the authority, as the successor agency. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of an entity remain unchanged, although the powers, duties, and liabilities of the entity have been transferred to the authority, as the successor agency.

As added by P.L.220-2011, SEC.16.

4-4-11-0.4

Sec. 0.4. (a) On May 15, 2005, all powers, duties, agreements, and liabilities of the treasurer of state, the auditor of state, the department of environmental management, and the budget agency with respect to:

(1) the wastewater revolving loan program established by IC 13-18-13-1;

(2) the drinking water revolving loan program established by IC 13-18-21-1; and

(3) the supplemental drinking water and wastewater assistance program established by IC 13-18-21-21;

are transferred to the authority, as the successor agency, for the limited purposes described in subdivisions (1) through (3).

(b) On May 15, 2005, all records, money, and other property of the treasurer of state, the auditor of state, the department of environmental management, and the budget agency with respect to:

(1) the wastewater revolving loan program established by IC 13-18-13-1;

(2) the drinking water revolving loan program established by IC 13-18-21-1; and

(3) the supplemental drinking water and wastewater assistance program established by IC 13-18-21-21;

are transferred to the authority as the successor agency for the limited purposes described in subdivisions (1) through (3).

(c) On May 15, 2005, all powers, duties, agreements, and liabilities of the Indiana bond bank, the Indiana department of environmental management, and the budget agency with respect to:

(1) outstanding bonds issued for:

(A) the wastewater revolving loan program established by IC 13-18-13-1; or

(B) the drinking water revolving loan program established by IC 13-18-21-1; and

(2) any trust agreement or indenture, security agreement, purchase agreement, or other undertaking entered into in connection with the bonds described in subdivision (1);

are transferred to the authority, as the successor agency, for the limited purposes described in subdivisions (1) and (2). The rights of the trustee and the bondholders with respect to any bonds or any trust agreement or indenture, security agreement, purchase agreement, or other undertaking described in this subsection remain the same, although the powers, duties, agreements, and liabilities of the Indiana bond bank have been transferred to the authority and the authority shall be considered to have assumed all those powers, duties, agreements, and liabilities as if the authority were the Indiana bond bank for those limited purposes.

As added by P.L.220-2011, SEC.17.

4-4-11-0.5

Sec. 0.5. (a) As used in this section, "IHEFFA" means the Indiana health and educational facility financing authority established by IC 5-1-16-2 (before its repeal).

(b) On July 1, 2007, all powers, duties, and liabilities of the IHEFFA are transferred to the authority, as the successor entity. The terms of office of the members of the IHEFFA serving on June 30, 2007, terminate on July 1, 2007.

(c) On July 1, 2007, all records and property of the IHEFFA, including appropriations and other funds under its control or supervision, are transferred to the authority, as the successor entity.

(d) After July 1, 2007, any amounts owed to the IHEFFA before July 1, 2007, are considered to be owed to the authority, as the successor entity.

(e) After June 30, 2007, a reference to the IHEFFA in a statute, rule, or other document is considered a reference to the authority, as the successor entity.

(f) All powers, duties, and liabilities of the IHEFFA with respect to bonds issued by the IHEFFA in connection with any trust agreement or indenture securing those bonds are transferred to the authority, as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of the IHEFFA remain unchanged, although the powers, duties, and liabilities of the IHEFFA have been transferred to the authority, as the successor entity.
As added by P.L.220-2011, SEC.18.

4-4-11-1

Sec. 1. This chapter may be cited as "The Indiana finance authority law".
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.16; P.L.235-2005, SEC.6.

4-4-11-2

Sec. 2. (a) The legislature makes the following findings of fact:

(1) That there currently exists in certain areas of the state critical conditions of unemployment, inadequate drinking water, inadequate wastewater and storm water management, or environmental pollution, including water pollution, air pollution, sewage and solid waste, radioactive waste, thermal pollution, radiation contamination, and noise pollution, and that these conditions may well exist, from time to time, in other areas of the state.

(2) That in some areas of the state such conditions are chronic and of long standing and that without remedial measures they may become so in other areas of the state.

(3) That economic insecurity due to unemployment, inadequate drinking water, inadequate wastewater and storm water management, or environmental pollution is a menace to the health, safety, morals, and general welfare of not only the people of the affected areas but of the people of the entire state.

(4) That involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker and ultimately upon the state in the form of public assistance and unemployment compensation.

(5) That security against unemployment and the resulting spread of indigency and economic stagnation in the areas affected can best be provided by:

(A) the promotion, attraction, stimulation, rehabilitation, and revitalization of industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products;

(B) the promotion and stimulation of international exports; and

(C) the education, both formal and informal, of people of all ages throughout the state by the promotion, attraction, construction, renovation, rehabilitation, and revitalization of and assistance to educational facility projects.

(6) That the present and prospective health, safety, morals, right to gainful employment, and general welfare of the people of the state require as a public purpose the provision of safe drinking water, the provision of wastewater and storm water management, the abatement or control of pollution, the promotion of increased educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) for people of all ages through new, expanded, or revitalized educational facility projects or through assisting educational facility projects, and the promotion of employment creation or retention through development of new and expanded industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products.

(7) That there is a need to stimulate a larger flow of private investment funds from commercial banks, investment bankers, insurance companies, other financial institutions, and individuals into such industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products in the state.

(8) That the authority can encourage the making of loans or leases for creation or expansion of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, thus putting a larger portion of the private capital available in Indiana for investment to use in the general economic development of the state.

(9) That the issuance of bonds of the authority to create a financing pool for industrial development projects and carrying out the purposes of IC 13-18-13 and IC 13-18-21 promoting a substantial likelihood of opportunities for:

(A) gainful employment;
(B) business opportunities;
(C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);
(D) the abatement, reduction, or prevention of pollution;
(E) the provision of safe drinking water;
(F) the provision of wastewater and storm water management;
(G) the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used; or
(H) increased options for and availability of child care;

will improve the health, safety, morals, and general welfare of the people of the state and constitutes a public purpose for which the authority shall exist and operate.

(10) That the issuance of bonds of the authority to create a funding source for the making of guaranteed participating loans will promote and encourage an expanding international exports market and international exports sales and will promote the general welfare of all of the people of Indiana by assisting Indiana businesses through stimulation of the expansion of international exports sales for Indiana products and services, especially those of small and medium-sized businesses, by providing financial assistance through the authority.

(b) The Indiana finance authority shall exist and operate for the public purposes of:

(1) promoting opportunities for gainful employment and business opportunities by the promotion and development of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, in any areas of the state;

(2) promoting the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of all the people of the state by the promotion, development, and assistance of educational facility projects;

(3) promoting affordable farm credit and agricultural loan financing at interest rates that are consistent with the needs of borrowers for farming and agricultural enterprises;

(4) preventing and remediating environmental pollution, including water pollution, air pollution, sewage and solid waste disposal, radioactive waste, thermal pollution, radiation contamination, and noise pollution affecting the health and well-being of the people of the state by:

(A) the promotion and development of industrial development projects; and
(B) carrying out the purposes of IC 13-18-13 and IC 13-18-21;

(5) promoting the provision of safe and adequate drinking water and wastewater and storm water management to positively affect the public health and well-being by carrying out the purposes of IC 13-18-13 and IC 13-18-21;

(6) otherwise positively affecting the public health and well-being by carrying out the purposes of IC 13-18-13 and IC 13-18-21;

(7) promoting affordable and accessible child care for the people of the state by the promotion and development of child care facilities; and

(8) carrying out the purposes of IC 5-1-17.5 concerning a motorsports investment district.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1983, SEC.1; P.L.20-1985, SEC.2; P.L.25-1987, SEC.4; P.L.20-1988, SEC.7; P.L.11-1990, SEC.17; P.L.24-1995, SEC.9; P.L.227-1999, SEC.6 and P.L.273-1999, SEC.195; P.L.4-2002, SEC.2; P.L.235-2005, SEC.7; P.L.233-2013, SEC.2.

4-4-11-2.5

Sec. 2.5. (a) The general assembly makes the following findings of fact in addition to those set forth in section 2 of this chapter:

(1) There are currently numerous bodies corporate and politic of the state, with separate decision making and borrowing authority, that may issue bonds, notes, and obligations, and otherwise access the financial markets.

(2) Consolidation of this decision making and borrowing authority may provide economic efficiencies and management synergies and enable the state to communicate, with a single voice, with the various participants in the financial markets, including credit rating agencies, investment bankers, investors, and municipal bond insurers and other credit enhancers.

(b) In addition to the purposes set forth in section 2 of this chapter, the authority is established for the purpose of

permitting the consolidation of certain bodies in a single body of decision making concerning access to the capital and financial markets in the name of, or for the benefit of, the state.

(c) The authority is authorized to carry out the public purposes provided for in the affected statutes through a single entity in order to achieve the purposes of this section.

As added by P.L.235-2005, SEC.8. Amended by P.L.1-2006, SEC.27.

4-4-11-2.7

Sec. 2.7. (a) This article and the affected statutes shall be liberally construed to effect the purposes of this article and the affected statutes.

(b) To the extent that the definitions in an affected statute are inconsistent with the definitions in this chapter or IC 4-4-10.9, the definitions in the affected statute prevail.

(c) Except as otherwise provided by subsection (b), to the extent that the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling and supersede all other laws.

As added by P.L.235-2005, SEC.9. Amended by P.L.162-2007, SEC.5.

4-4-11-3 Repealed

4-4-11-3(Repealed by P.L.20-1985, SEC.18(b).)

4-4-11-4

Sec. 4. (a) There is created for the public purposes set forth in section 2.5 of this chapter a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, to be known as the Indiana finance authority. The authority is separate and apart from the state in its corporate and sovereign capacity, and though separate from the state, the exercise by the authority of its powers constitutes an essential governmental, public, and corporate function.

(b) The authority shall be composed of the following five (5) members:

(1) The budget director, or the budget director's designee, who shall serve as chairman of the authority.

(2) The treasurer of state, or the treasurer of state's designee.

(3) Three (3) members appointed by the governor, no more than two (2) of whom may be from the same political party.

(c) All members shall be residents of the state.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.18; P.L.235-2005, SEC.10.

4-4-11-5

Sec. 5. Appointments to the authority under section 4(b)(3) of this chapter are for terms of four (4) years. Each member appointed to the authority under section 4(b)(3) of this chapter:

(1) holds office for the term of this appointment;

(2) continues to serve after expiration of the appointment until a successor is appointed and qualified;

(3) is eligible for reappointment; and

(4) may be removed from office by the governor with or without cause and serves at the pleasure of the governor.

The governor shall fill a vacancy for the unexpired term of any member appointed under section 4(b)(3) of this chapter.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.19; P.L.235-2005, SEC.11.

4-4-11-6

Sec. 6. (a) The members shall elect from among their number a vice chairman and other officers as they may determine.

(b) The members of the authority are entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with their duties as provided by law. Members are not entitled to the salary per diem provided by IC 4-10-11-2.1(b) or any other compensation while performing their duties.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.20-1985, SEC.3; P.L.11-1990, SEC.20; P.L.235-2005, SEC.12.

4-4-11-7

Sec. 7. The powers of the authority are vested in the members. Three (3) members of the authority constitute a quorum for the transaction of business. The affirmative vote of at least three (3) members is necessary for any action to be taken by the authority. Members may vote by written proxy delivered in advance to any other member who is present at the meeting. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all rights and perform all duties of the authority.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.21; P.L.235-2005, SEC.13.

4-4-11-8

Sec. 8. Meetings of the members of the authority shall be held at the call of the chairman or whenever any three (3) members so request. In any event, the members shall meet at least once every three (3) months to attend to the business of the authority.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.22.

4-4-11-9

Sec. 9. The governor shall appoint the public finance director, who shall serve at the pleasure of the governor. The public finance director shall:

(1) administer, manage, and direct the affairs and activities of the authority and the employees of the authority in accordance with the policies and under the control and direction of the members of the authority;
(2) approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant, and expenses incidental to the operation of the authority; and
(3) perform other duties as may be directed by the members of the authority in carrying out the purposes of the affected statutes.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.23; P.L.24-1995, SEC.10; P.L.235-2005, SEC.14.

4-4-11-10

Sec. 10. The public finance director shall attend the meetings of the members of the authority, shall keep a record of the proceedings of the authority, and shall maintain and be custodian of all books, documents, and papers filed with the authority and its official seal. The public finance director may make copies of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that the copies are true copies. All persons dealing with the authority may rely upon these certificates.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.24; P.L.235-2005, SEC.15.

4-4-11-11

Sec. 11. (a) The authority may, without the approval of the attorney general or any other state officer, employ bond counsel, other legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it considers necessary to carry out the efficient operation of the authority, and shall determine their qualifications, duties, compensation, and terms of service. The authority shall fix the compensation of the public finance director.

(b) The members of the authority may adopt a resolution delegating to:

(1) a member of the authority;
(2) the public finance director; or
(3) one (1) or more agents or employees of the authority;

administrative duties that they consider proper, including the powers of the authority set forth in this section.

(c) Employees of the authority shall not be considered employees of the state.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.25; P.L.18-1992, SEC.2; P.L.235-2005, SEC.16.

4-4-11-12

Sec. 12. Any member or employee of the authority who has, will have, or later acquires an interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of the interest in writing to the authority as soon as he has knowledge of the actual or prospective interest. The disclosure shall be announced in open meeting and entered upon the minutes of the authority. Upon disclosure, the member or employee shall not participate in any action by the authority authorizing the transaction. However, such an interest

shall not invalidate actions by the authority with the participation of the disclosing member prior to the time when the member became aware of the interest or should reasonably have become aware of the interest.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.26.

4-4-11-13

Sec. 13. Notwithstanding the provisions of any other law, no officer or employee of the state forfeits his office or employment by reason of his acceptance of membership in the authority or by reason of his providing services to the authority.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.27.

4-4-11-14

Sec. 14. (a) Each member of the authority, the public finance director, and any other employee or agent of the authority authorized by resolution of the authority to handle funds or sign checks, before beginning the individual's duties, shall execute a surety bond in the penal sum of fifty thousand dollars ($50,000). To the extent an individual described in this section is already covered by a bond required by state law, the individual need not obtain another bond so long as the bond required by state law is in at least the penal sum specified in this section and covers the individual's activities for the authority. In lieu of a bond, the chairman of the authority may execute a blanket surety bond covering each member and the employees or other officers of the authority. Each surety bond shall be conditioned upon the faithful performance of the individual's duties and shall be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bonds, each individual described in this section shall maintain the surety bonds in full force and effect. All costs of the surety bonds shall be borne by the authority.

(b) The public finance director, before beginning the public finance director's duties, must:

(1) execute a surety bond as provided in subsection (a); or

(2) be included in the coverage of a blanket surety bond described in subsection (a).

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.28; P.L.24-1995, SEC.11; P.L.235-2005, SEC.17.

4-4-11-14.5

Sec. 14.5. The authority, after consulting with the treasurer of state, the Indiana bond bank, the budget agency, and the commission for higher education, shall establish and periodically update a state debt management plan. The plan must include at least the following provisions with respect to debt issued or to be issued by the authority, other bodies corporate and politic of the state, and state educational institutions:

(1) An inventory of existing debt.

(2) Projections of future debt obligations.

(3) Recommended criteria for the appropriate use of debt as a means to finance capital projects.

(4) Recommended strategies to minimize costs associated with debt issuance.

(5) An analysis of the impact of debt issued by all bodies corporate and politic and state educational institutions on the state budget.

(6) Recommended guidelines for the prudent issuance of debt that creates a moral obligation of the state to pay all or part of the debt.

(7) Recommended policies for the investment of:

(A) proceeds of bonds, notes, or other obligations issued by bodies corporate and politic and state educational institutions; and

(B) other money, funds, and accounts owned or held by a body corporate and politic.

(8) Recommended policies for the establishment of a system of record keeping and reporting to meet the arbitrage rebate compliance requirements of the Internal Revenue Code.

(9) Recommended policies for the preparation of financial disclosure documents, including official statements accompanying debt issues, comprehensive annual financial reports, and continuing disclosure statements. The recommended policies must include a provision for approval by the budget director of any statements or reports that include a discussion of the state's economic and fiscal condition.

(10) Potential opportunities to more effectively and efficiently authorize and manage debt.

(11) Recommendations to the budget director, the governor, and the general assembly with respect to financing of capital projects.

The recommendations to the general assembly under subdivision (11) must be in an electronic format under IC 5-14-6.
As added by P.L.235-2005, SEC.18. Amended by P.L.2-2007, SEC.22.

4-4-11-15

Sec. 15. (a) The authority is granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes under the affected statutes, including but not limited to the following:

(1) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.

(2) Without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, guidelines, and policies not inconsistent with the affected statutes, and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the authority and conduct its business under the affected statutes. These bylaws, rules, guidelines, and policies must be made by a resolution of the authority introduced at one (1) meeting and approved at a subsequent meeting of the authority.

(3) Sue and be sued in its own name.

(4) Have an official seal and alter it at will.

(5) Maintain an office or offices at a place or places within the state as it may designate.

(6) Make, execute, and enforce contracts and all other instruments necessary, convenient, or desirable for the purposes of the authority or pertaining to:

(A) a purchase, acquisition, or sale of securities or other investments; or

(B) the performance of the authority's duties and execution of any of the authority's powers under the affected statutes.

(7) Employ architects, engineers, attorneys, inspectors, accountants, agriculture experts, silviculture experts, aquaculture experts, and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation.

(8) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(9) Borrow money, make guaranties, issue bonds, and otherwise incur indebtedness for any of the authority's purposes, and issue debentures, notes, or other evidences of indebtedness, whether secured or unsecured, to any person, as provided by the affected statutes. Notwithstanding any other law, the:

(A) issuance by the authority of any indebtedness that establishes a procedure for the authority or a person acting on behalf of the authority to certify to the general assembly the amount needed to restore a debt service reserve fund or another fund to required levels; or

(B) execution by the authority of any other agreement that creates a moral obligation of the state to pay all or part of any indebtedness issued by the authority;

is subject to review by the budget committee and approval by the budget director.

(10) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority, including the power to pay premiums on any insurance or reinsurance.

(11) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, and accept, from any source, aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the affected statutes, subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States, and lease or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, for any purpose consistent with the affected statutes.

(12) Enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders and enter into loan agreements, sales contracts, and leases with contracting parties, including participants (as defined in IC 13-11-2-151.1) for any purpose permitted under IC 13-18-13 or IC 13-18-21, borrowers, lenders, developers, or users, for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise (as defined in IC 5-28-31-1), rural development project (as defined in IC 5-28-31-20), industrial development project, purpose permitted under IC 13-18-13 and IC 13-18-21, or international exports, and distribute data and information concerning the encouragement

and improvement of agricultural enterprises and agricultural employment, rural development projects, industrial development projects, international exports, and other types of employment in the state undertaken with the assistance of the authority under this chapter.
(13) Enter into contracts or agreements with lenders and lessors for the servicing and processing of loans and leases pursuant to the affected statutes.
(14) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises, rural development projects, and industrial development projects.
(15) To the extent permitted under its contract with the holders of the bonds of the authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party.
(16) To the extent permitted under its contract with the holders of bonds of the authority, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise, rural development project, or industrial development project being financed.
(17) Notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, invest:
(A) the authority's money, funds, and accounts;
(B) any money, funds, and accounts in the authority's custody; and
(C) proceeds of bonds or notes;
in the manner provided by an investment policy established by resolution of the authority.
(18) Fix and revise periodically, and charge and collect, fees and charges as the authority determines to be reasonable in connection with:
(A) the authority's loans, guarantees, advances, insurance, commitments, and servicing; and
(B) the use of the authority's services or facilities.
(19) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency, or instrumentality of the United States or this state.
(20) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority.
(21) Enter into agreements concerning, and acquire, hold, and dispose by any lawful means, land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for the purposes of the affected statutes.
(22) Take assignments of accounts receivable, loans, guarantees, insurance, notes, mortgages, security agreements securing notes, and other forms of security, attach, seize, or take title by foreclosure or conveyance to any industrial development project when a guaranteed loan thereon is clearly in default and when in the opinion of the authority such acquisition is necessary to safeguard the industrial development project guaranty fund, and sell, or on a temporary basis, lease or rent such industrial development project for any use.
(23) Expend money provided to the authority by the Indiana economic development corporation from the industrial development project guaranty fund created by IC 5-28-30, subject to the terms of any agreement with the Indiana economic development corporation governing the expenditure of that money.
(24) Purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve industrial development projects, including land, machinery, equipment, or any combination thereof.
(25) Lease industrial development projects to users or developers, with or without an option to purchase.
(26) Sell industrial development projects to users or developers, for consideration to be paid in installments or otherwise.
(27) Make direct loans from the proceeds of the bonds to users or developers for:
(A) the cost of acquisition, construction, or installation of industrial development projects, including land, machinery, equipment, or any combination thereof; or
(B) eligible expenditures for an educational facility project described in IC 4-4-10.9-6.2(a)(2);
with the loans to be secured by the pledge of one (1) or more bonds, notes, warrants, or other secured or unsecured debt obligations of the users or developers.

(28) Lend or deposit the proceeds of bonds to or with a lender for the purpose of furnishing funds to such lender to be used for making a loan to a developer or user for the financing of industrial development projects under this chapter.
(29) Enter into agreements with users or developers to allow the users or developers, directly or as agents for the authority, to wholly or partially construct industrial development projects to be leased from or to be acquired by the authority.
(30) Establish reserves from the proceeds of the sale of bonds, other funds, or both, in the amount determined to be necessary by the authority to secure the payment of the principal and interest on the bonds.
(31) Adopt rules and guidelines governing its activities authorized under the affected statutes.
(32) Use the proceeds of bonds to make guaranteed participating loans.
(33) Purchase, discount, sell, and negotiate, with or without guaranty, notes and other evidences of indebtedness.
(34) Sell and guarantee securities.
(35) Make guaranteed participating loans under IC 4-4-21-26.
(36) Procure insurance to guarantee, insure, coinsure, and reinsure against political and commercial risk of loss, and any other insurance the authority considers necessary, including insurance to secure the payment of principal and interest on notes or other obligations of the authority.
(37) Provide performance bond guarantees to support eligible export loan transactions, subject to the terms of the affected statutes.
(38) Provide financial counseling services to Indiana exporters.
(39) Accept gifts, grants, or loans from, and enter into contracts or other transactions with, any federal or state agency, municipality, private organization, or other source.
(40) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property, wherever the property is located.
(41) Cooperate with other public and private organizations to promote export trade activities in Indiana.
(42) Cooperate with the Indiana economic development corporation in taking any actions necessary for the administration of the agricultural loan and rural development project guarantee fund established by IC 5-28-31.
(43) In cooperation with the Indiana economic development corporation, take assignments of notes and mortgages and security agreements securing notes and other forms of security, and attach, seize, or take title by foreclosure or conveyance to any agricultural enterprise or rural development project when a guaranteed loan to the enterprise or rural development project is clearly in default and when in the opinion of the Indiana economic development corporation the acquisition is necessary to safeguard the agricultural loan and rural development project guarantee fund, and sell, or on a temporary basis, lease or rent the agricultural enterprise or rural development project for any use.
(44) Expend money provided to the authority by the Indiana economic development corporation from the agricultural loan and rural development project guarantee fund created by IC 5-28-31, subject to the terms of any agreement with the Indiana economic development corporation governing the expenditure of that money.
(45) Reimburse from bond proceeds expenditures for industrial development projects under this chapter.
(46) Acquire, hold, use, and dispose of the authority's income, revenues, funds, and money.
(47) Purchase, acquire, or hold debt securities or other investments for the authority's own account at prices and in a manner the authority considers advisable, and sell or otherwise dispose of those securities or investments at prices without relation to cost and in a manner the authority considers advisable.
(48) Fix and establish terms and provisions with respect to:
    (A) a purchase of securities by the authority, including dates and maturities of the securities;
    (B) redemption or payment before maturity; and
    (C) any other matters that in connection with the purchase are necessary, desirable, or advisable in the judgment of the authority.
(49) To the extent permitted under the authority's contracts with the holders of bonds or notes, amend, modify, and supplement any provision or term of:
    (A) a bond, a note, or any other obligation of the authority; or
    (B) any agreement or contract of any kind to which the authority is a party.
(50) Subject to the authority's investment policy, do any act and enter into any agreement pertaining to a swap

agreement (as defined in IC 8-9.5-9-4) related to the purposes of the affected statutes in accordance with IC 8-9.5-9-5 and IC 8-9.5-9-7, whether the action is incidental to the issuance, carrying, or securing of bonds or otherwise.

(51) Do any act necessary or convenient to the exercise of the powers granted by the affected statutes, or reasonably implied from those statutes, including but not limited to compliance with requirements of federal law imposed from time to time for the issuance of bonds.

(b) The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers. The omission of a power from the list in subsection (a) does not imply that the authority lacks that power. The authority may exercise any power that is not listed in subsection (a) but is consistent with the powers listed in subsection (a) to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(c) This chapter does not authorize the financing of industrial development projects for a developer unless any written agreement that may exist between the developer and the user at the time of the bond resolution is fully disclosed to and approved by the authority.

(d) The authority shall work with and assist the Indiana housing and community development authority established by IC 5-20-1-3, the ports of Indiana established under IC 8-10-1-3, and the state fair commission established by IC 15-13-2-1 in the issuance of bonds, notes, or other indebtedness. The Indiana housing and community development authority, the ports of Indiana, and the state fair commission shall work with and cooperate with the authority in connection with the issuance of bonds, notes, or other indebtedness.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1983, SEC.3; P.L.20-1985, SEC.4; P.L.2-1987, SEC.2; P.L.25-1987, SEC.5; P.L.20-1988, SEC.8; P.L.11-1990, SEC.29; P.L.24-1995, SEC.12; P.L.4-2002, SEC.3; P.L.235-2005, SEC.19; P.L.232-2005, SEC.3; P.L.1-2006, SEC.28 and P.L.181-2006, SEC.1; P.L.162-2007, SEC.6; P.L.2-2008, SEC.15; P.L.98-2008, SEC.2.

4-4-11-15.1 Repealed

4-4-11-15.1 (Repealed by P.L.177-2011, SEC.5.)

4-4-11-15.2

Sec. 15.2. (a) Before using the proceeds of bonds to make a guaranteed participating loan, the authority shall require the financial institution to which the authority makes the guaranteed participating loan to make eligible export loans and sell them to the authority within a reasonable period of time.

(b) Issuance of bonds by the authority to fund the program of the authority under IC 4-4-21 is subject to the general provisions for the issuance of bonds set forth in this chapter, except for the requirements for the issuance of bonds under sections 17 and 17.5 of this chapter.

As added by P.L.20-1988, SEC.9. Amended by P.L.11-1990, SEC.30.

4-4-11-15.3

Sec. 15.3. The authority:

(1) may not deal in securities within the meaning of or subject to any securities law, securities exchange law, or securities dealers law of the United States of America or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the affected statutes;

(2) may not:

(A) emit bills of credit;

(B) accept deposits of money for time or demand deposit;

(C) administer trusts;

(D) engage in any form or manner, or in the conduct of, any private or commercial banking business; or

(E) act as a savings bank, savings association, or any other kind of financial institution; and

(3) may not engage in any form of private or commercial banking business.

As added by P.L.235-2005, SEC.21. Amended by P.L.1-2006, SEC.29.

4-4-11-15.4

Sec. 15.4. (a) The authority may issue bonds or notes and invest or loan the proceeds of those bonds or notes to a participant (as defined in IC 13-11-2-151.1) for the purposes of:

(1) the wastewater revolving loan program established by IC 13-18-13-1; and

(2) the drinking water revolving loan program established by IC 13-18-21-1.

(b) If the authority loans money to or purchases debt securities of a political subdivision (as defined in IC 13-11-2-164(a) and IC 13-11-2-164(b)), the authority may, by the resolution approving the bonds or notes, provide that subsection (c) is applicable to the political subdivision.

(c) Notwithstanding any other law, to the extent that any department or agency of the state, including the treasurer of state, is the custodian of money payable to the political subdivision (other than for goods or services provided by the political subdivision), at any time after written notice to the department or agency head from the authority that the political subdivision is in default on the payment of principal or interest on the obligations then held or owned by or arising from an agreement with the authority, the department or agency shall withhold the payment of that money from that political subdivision and pay over the money to the authority for the purpose of paying principal of and interest on bonds or notes of the authority. However, the withholding of payment from the political subdivision and payment to the authority under this section must not adversely affect the validity of the obligation in default.

As added by P.L.235-2005, SEC.22.

4-4-11-15.5

Sec. 15.5. (a) In addition to the powers enumerated in section 15(a) of this chapter, the authority may, in lieu of a private sale or leasing as authorized by section 15(a) of this chapter or a financing of an industrial development project under section 17 of this chapter, decide to hold a public offering under this section for the sale or leasing of any land or interests in land, building improvements, structures, personal property, and franchises and patents acquired by the authority under this chapter for an industrial development project. If the authority decides to hold a public offering for the sale or leasing of any property or interests acquired for an industrial development project, the offering shall be made in accordance with this section.

(b) Before offering for sale or lease to the public any property or interests acquired for an industrial development project under this section, the authority shall prepare an offering sheet showing the property or interests to be offered and copies of the offering sheets shall be furnished to prospective buyers or lessees. Maps and plats of the property and any additional information considered appropriate by the authority shall also be kept available for inspection at the office of the authority.

(c) The authority shall publish a notice of the offering in accordance with IC 5-3-1. The notice must state that at a designated time the authority will open and consider written offers for the purchase or lease of the property or interests being offered. In giving the notice, it is not necessary to describe specifically the property or interests or to specify the exact terms of the disposition, but the notice must state the general location of the property or interests and call attention generally to any requirements or limitations that the authority may establish in respect to the industrial development project.

(d) At the time fixed in the notice, the authority shall open and consider any offers received. All offers received shall be opened at public meetings of the authority and shall be kept open for public inspection.

(e) The authority may reject any or all bids or may make awards to the highest and best bidder or bidders. In determining the highest and best bids, the authority may take into consideration the following:

(1) The size and character of the improvements for the industrial development project as proposed by the bidder to be made on the property and the terms and conditions of the consideration offered by the bidder.

(2) The bidder's plans and ability to carry out the industrial development project with reasonable promptness.

(3) Whether the property and interests to be acquired by the bidder will be leased or released for the industrial development project.

(4) The nature and extent of any obligations to be undertaken by the authority in conjunction with the improvement of the property or interests to be acquired for the industrial development project as proposed by the bidder.

(5) The potential impact of the bidder's proposal on the creation of new employment or the retention of existing employment resulting from the industrial development project.

(6) The potential impact of the bidder's proposal to attract or establish a major new business enterprise or to retain or expand a significant existing business enterprise that will provide or preserve gainful employment for the citizens of the state.

(7) The economic benefits to the state and its citizens that will result from the industrial development project, as proposed by the bidder, including the dollar volume of new or preserved wages and salaries, increases in or

preservation of state and local government tax revenues, the incremental economic benefits to the citizens of the state, the state, and local governmental units potentially resulting from the industrial development project as proposed by the bidder, and any other direct or indirect economic benefit to the state and its citizens resulting from the industrial development project as proposed by the bidder.

(8) The potential impact and benefit to the state and its citizens of the industrial development project as proposed by the bidder from the standpoint of both human and economic welfare.

(f) In making an award to the highest and best bidder as provided in subsection (e), the authority shall determine whether in its judgment the potential benefits to the state and its citizens of the industrial development project as proposed by the bidder exceed the direct costs to the authority of acquiring the property and interests being offered for sale or lease for the industrial development project less any sums to be paid by the successful bidder pursuant to its bid. The authority's judgment concerning this determination shall be based on the economic studies, analyses, and projections that the authority determines are reasonably necessary. The authority's determination is final and conclusive.

(g) The authority may contract with a bidder concerning any of the factors listed in subsection (e), and the contract may provide for the deposit of surety bonds, the making of good faith deposits, liquidated damages, the right of reversion or repurchase, or other rights and remedies if the bidder fails to comply with the contract.

(h) After the opening, consideration, and determination of the written offers filed in response to the notice, the authority may dispose of all or part of the remaining available property or interests for any approved use, either at public sale or by private negotiation carried on by the authority, its regular employees, or real estate experts employed for that purpose. For a period of thirty (30) days after the opening of the written offers and determination on them, no sale, exchange, or lease may be made on terms less than that shown on the offering sheet, but after that period the authority may adjust the offering terms it considers necessary to further the industrial development project.

(i) An action to contest the validity of any sale or lease awarded and approved by the authority under this section may not be commenced more than thirty (30) days following the authority's adoption of a resolution designating the successful bidder or bidders and stating and approving the basic terms and conditions of the sale or lease.

As added by P.L.24-1987, SEC.4. Amended by P.L.11-1990, SEC.31.

4-4-11-15.6

Sec. 15.6. In addition to the powers listed in section 15 of this chapter, the authority may:

(1) issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire obligations issued by any entity authorized to acquire, finance, construct, or lease capital improvements under IC 5-1-17;

(2) issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire any obligations issued by the northwest Indiana regional development authority established by IC 36-7.5-2-1;

(3) after December 31, 2009, issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire any obligations issued by either the commuter rail service board established under IC 8-24-5 or the regional demand and scheduled bus service board established under IC 8-24-6;

(4) enter into leases and issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to carry out the purposes of IC 5-1-17.5 within a motorsports investment district; and

(5) perform any other functions determined by the authority to be necessary or appropriate to carry out the purposes of IC 5-1-17.5 within a motorsports investment district.

As added by P.L.214-2005, SEC.1. Amended by P.L.182-2009(ss), SEC.50; P.L.233-2013, SEC.3.

4-4-11-15.7

Sec. 15.7. (a) This section does not apply to any indebtedness issued by the authority if:

(1) the proceeds will be used for a project that has been specifically authorized by the general assembly; or

(2) the indebtedness is authorized under the affected statutes.

(b) Notwithstanding any other law in effect before:

(1) the authority issues indebtedness that establishes a procedure for the authority or a person acting on behalf of the authority to certify to the general assembly the amount needed to restore a debt service reserve fund or another fund to a required level; or

(2) execution by the authority of any other agreement that creates a moral obligation of the state to pay all or

any part of any indebtedness issued by the authority;

the authority is subject to, and shall comply with, to the extent practicable, the requirements set forth in IC 5-1.5-5-4(c) through IC 5-1.5-5-4(g) as if the authority was specifically named in IC 5-1.5-5-4(c) through IC 5-1.5-5-4(g).

(c) In addition:

(1) indebtedness described in IC 5-1.5-5-4(c) through IC 5-1.5-5-4(g) is considered a reference to an indebtedness or agreement referred to in this section; and

(2) a qualified entity referred to in IC 5-1.5-5-4(c) through IC 5-1.5-5-4(g) is considered a reference to a borrower of any indebtedness and to any other parties referred to in this section.

As added by P.L.229-2011, SEC.42.

4-4-11-16 Repealed

4-4-11-16 (Repealed by P.L.162-2007, SEC.42.)

4-4-11-16.1 Repealed

4-4-11-16.1 (Repealed by P.L.2-2005, SEC.131.)

4-4-11-16.2

Sec. 16.2. Notwithstanding the expiration of section 16.1 of this chapter on December 31, 2002, a loan guarantee made by the Indiana development finance authority under that section before December 31, 2002, remains a valid and binding obligation of the Indiana development finance authority after December 31, 2002, as if section 16.1 of this chapter had not expired.

As added by P.L.220-2011, SEC.19.

4-4-11-16.3 Repealed

4-4-11-16.3 (Repealed by P.L.162-2007, SEC.42.)

4-4-11-16.5 Repealed

4-4-11-16.5 (Repealed by P.L.162-2007, SEC.42.)

4-4-11-16.7

Sec. 16.7. (a) As used in this section, "Indiana development finance authority" refers to the Indiana development finance authority transferred to the authority by P.L.235-2005, SECTION 213.

(b) As used in this section, "Indiana employment development commission" refers to the Indiana employment development commission transferred to the Indiana development finance authority by P.L.11-1990, SECTION 139.

(c) The restrictions on eligibility of any mortgage or security agreement under IC 4-4-11-16 (before its repeal) do not invalidate any guarantee of the Indiana employment development commission made before January 1, 1985.

As added by P.L.220-2011, SEC.20. Amended by P.L.39-2011, SEC.1.

4-4-11-16.8

Sec. 16.8. (a) All powers, duties, and liabilities of the Indiana employment development commission and the Indiana agricultural development corporation with respect to bonds issued by the commission or the corporation in connection with any trust agreement or indenture securing those bonds are transferred to the authority.

(b) The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of the Indiana employment development commission and the Indiana agricultural development corporation remain unchanged, although the powers, duties, and liabilities of the commission and the corporation have been transferred to the authority.

(c) All bonds issued by the Indiana employment development commission and the Indiana agricultural development corporation are hereby legalized and declared valid if these bonds have been delivered and payment for those bonds has been received before July 1, 1990. All proceedings had and actions taken under which the bonds were issued are hereby fully legalized and declared valid.

As added by P.L.220-2011, SEC.21. Amended by P.L.39-2011, SEC.2.

4-4-11-16.9

Sec. 16.9. (a) As used in this section, "IHEFFA" means the Indiana health and educational facility financing

authority established by IC 5-1-16-2 (before its repeal).

(b) As used in this section, "IFA" means the Indiana finance authority established by IC 4-4-11-4.

(c) On July 1, 2007, all powers, duties, and liabilities of the IHEFFA are transferred to the IFA, as the successor entity. The terms of office of the members of the IHEFFA serving on June 30, 2007, terminate on July 1, 2007.

(d) On July 1, 2007, all records and property of the IHEFFA, including appropriations and other funds under the control or supervision of the authority, are transferred to the IFA, as the successor entity.

(e) After July 1, 2007, any amounts owed to the IHEFFA before July 1, 2007, are considered to be owed to the IFA, as the successor entity.

(f) After June 30, 2007, a reference to the IHEFFA in a statute, rule, or other document is considered a reference to the IFA, as the successor entity.

(g) All powers, duties, and liabilities of the IHEFFA with respect to bonds issued by the IHEFFA in connection with any trust agreement or indenture securing those bonds are transferred to the IFA, as the successor entity. The rights of the trustee under any trust agreement or indenture and the rights of the bondholders of the IHEFFA remain unchanged, although the powers, duties, and liabilities of the IHEFFA have been transferred to the IFA, as the successor entity.

As added by P.L.220-2011, SEC.22.

4-4-11-17

Sec. 17. (a) The authority may enter into negotiations with one (1) or more persons concerning the terms and conditions of financing agreements for industrial development projects. The authority shall consider whether a proposed industrial development project may have an adverse competitive effect on similar industrial development projects already constructed or operating in the local governmental unit where the industrial development project will be located. Preliminary expenses in connection with negotiations under this section may be paid from:

(1) money furnished by the proposed user or developer;

(2) money made available by the state or federal government, or by any of their departments or agencies; or

(3) money of the authority.

(b) The authority shall prepare a report that:

(1) briefly describes the proposed industrial development project;

(2) estimates the number and expense of public works or services that would be made necessary or desirable by the proposed industrial development project, including public ways, schools, water, sewers, street lights, and fire protection;

(3) estimates the total costs of the proposed industrial development project;

(4) for an industrial development project that is not exclusively either a pollution control facility or an educational facility project, estimates the number of jobs and the payroll to be created or saved by the project;

(5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution;

(6) for educational facility projects, describes how the project promotes the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of the people of the state; and

(7) for child care facility projects, describes the facilities and how the facilities promote accessibility to and increased options for child care for the people of the state.

The report shall be submitted to the executive director or chairman of the plan commission, if any, having jurisdiction over the industrial development project and, if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation where the industrial development project will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the report and transmit their comments, if any, to the authority within five (5) days from the receipt of the report.

(c) The authority shall hold a public hearing, which may be conducted by the authority, or any officer, member, or agent designated thereby, on the proposed financing agreement for the industrial development project, after giving notice by publication in one (1) newspaper of general circulation in the city, town, or county where the industrial development project is to be located at least ten (10) days in advance of this public hearing.

(d) If the authority finds that the industrial development project will be of benefit to the health, safety, morals, and general welfare of the area where the industrial development project is to be located, and complies with the purposes and provisions of this chapter, it may by resolution approve the proposed financing agreement. This resolution may also authorize the issuance of bonds payable solely from revenues and receipts derived from the

financing agreement or from payments made under an agreement to guarantee obligations of the developer, a user, a related person, or the authority by a developer, a user, a related person thereto, or the authority and the Indiana economic development corporation pursuant to the industrial development project guaranty fund under IC 5-28-30. The bonds are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(e) A financing agreement approved under this section must provide for payments in an amount sufficient to pay the principal of, premium, if any, and interest on the bonds authorized for the financing of the industrial development project. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the bond issue. The term of a financing agreement may not exceed fifty (50) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after fifty (50) years if a default under that financing agreement remains uncured, unless the termination is authorized by the terms of the financing agreement. If the authority retains an interest in the industrial development project, the financing agreement must require the user or the developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the industrial development projects, so that the authority will not incur any expenses on account of the industrial development projects other than those that are covered by the payments provided for in the financing agreement.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.20-1985, SEC.6; P.L.24-1987, SEC.6; P.L.11-1990, SEC.33; P.L.24-1995, SEC.13; P.L.227-1999, SEC.7 and P.L.273-1999, SEC.196; P.L.4-2002, SEC.4; P.L.162-2007, SEC.7.

4-4-11-17.5

Sec. 17.5. (a) In addition to all other authority granted to the authority under this chapter, including the authority to borrow money and to issue bonds to finance directly or indirectly the acquisition or development of industrial development projects undertaken or initiated by the authority, the authority may initiate programs for financing industrial development projects for developers and users in Indiana through the issuance of bonds under this chapter. In furtherance of this objective, the authority may do any of the following:

(1) Establish eligibility standards for developers and users, without complying with IC 4-22-2. However, these standards have the force of law if the standards are adopted after a public hearing for which notice has been given by publication under IC 5-3-1.

(2) Contract with any entity securing the payment of bonds issued under this chapter and authorizing the entity to approve the developers and users that can finance or refinance industrial development projects with proceeds from the bond issue secured by that entity.

(3) Lease to a developer or user industrial development projects upon terms and conditions that the authority considers proper and, with respect to the lease:

(A) charge and collect rents;

(B) terminate the lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides; and

(C) include in the lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the authority or to purchase any or all of the industrial development projects to which the lease applies.

(4) Lend money, upon such terms and conditions as the authority considers proper, to a developer or user under an installment purchase contract or loan agreement to:

(A) finance, reimburse, or refinance the cost of an industrial development project; and

(B) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the industrial development project financed or refinanced with the loan.

(5) Sell or otherwise dispose of any unneeded or obsolete industrial development project under terms and conditions determined by the authority.

(6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved any industrial development project owned by the authority.

(7) Require any type of security that the authority considers reasonable and necessary.

(8) Obtain or aid in obtaining property insurance on all industrial development projects owned or financed, or accept payment if any industrial development project property is damaged or destroyed.

(9) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided in the instrument if a developer or user defaults, and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the authority.

(10) Finance for eligible developers and users in connection with their industrial development projects:

(A) the cost of their industrial development projects; and

(B) in the case of a program funded from the proceeds of taxable bonds, working capital associated with the operation of such industrial development projects;

in amounts determined to be appropriate by the authority.

(11) Issue bonds to fund a program for financing multiple, identified or unidentified industrial development projects if the authority finds that issuance of the bonds will be of benefit to the health, safety, morals, or general welfare of the state and complies with the purposes and provisions of this chapter by promoting a substantial likelihood for:

(A) creating opportunities for gainful employment;

(B) creating business opportunities;

(C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);

(D) the abatement, reduction, or prevention of pollution;

(E) the removal or treatment of any substances in materials being processed that would otherwise cause pollution when used; or

(F) promoting affordable and accessible child care.

The authority may by resolution approve the proposed taxable bond issue. The authority may use appropriations to create a debt service reserve fund for the purpose of allowing the authority to issue pooled bonds, either tax-exempt or taxable, for the construction or renovation of licensed child care facilities (or child care facilities that are in the process of being licensed) under the authority's industrial development project section.

(b) As each unidentified industrial development project is identified for possible funding from a program under subsection (a)(11), the requirements of sections 17(a), 17(b), 17(c), and 17(e) of this chapter shall be complied with as a condition precedent to entering into a financing agreement for the funding of the industrial development project.

(c) Bonds issued to fund a program under this section are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(d) Any resolution adopted to authorize the issuance of taxable bonds to fund a program under subsection (a)(11) may provide that the bonds are payable solely from:

(1) revenues and receipts derived from the various financing agreements; or

(2) the payments made under any other agreements to secure the obligations of the developers, users, related persons, or the authority.

As added by P.L.25-1987, SEC.6. Amended by P.L.11-1990, SEC.34; P.L.24-1995, SEC.14; P.L.227-1999, SEC.8; P.L.273-1999, SEC.197; P.L.14-2000, SEC.10; P.L.162-2007, SEC.8.

4-4-11-18

Sec. 18. (a) The authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, loans made for the acquisition, construction, installation, rehabilitation, or purchase of industrial development projects. Prior to investment, purchase, assignment, or commitment, the lender shall certify that the proceeds of the authority's bonds will be used to make loans to provide financing for industrial development projects, or pending the making of such loans, invested in short term obligations complying with the requirements of this chapter. The authority shall purchase loans at a purchase price equal to the outstanding principal balance, but the authority may require a discount from the principal balance or make a payment of a premium to effect a fair rate of return for the lender, as determined by the rate of return on comparable investments under market conditions existing at the time of purchase. In addition to the payment of the outstanding principal balance, the authority shall pay the accrued interest due thereon, on the date the loan is delivered against payment therefor or on another date as may be established by agreement between the authority and the selling lender. The authority shall comply with section 17(b), 17(c), and 17(d) of this chapter in connection with the multiple project program described in this section.

(b) Before exercising any of the powers authorized in this section, the authority shall require the lender to certify

and agree that:

(1) the loan is, or, if the same has not been made, will be, at the time of making, in all respects a prudent investment; and

(2) the lender will make the loans and sell the same to the authority within a reasonable period of time.

(c) Before exercising any of the powers conferred by this section, the authority may:

(1) require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;

(2) require any type of security that it deems reasonable and necessary; or

(3) authorize the reservation of funds by lenders in the amount and subject to conditions as the authority considers reasonable and necessary under this chapter.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.25-1987, SEC.7; P.L.11-1990, SEC.35.

4-4-11-19

Sec. 19. (a) The authority shall have the power to borrow money and to issue its bonds from time to time in such principal amounts as the authority determines shall be necessary to provide sufficient funds to carry out its purposes, including:

(1) carrying out the powers stated in this chapter;

(2) the payment of interest on bonds of the authority;

(3) the establishment of reserves to secure the bonds; and

(4) all other expenditures of the authority incident to, necessary, and convenient to carry out its purposes and powers.

(b) The authority may also issue bonds in the manner and for the purposes provided by the affected statutes.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.36; P.L.24-1995, SEC.15; P.L.235-2005, SEC.24; P.L.162-2007, SEC.9.

4-4-11-20

Sec. 20. (a) The authority shall have the power to issue, from time to time, bonds to renew or to pay bonds, including the interest thereon, if such bonds have been issued to finance projects that constitute industrial development projects, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes as long as the bonds to be refunded were issued to finance projects that constitute industrial development projects. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. With respect to any bonds issued for an industrial development project under this chapter, the cumulative terms of refunding bonds shall not exceed fifty (50) years for any industrial development project or group of industrial development projects financed at the same time. If issued to refund bonds issued under IC 36-7-12 to finance projects that constitute industrial development projects, the cumulative terms of refunding bonds may not exceed forty (40) years.

(b) A savings to the authority or to the unit issuing the bonds to be refunded is not required for the issuance of the refunding bonds or the issuance of bonds to refund refunding bonds. Refunding bonds issued under this section are payable solely from revenues and receipts derived from:

(1) financing agreements with the users or developers of the facilities originally financed by the outstanding bonds, or related persons; or

(2) payments made under guaranty agreements by developers, users, or related persons.

The financing agreements or guaranties may be new financing agreements or guaranties or amendments of the original financing agreements or guaranties.

(c) Refunding bonds issued under this section are not in any respect a general obligation of the authority, nor are the bonds payable in any manner from revenues raised by taxation.

(d) Section 17(b) and 17(c) of this chapter does not apply to the issuance of refunding bonds under this section.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.37; P.L.24-1995, SEC.16.

4-4-11-21

Sec. 21. Except as may otherwise be expressly provided by the authority, every issue of its bonds shall be obligations of the authority payable solely out of any specified revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be

additionally secured by a pledge of any grant, contribution, or guarantee from the federal government or any corporation, limited liability company, association, institution, or person or a pledge of any money, income, or revenue of the authority from any source.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.38; P.L.8-1993, SEC.14.

4-4-11-22

Sec. 22. No bonds issued by the authority under this chapter shall constitute a debt, liability, or obligation of the state, or a pledge of the faith and credit of the state, but shall be payable solely as provided by section 21 of this chapter. Each bond issued under this chapter shall contain on its face a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.39.

4-4-11-23

Sec. 23. The bonds shall be authorized by a resolution of the authority, shall bear the date or dates, and shall mature at a time or times as the resolution may provide, except that no bond shall mature more than fifty (50) years from the date of its issue, except as provided in section 20 of this chapter. The bonds shall be in denominations, be in the form, either coupon or registered, carry the conversion or registration privileges, be executed in the manner, be payable in the medium of payment at the place or places inside or outside Indiana, and be subject to the terms of redemption, including redemption prior to maturity, as the resolution or any trust agreement or indenture of the authority securing the bonds may provide. The bonds shall bear interest at a rate or rates that may be fixed, variable, fixed convertible to variable, variable convertible to fixed, or any combination of these rates. Variable rates shall be determined in the manner and in accordance with the provisions set forth in the resolution or the trust agreement or indenture securing the bonds. The interest on the bonds may be payable at the time or times or at the interval or intervals as may be provided in the resolution or the trust agreement or indenture securing the bonds, including the compounding and payment of interest at maturity or at any other time or times as may be specified in the resolution, trust agreement, or indenture. The bonds and their issuance shall not be subject to the provisions of any other statute concerning bonds or the issuance of bonds. Bonds of the authority may be sold by the authority at public or private sale, and at a price or prices as the authority shall determine. No action to contest the validity of any bonds issued or guarantees entered into by the authority under this chapter shall be commenced more than thirty (30) days following the adoption of the resolution approving such bonds or guarantees as provided in this chapter.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.40.

4-4-11-24

Sec. 24. Any resolution authorizing the issuance of bonds or trust agreement or indenture pursuant to which the bonds are issued may contain provisions, which shall be a part of the contract or contracts with the holders of the bonds, as to the following:

(1) Pledging all or any part of the revenue of the authority to secure the payment of the bonds, subject to agreements with bondholders as may then exist.
(2) Pledging all or any part of the assets of the authority, including loans and obligations securing the same, to secure the payment of the bonds, subject to agreements with bondholders as may then exist.
(3) The use and disposition of the gross income from loans owned by the authority and payment of the principal of loans owned by the authority.
(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof.
(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders must consent to, and the manner in which the consent may be given.
(8) Limitations on the amount of money to be expended by the authority for operating expenses of the authority.
(9) Vesting in a trustee or trustee property, rights, powers, and trust as the authority may determine, and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.

(10) Defining the acts or omissions which shall constitute a default and the obligations or duties of the authority to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver. However, the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of this chapter.
(11) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.41.

4-4-11-25

Sec. 25. Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice. The resolution or any other instrument by which a pledge is created does not need to be recorded.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.42.

4-4-11-26

Sec. 26. The authority, subject to any agreements with bondholders as may then exist, shall have power out of any funds available to purchase bonds of the authority, which shall thereupon be cancelled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment on the bond.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.43.

4-4-11-27

Sec. 27. The bonds may be secured by a trust agreement or indenture by and between the authority and a corporate trustee, which may be a bank having the power of a trust company or any trust company within or without the state. The trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping, and application of all money related to the particular bond financing for which said trust agreement or indenture exists. The authority may provide by the trust agreement or indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust agreement or indenture or other depository, and for the method of disbursement thereof, with safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust agreement or indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust agreement or indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.44.

4-4-11-28

Sec. 28. Whether the bonds are in the form and character of negotiable instruments, the bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.
As added by Acts 1982, P.L.16, SEC.1.

4-4-11-29

Sec. 29. Any bonds issued by the authority under this chapter shall be executed by the manual or facsimile, except as otherwise provided in this chapter, signatures of such officers or agents of the authority as the authority shall designate. In the event bonds are issued pursuant to a trust indenture, the manual authentication of each bond by the trustee shall be required. In the event that bonds are issued without a trust indenture or trustee, at least one (1) of the officers or agents of the authority shall manually execute each bond. In the event that any of the members or officers of the authority shall cease to be members or officers of the authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles shall nevertheless be valid and sufficient for all purposes the same as if the members or officers had remained in office until the delivery.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.45.

4-4-11-30

Sec. 30. The members of the authority, the officers and employees of the authority, the public finance director, any agents of the authority, and any other persons executing bonds issued under the affected statutes are not subject to personal liability or accountability by reason of any act authorized by the affected statutes, including without limitation the issuance of bonds, the failure to issue bonds, the execution of bonds, and the making of guarantees.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1987, SEC.7; P.L.11-1990, SEC.46; P.L.235-2005, SEC.25.

4-4-11-31

Sec. 31. The authority may create and establish any funds and accounts necessary or desirable for its purposes.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.47; P.L.162-2007, SEC.10.

4-4-11-32

Sec. 32. All money received by the authority, except as provided in the affected statutes, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in these accounts shall be paid out on checks signed by the chairman or other officers or employees of the authority as the authority shall authorize or by wire transfer or other electronic means authorized by the authority. All deposits of money shall, if required by the authority, be secured in a manner that the authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits. Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the affected statutes are trust funds to be held and applied solely as provided in the affected statutes. The resolution authorizing any obligations, or trust agreement or indenture securing the same, may provide that any of the money may be temporarily invested pending the disbursement thereof, and shall provide that any officer with whom or any bank or trust company with which the money shall be deposited shall act as trustee of the money and shall hold and apply the same for the authorized purposes of the authority, subject to regulations as the affected statutes, the authority's investment policy, and the resolution or trust agreement or indenture may provide.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.48; P.L.235-2005, SEC.26.

4-4-11-33

Sec. 33. Notwithstanding section 32 of this chapter, the authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any money of the authority and of any money held in trust or otherwise for the payment of bonds, and to carry out the contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for the deposits.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.49.

4-4-11-34

Sec. 34. The state does hereby pledge to and agree with the holder of any bonds issued under this chapter that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with such holders or in any way impair the rights or remedies of such holders until the bonds, together with the interest, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.50.

4-4-11-35

Sec. 35. (a) All expenses incurred by the authority in carrying out the affected statutes shall be payable solely from funds provided under the affected statutes, and nothing in the affected statutes shall be construed to authorize the authority to incur indebtedness or liability of the state or any political subdivision of it.

(b) The authority shall annually prepare a budget that allocates the expenses incurred by the authority in an equitable manner among the various financing programs administered by the authority.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.51; P.L.235-2005, SEC.27.

4-4-11-36 Repealed

4-4-11-36 (Repealed by P.L.1-1991, SEC.6.)

4-4-11-36.1

Sec. 36.1. (a) Except as provided in subsections (b) through (c), all property, both tangible and intangible, acquired or held by the authority under the affected statutes is declared to be public property used for public and governmental purposes, and all such property and income therefrom shall at all times be exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state, except for the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) Property owned by the authority and leased to a person for an industrial development project is not public property. The property and the industrial development project are subject to all taxes of the state or any county, city, or other political subdivision of the state in the same manner and subject to the same exemptions as are applicable to all persons.

(c) Any industrial development project financed by a loan under the authority of this chapter shall not be considered public property and shall not be exempt from any taxes of this state, or any county, city, or other political subdivision thereof, except for pollution control equipment.

(d) An agricultural enterprise or rural development project financed by a loan under the authority of this chapter or IC 5-28-31 shall not be considered public property and shall not be exempt from Indiana taxes or any county, city, or other political subdivision of the state.

As added by P.L.1-1991, SEC.7. Amended by P.L.254-1997(ss), SEC.1; P.L.235-2005, SEC.28; P.L.162-2007, SEC.11.

4-4-11-36.5

Sec. 36.5. Bonds issued under this chapter and:

(1) proceeds received from their sale by a holder, to the extent of the holder's costs of acquisition;
(2) proceeds received on their redemption before maturity;
(3) proceeds received at their maturity; and
(4) interest received on them;

are exempt from state taxes as provided by IC 6-8-5.

As added by P.L.25-1987, SEC.8.

4-4-11-37

Sec. 37. The bonds issued by and under the authority of this chapter by the authority are declared to be legal investments in which all public officers or public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including capital, in their control or belonging to them. The bonds are also made securities which may be deposited with and received by all public officers and bodies of this state or any agency or political subdivisions of this state and all municipalities and public commissions for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.53.

4-4-11-38

Sec. 38. The authority shall, following the close of each fiscal year, submit an annual report of its activities under the affected statutes for the preceding year to the governor, the budget committee, and the general assembly. A report submitted to the general assembly must be in an electronic format under IC 5-14-6. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.54; P.L.235-2005, SEC.29.

4-4-11-39

Sec. 39. The issuance of bonds and the promulgation of rules under the affected statutes need not comply with

the requirements of any other state laws applicable thereto. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in the affected statutes. All agricultural enterprises, rural development projects, and industrial development projects for which funds are advanced, loaned, or otherwise provided by the authority under this chapter or IC 5-28-31 must be in compliance with any land use, zoning, subdivision, and other laws of this state applicable to the land upon which the agricultural enterprise, rural development project, or industrial development project is located or is to be constructed, but a failure to comply with these laws does not invalidate any bonds issued to finance an agricultural enterprise, rural development project, or industrial development project.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.55; P.L.235-2005, SEC.30; P.L.162-2007, SEC.12.

4-4-11-40

Sec. 40. Except as provided in IC 13-18-13 or IC 13-18-21, all income and assets of the authority are for its own use without appropriation, but shall revert to the state general fund if the authority by resolution transfers money to the state general fund or if the authority is dissolved.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.56; P.L.235-2005, SEC.31.

4-4-11-41

Sec. 41. Any bonds issued by the authority pursuant to this chapter and any other securities issued in connection with a financing under this chapter shall be exempt from the registration and other requirements of IC 23-19 and any other securities registration laws.
As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.57; P.L.27-2007, SEC.1; P.L.162-2007, SEC.13.

4-4-11-42 Repealed

4-4-11-42 (Repealed by P.L.11-1990, SEC.135.)

4-4-11-43

Sec. 43. (a) In addition to the findings of fact set forth in section 2 of this chapter, the general assembly finds that:

(1) the federal Clean Air Act, as implemented, will have a harmful and injurious effect on the state's coal industry, resulting in critical and chronic conditions of unemployment affecting the unemployed workers and their families and communities and, ultimately, the state;

(2) there exists clean coal technology that, if successfully implemented, will increase the fortunes of the coal industry and, as a result, workers in the industry and their families and communities and, ultimately, the state; and

(3) implementation of clean coal technology consistent with the findings of fact set forth in subdivisions (1) and (2) serves the public purposes of public health, welfare, safety, and economic development.

(b) For purposes of this section, "political subdivision" has the meaning set forth in IC 36-1-2-13.

(c) There is created within the authority a clean coal technology program. The authority shall manage the clean coal technology program with the advice of the lieutenant governor.

(d) Subject to subsection (i), the authority is authorized and directed to issue revenue bonds, or to guarantee its revenue bonds, in an amount not to exceed forty million dollars ($40,000,000), under this chapter to finance clean coal technology projects, including all costs related to the financing. Subject to subsection (i), as an alternative to issuing revenue bonds, and notwithstanding any other law, the authority may guarantee revenue bonds issued by another body politic and corporate of the state or a political subdivision for these purposes. Revenue bonds or guarantees are payable solely from or secured by:

(1) revenues from the clean coal technology projects;

(2) contributions made by and to the authority for the clean coal technology program;

(3) appropriations made by the general assembly; and

(4) appropriations or pledges made by other bodies corporate and politic of the state and political subdivisions.

(e) Notwithstanding any other law or provisions of this chapter, revenue bonds may be issued or guaranteed under this section by resolution of the authority. Subject to subsection (i), no other procedures or findings, including procedures or findings required under this chapter for revenue bonds or guarantees, are required to be followed. The

terms of the revenue bonds or the guarantee must be set forth in the resolution in the discretion of the authority.

(f) Bodies corporate and politic of the state and political subdivisions, including cities, towns, and counties, may make appropriations to the clean coal technology program and clean coal technology projects and, notwithstanding any other law, may pledge county option and economic development income tax revenues to the clean coal technology program or one (1) or more clean coal technology projects or to revenue bonds issued or guaranteed for the program or projects, whether by the authority or otherwise.

(g) Revenue bonds and guarantees of the authority under this section do not constitute debt of the state, and the general assembly shall not be obligated to make appropriations to the authority for such purposes.

(h) In addition to other powers granted to the authority or a political subdivision under this chapter, the authority or a political subdivision may lease clean coal technology projects under this section from a lessor corporation or authority and sublease the project to any entity. Bonds issued by any lessor corporation or authority shall be considered revenue bonds of a body politic and corporate of the state or a political subdivision for all purposes of this section.

(i) The authority may not issue revenue bonds to finance a clean coal technology project, guarantee revenue bonds issued by another body corporate and politic of Indiana or a political subdivision to finance a clean coal technology project, or enter into a lease in connection with a clean coal technology project unless and until:

(1) the lieutenant governor evaluates in writing the technical merits and feasibility of the clean coal technology project and the lieutenant governor presents the evaluation with a recommendation to proceed to the budget committee for review;

(2) the authority, in cooperation with the budget agency, evaluates the financial merits and feasibility of the clean coal technology project (including a plan of finance for the project and appropriate assurances that the project will be constructed as contemplated) and the authority presents the evaluation with a recommendation to proceed to the budget committee for review;

(3) the budget committee completes the reviews described in this subsection and makes a recommendation to proceed to the state board of finance; and

(4) the state board of finance approves the undertaking of the clean coal technology project and plan of finance.

(j) In evaluating the technical merits and feasibility of the clean coal technology project, the lieutenant governor may rely upon the written testimony of outside experts retained for this purpose.

(k) The plan of finance described in subsection (i) must indicate whether, in the authority's opinion, state appropriations will be needed to support the project and if so, the anticipated times and amounts of the appropriations.

(l) In creating the clean coal technology program and in authorizing the financing of clean coal technology projects, the general assembly expects that the plan of finance for each project will take into account revenues from the project and contributions from the beneficiaries of the program. For purposes of this section, "beneficiaries" means corporate and individual sponsors and proponents of projects, the coal industry and coal users, and employees of the coal industry and coal users, and political subdivisions whose economies are dependent in whole or in part on the coal industry. Contributions may be in cash, in kind, or in any combination of in cash and in kind, and may include real and personal property and interests in real and personal property and in technology, patents, licenses, franchises, marketing agreements, and shares and other interests in any of the foregoing. In evaluating and reviewing projects and plans of finance under this section, the authority, the lieutenant governor, the budget agency, the budget committee, and the state board of finance shall be guided by the general assembly's expectation as to contributions from the beneficiaries of the program as described in this subsection. However, failure of any particular beneficiary to contribute to a project shall not in itself disqualify a project.

(m) This section only applies to the clean coal technology program and clean coal technology projects and not to any other programs or projects undertaken by the authority.

As added by P.L.28-1995, SEC.1. Amended by P.L.1-2006, SEC.30.

4-4-11-44 Repealed

4-4-11-44 (Repealed by P.L.162-2007, SEC.42.)

4-4-11-44.6

Sec. 44.6. (a) For purposes of this section, "program" refers to:

(1) a program defined in IC 13-11-2-172(a) through IC 13-11-2-172(b); and

(2) the supplemental drinking water and wastewater assistance program established by IC 13-18-21-21.

(b) Notwithstanding any statute applicable to or constituting any limitation on the investment or reinvestment of funds by or on behalf of political subdivisions:

(1) a participant receiving financial assistance in connection with a program may invest and reinvest funds that constitute, replace, or substitute for the proceeds of bonds or other evidence of indebtedness sold to the authority under the program, together with any account or reserves of a participant not funded with the proceeds of the bonds or other evidence of indebtedness purchased by the authority but which secure or provide payment for those bonds or other evidence of indebtedness, in any instrument or other investment authorized under a resolution of the authority; and

(2) a participant that is obligated to make payments on bonds or other evidence of indebtedness purchased in connection with the operation of a program may invest and reinvest funds that constitute, replace, or substitute for the proceeds of those bonds or other evidence of indebtedness, together with any account or reserves of a participant not funded with the proceeds of the bonds or other evidence of indebtedness purchased under the program but which secure or provide payment for those bonds or other evidence of indebtedness, in any instrument or other investment authorized under a resolution of the authority.

As added by P.L.235-2005, SEC.32.

4-4-11-45 Repealed

4-4-11-45 (Repealed by P.L.162-2007, SEC.42.)

4-10-19-7

Sec. 7. (a) A loan or grant from the fund must be used by a political subdivision to establish or improve only the following infrastructure needs:

(1) Wastewater treatment projects, sewer systems, and drinking water systems, and extending water lines and installing hydrants for fire protection.

(2) Cargo, reliever, and general aviation airports, as classified by the Federal Aviation Administration on January 1, 1996.

(3) Juvenile detention centers.

(4) Infrastructure or local public improvements needed for the rehabilitation, redevelopment, economic development, and reuse of military base property acquired from the federal government by a reuse authority established under IC 36-7-30 or a redevelopment authority operating under IC 36-7-14.5-12.5.

(5) Highways, roads, streets, and public mass transportation systems for communities.

(b) A grant from the fund must:

(1) not exceed ten percent (10%) of the total project cost or five million dollars ($5,000,000), whichever is less; and

(2) be made in conjunction with the adoption of a resolution by a political subdivision that sets forth the political subdivision's commitment of revenues to the infrastructure project for which the grant is made.

As added by P.L.13-1996, SEC.1.

Chapter 25. Industrial Development Grant Fund

5-28-25

5-28-25-1

Sec. 1. As used in this chapter, "eligible entity" means:

(1) a city;

(2) a town;

(3) a county;

(4) a special taxing district;

(5) an economic development commission established under IC 36-7-12;

(6) a nonprofit corporation;

(7) a corporation established under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17 to distribute water for domestic and industrial use;

(8) a regional water, sewage, or solid waste district;

(9) a conservancy district that includes in its purpose the distribution of domestic water or the collection and treatment of waste; or

(10) the Indiana finance authority established under IC 4-4-11.

As added by P.L.4-2005, SEC.34. Amended by P.L.235-2005, SEC.94.

5-28-25-2

Sec. 2. As used in this chapter, "fund" refers to the industrial development grant fund established by section 4 of this chapter.

As added by P.L.4-2005, SEC.34.

5-28-25-3

Sec. 3. As used in this chapter, "industrial development program" means a program designed to aid economic development in Indiana and includes:

(1) the construction of airports, airport facilities, and tourist attractions;

(2) the construction, extension, or completion of:

(A) sanitary sewerlines, storm sewers, and other related drainage facilities;

(B) waterlines;

(C) roads and streets;

(D) sidewalks;

(E) rail spurs and sidings; and

(F) information and high technology infrastructure (as defined in IC 5-28-9-4);

(3) the leasing, purchase, construction, repair, and rehabilitation of property, both real and personal; and

(4) the preparation of surveys, plans, and specifications for the construction of publicly owned and operated facilities, utilities, and services.

As added by P.L.4-2005, SEC.34.

5-28-25-4

Sec. 4. (a) The industrial development grant fund is established within the state treasury. Grants may be made from the fund to eligible entities in accordance with this chapter and the rules adopted under this chapter.

(b) The corporation may receive and accept, for purposes of the fund, grants, gifts, and contributions from public and private sources, including, on behalf of the state, grants from agencies and instrumentalities of the United States.

(c) The fund consists of appropriations from the general assembly.

(d) The corporation shall administer the fund. The following may be paid from money in the fund:

(1) Expenses of administering the fund.

(2) Nonrecurring administrative expenses incurred to carry out the purposes of this chapter.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund.

(f) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the state general fund.

As added by P.L.4-2005, SEC.34.

5-28-25-5

Sec. 5. (a) The secretary of commerce, subject to the approval of the governor and budget director, may direct the auditor of state to make an approved grant from the fund to an eligible entity.

(b) The money granted must be used by the recipient to institute and administer an approved industrial development program.

As added by P.L.4-2005, SEC.34.

7.1-4-8-2

Sec. 2. The monies deposited in the postwar construction fund shall be used for construction by the state for the use of:

(1) penal, benevolent, charitable and educational institutions of the state;

(2) public safety projects of the state; and
(3) municipal water and sewer infrastructure improvements necessary or useful for an institution or project described in subdivision (1) or (2).

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.234-2007, SEC.274.

Chapter 2. Utility Regulation

8-1-2

8-1-2-0.3

Sec. 0.3. Notwithstanding the amendments made to section 103 of this chapter by P.L.93-1993, in the case of a public utility that is described in section 103(c) of this chapter, as amended by P.L.93-1993, the effective date for the implementation of the amendments made to section 103 of this chapter by P.L.93-1993, is July 1, 1993.
As added by P.L.220-2011, SEC.185.

8-1-2-1

Sec. 1. (a) Except as provided in section 1.1 of this chapter, "public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

(1) conveyance of telegraph or telephone messages;
(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

(1) the conveyance of telegraph and telephone messages;
(2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees,

trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

(1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;

(2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or

(3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

(Formerly: Acts 1913, c.76, s.1a; Acts 1955, c.37, s.1; Acts 1957, c.313, s.1.) As amended by P.L.59-1984, SEC.8; P.L.384-1987(ss), SEC.5; P.L.8-1989, SEC.38; P.L.8-1993, SEC.105; P.L.91-1995, SEC.2; P.L.27-2006, SEC.3.

8-1-2-1.1

Sec. 1.1. A person or an entity that:

(1) transmits communications through Internet Protocol enabled retail services, including:

(A) voice;

(B) data;

(C) video; or

(D) any combination of voice, data, and video communications; or

(2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1);

is not a public utility solely by reason of engaging in any activity described in subdivisions (1) through (2).

As added by P.L.27-2006, SEC.4.

8-1-2-1.2

Sec. 1.2. (a) As used in this section, "landlord" refers to a landlord or a person acting on a landlord's behalf.

(b) A landlord that distributes water or sewage disposal service from a public utility or a municipally owned utility to one (1) or more dwelling units is not a public utility solely by reason of engaging in this activity if the landlord complies with all of the following:

(1) The landlord bills tenants, separately from rent, for:

(A) the water or sewage disposal service distributed; and

(B) any costs permitted by subsection (c).

(2) The total charge for the services described in subdivision (1)(A) is not more than what the landlord paid the utility for the same services, less the landlord's own use.

(3) The landlord makes a disclosure to the tenant that satisfies subsection (d). A disclosure required by this subdivision must be in:

(A) the lease;

(B) the tenant's first bill; or

(C) a writing separate from the lease signed by the tenant before entering into the lease.

(c) A landlord may charge only the following costs under subsection (b)(1)(B):

(1) A reasonable initial set-up fee.

(2) A reasonable administrative fee that may not exceed four dollars ($4) per month.

(3) A reasonable fee for the return for insufficient funds of an instrument in payment of charges.

(d) A disclosure required by subsection (b)(3) must:

(1) be printed using a font that is not smaller than the largest font used in the lease; and

(2) include the following:

(A) A description of the water or sewage disposal services to be provided.

(B) An itemized statement of the fees that will be charged as permitted under subsection (c).

(C) The following statement: "If you believe you are being charged in violation of this disclosure or if you believe you are being billed in excess of the utility services provided to you as described in this disclosure, you have a right under Indiana law to file a complaint with the Indiana Utility Regulatory Commission. You may contact the Commission at (insert phone number for the tenant to contact the Commission).".

(e) If a complaint is filed under section 34.5 or 54 of this chapter alleging that a landlord may be acting as a

public utility in violation of this section, the commission shall:

(1) consider the issue; and

(2) if the commission considers necessary, enter an order requiring that billing be adjusted to comply with this section.

As added by P.L.103-2008, SEC.1. Amended by P.L.1-2009, SEC.64.

8-1-2-2

Sec. 2. The attorney-general shall be the legal counsel for the commission and shall prosecute all cases in which the commission may be interested. He shall advise the commission in legal matters arising in the discharge of their duties and shall represent the commission in all suits to which the commission is a party. The attorney-general shall have the right to call upon the prosecuting attorney of any county or the legal officers of any city to assist in the prosecution or defense of any case in their county or city to which the commission may be a party, and it shall be the duty of such prosecuting attorney or legal officer to give such assistance as may be required by the attorney general.

(Formerly: Acts 1913, c.76, s.3; Acts 1917, c.16, s.1.)

8-1-2-3 Repealed

8-1-2-3 (Repealed by P.L.89-1985, SEC.14.)

8-1-2-4

Sec. 4. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any service rendered or to be rendered either directly or in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. The commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid discrimination in rates between classes of customers, or, whenever in the judgment of the commission public interest so requires, may, for ratemaking and accounting purposes, or either of them, consider a single municipality and/or two (2) or more municipalities and/or the adjacent and/or intervening rural territory as a regional unit where the same utility serves such region, and may within such region prescribe uniform rates for consumers or patrons of the same class. Nothing in this chapter contained shall authorize any public utility during the remainder of the term of any grant or franchise under which it may be acting on May 1, 1913, to charge for any service, in such grant or franchise contracted, exceeding the maximum rate or rates therefor, if any, that may be fixed in such grant or franchise.

(Formerly: Acts 1913, c.76, s.7; Acts 1933, c.190, s.2.) As amended by P.L.59-1984, SEC.10.

8-1-2-5

Sec. 5. (a) Every public utility, and every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users. Every public utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, before any telephone system operated by it, and the telephone toll line operated by another such public utility or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections and such physical connection or connections will not result in irreparable injury to the owner or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of such utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by such utility, such public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or persons who have constructed and installed such equipment. The term "physical connection", as used in this section, shall mean such number of trunk lines or

complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(b) In case of failure to agree upon such use or the conditions or compensations for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

(c) Such use so ordered shall be permitted, and such physical connection or connections so ordered shall be made and such conditions and compensation so prescribed for such use, and such terms and conditions upon which such physical connection or connections shall be made, as so determined, shall be lawful conditions and compensations for such use, and the lawful terms and conditions upon which such physical connection or connections shall be made, to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party as provided in sections 73 and 74 of this chapter and IC 8-1-3, and such statute so far as applicable shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion.
(Formerly: Acts 1913, c.76, s.8; Acts 1933, c.190, s.3; Acts 1935, c.293, s.2.) As amended by P.L.59-1984, SEC.11; P.L.8-1993, SEC.106.

8-1-2-6

Sec. 6. (a) The commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, giving such consideration as it deems appropriate in each case to all bases of valuation which may be presented or which the commission is authorized to consider by the following provisions of this section. As one of the elements in such valuation the commission shall give weight to the reasonable cost of bringing the property to its then state of efficiency. In making such valuation, the commission may avail itself of any information in possession of the department of local government finance or of any local authorities. The commission may accept any valuation of the physical property made by the interstate commerce commission of any public utility subject to the provisions of this act.

(b) The lands of such public utility shall not be valued at a greater amount than the assessed value of said lands exclusive of improvements as valued for taxation. In making such valuation no account shall be taken of presumptive value resting on natural resources independent of any structures in relation thereto, the natural resource itself shall be viewed as the public's property. No account shall be taken of good will for presumptive values growing out of the operation of any utility as a going concern, all such values to rest with the municipality by reason of the special and exclusive grants given such utility enterprises. No account shall be taken of construction costs unless such costs were actually incurred and paid as part of the cost entering into the construction of the utility. All public utility valuations shall be based upon tangible property, that is, such property as has value by reason of construction costs, either in materials purchased or in assembling of materials into structures by the labor or (of) workers and the services of superintendents, including engineers, legal and court costs, accounting systems and transportation costs, and also including insurance and interest charges on capital accounts during the construction period. As an element in determining value the commission may also take into account reproduction costs at current prices, less depreciation, based on the items set forth in the last sentence hereof and shall not include good will, going value, or natural resources.

(c) In determining the amount of allowable operating expenses of a utility, the commission may not take into consideration or approve any expense for institutional or image building advertising, charitable contributions, or political contributions.
(Formerly: Acts 1913, c.76, s.9; Acts 1933, c.190, s.4; Acts 1947, c.307, s.1.) As amended by Acts 1979, P.L.85, SEC.1; P.L.90-2002, SEC.309.

8-1-2-6.1

Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

As added by P.L.88-1985, SEC.1. Amended by P.L.105-1989, SEC.1.

8-1-2-6.6

Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

"Qualified pollution control property" means an air pollution control device on a coal burning electric generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

As added by P.L.88-1985, SEC.2. Amended by P.L.23-1988, SEC.21; P.L.105-1989, SEC.2; P.L.159-2002, SEC.3.

8-1-2-6.7

Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

As added by P.L.105-1989, SEC.3.

8-1-2-6.8

Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

As added by P.L.159-2002, SEC.4.

8-1-2-7

Sec. 7. Before final determination of such value, the commission shall, after notice to the public utility, hold a public hearing as to such valuation in the manner prescribed for a hearing in sections 54 through 67 of this chapter, and the provisions of such sections so far as applicable shall apply to such hearing.

(Formerly: Acts 1913, c.76, s.10.) As amended by P.L.59-1984, SEC.12.

8-1-2-8

Sec. 8. (a) The commission, within five (5) days after any such valuation is determined, shall deliver a written

statement thereof to the public utility interested and a copy thereof to the clerk of each municipality in which any part of the plant or equipment of such utility is located. In such statement, the commission shall declare and fix the reasonable and necessary expenses incurred by it in making such valuation, and, within twenty (20) days thereafter, the utility shall pay into the treasury of the state the amount of the expenses so declared and fixed.

(b) The commission shall not make any order, based on any such valuation, increasing any rate of any public utility until such expenses have been paid. All such moneys paid into the treasury of the state are hereby appropriated to the commission until and including September 30, 1925, to defray its expenses until said date and thereafter shall be paid into the general fund of the state.

(Formerly: Acts 1913, c.76, s.11; Acts 1925, c.63, s.1.) As amended by P.L.23-1988, SEC.22.

8-1-2-9

Sec. 9. The commission may, at any time, on its own initiative, make a revaluation of such property.

(Formerly: Acts 1913, c.76, s.12.)

8-1-2-10

Sec. 10. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. In formulating a system of accounting for any class of public utilities, the commission shall consider any system of accounting established by any federal law, commission or department and any system authorized by a national association of such utilities.

(Formerly: Acts 1913, c.76, s.13.)

8-1-2-11

Sec. 11. Every public utility engaged, directly or indirectly, in any other or subsidiary business shall, if ordered by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such business, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other business; provided, every public utility may, with consent of the commission and the proper local authorities, furnish to all patrons or persons applying therefor any service, product, or commodity which it creates as a necessary incident and subsidiary to its main or primary business. No such consent shall be granted except as provided in section 86 of this chapter, and every such subsidiary business shall be subject to all the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.14.) As amended by P.L.59-1984, SEC.13.

8-1-2-12

Sec. 12. The commission shall prescribe the forms of all books, accounts, papers and records required to be kept, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records.

(Formerly: Acts 1913, c.76, s.15.)

8-1-2-13

Sec. 13. The commission shall cause to be prepared suitable blanks for carrying out the purpose of this chapter and shall, when necessary, furnish such blanks to each public utility.

(Formerly: Acts 1913, c.76, s.16.) As amended by P.L.59-1984, SEC.14.

8-1-2-14

Sec. 14. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission, unless required by other public authority.

(Formerly: Acts 1913, c.76, s.17.)

8-1-2-15

Sec. 15. Each public utility shall have an office in one (1) of the towns or cities in this state in which its property or some part thereof is located, and shall keep in said office all books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall be at any time removed from this state, except upon such conditions as may be prescribed by the commission. A majority in number of the board of directors of each and every company or

association organized under Indiana statutes and coming under the provisions of this chapter shall be bona fide residents and citizens of the state of Indiana while acting as such directors.
(Formerly: Acts 1913, c.76, s.18; Acts 1915, c.110, s.1.) As amended by P.L.59-1984, SEC.15.

8-1-2-16

Sec. 16. The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the thirtieth day of April following, such balance sheet, together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.
(Formerly: Acts 1913, c.76, s.19; Acts 1917, c.150, s.1.) As amended by Acts 1979, P.L.84, SEC.3; P.L.103-1983, SEC.2.

8-1-2-17

Sec. 17. The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.
(Formerly: Acts 1913, c.76, s.20.)

8-1-2-18

Sec. 18. The agents, accountants or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records and memoranda kept by such public utility.
(Formerly: Acts 1913, c.76, s.21.)

8-1-2-19

Sec. 19. Every public utility shall carry a separate, proper and adequate depreciation account whenever the commission, after investigation, shall determine that such depreciation account reasonably can be required. The commission, from time to time, shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates, tolls and charges shall be such as will provide the amounts required over and above the reasonable and necessary operating expenses, to maintain such property in an operating state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates, so ascertained and determined by the commission. The commission shall make changes in such rates of depreciation, from time to time, as it may find necessary.
(Formerly: Acts 1913, c.76, s.22; Acts 1925, c.64, s.1.)

8-1-2-20

Sec. 20. The commission shall also prescribe rules, regulations and forms of accounts regarding such depreciation, which the public utility is required to carry into effect.
(Formerly: Acts 1913, c.76, s.23.)

8-1-2-21

Sec. 21. The commission shall provide for such depreciation in fixing the rates, tolls and charges to be paid by the public.
(Formerly: Acts 1913, c.76, s.24.)

8-1-2-22

Sec. 22. All money thus provided shall be set aside out of the earnings and carried in a separate depreciation fund. The money in this fund shall be applied first to depreciation expenses. Any balance in the fund, not applied to depreciation expenses, may be invested by the public utility or expended temporarily by it for new construction, extensions or additions to its utility property. This fund shall be used for no other purpose. If invested, the income from the investment shall be carried into and become a part of the depreciation fund. Any balance, not applied to depreciation expenses, shall always remain a part of the depreciation fund. In no event shall moneys, temporarily expended from this fund for new construction, extensions or additions to the property, be carried into or considered a part of the capital account of such public utility. Upon the sale of any public utility property, to continue in operation as such, the balance in the depreciation fund, unexpended for depreciation expenses, shall be transferred to the purchaser and by the purchaser shall be held, administered and used as herein authorized and required.

(Formerly: Acts 1913, c.76, s.25; Acts 1925, c.64, s.2.)

8-1-2-23

Sec. 23. The commission shall keep itself informed of all new construction, extensions and additions to the property of such public utility and shall prescribe the necessary forms, regulations and instructions to the officers and employees of such public utility for the keeping of construction accounts which shall clearly distinguish all operating expenses and new construction. Unless a public utility shall obtain the approval by the commission of any expenditure exceeding ten thousand dollars ($10,000) for an extension, construction, addition or improvement of its plant and equipment, the commission shall not, in any proceeding involving the rates of such utility, consider the property acquired by such expenditures as a part of the rate base, unless in such proceeding the utility shall show that such property is in fact used and useful in the public service; Provided, That the commission in its discretion may authorize the expenditure for such purpose of a less amount than shown in such estimate.
(Formerly: Acts 1913, c.76, s.26; Acts 1933, c.190, s.5.)

8-1-2-24

Sec. 24. (a) Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

(b) A customer of an electricity supplier (as defined in IC 8-1-2.3-2) that is a public utility that is under the jurisdiction of the commission for the approval of rates and charges may apply to the commission for a temporary discount to the demand component of the rates and charges contained in the electricity supplier's applicable standard tariff for service to a single facility of the customer that is located in Indiana if the customer:

(1) has or will have a maximum demand for electricity of at least ten (10) megawatts at the facility;

(2) employs more than fifty (50) full-time employees at the facility;

(3) demonstrates that the temporary discount is necessary and essential for the customer to attract or create additional jobs or retain existing jobs at the facility;

(4) demonstrates that the customer's demand for electricity at the facility will increase by at least one (1) megawatt as a result of the jobs created or retained under subdivision (3); and

(5) has applied for and received from the Indiana economic development corporation approval for the requested temporary discount amount.

(c) Upon receiving an application from a customer of an electricity supplier under subsection (b), the commission may approve a temporary discount to the demand component of the rates and charges contained in the electricity supplier's applicable standard tariff if the commission finds that the discount is just and reasonable and consistent with the circumstances described by the customer under subsection (b), as follows:

(1) For circumstances not described in subdivision (2) or (3), a discount up to ten percent (10%).

(2) For circumstances involving a redevelopment project in which the customer is involved, a discount up to fifteen percent (15%).

(3) For circumstances involving a brownfield project in which the customer is involved, a discount up to twenty percent (20%).

(d) A temporary discount authorized under subsection (c) expires three (3) years after the effective date of the discount. The cost of the temporary discount shall be included by the commission in the cost of service for the electricity supplier and shall be deferred for ratemaking purposes by the electricity supplier for subsequent recovery in connection with the electricity supplier's next general retail electric rate case.

(e) A customer that receives a temporary discount under this section for service to a facility may not:

(1) enter into a contract with the customer's electricity supplier for electric utility service to the facility that provides for rates, terms, or conditions that differ from the rates, terms, and conditions contained in the electricity supplier's applicable standard tariff; or

(2) take electric utility service to the facility under a commission-approved economic development tariff offered by the electricity supplier.

(f) A temporary discount authorized under subsection (c) applies only to the demand component of the

customer's rates and charges related to the increase in the customer's load described in subsection (b)(4). However, the commission may authorize the application of the applicable temporary discount under subsection (c) to all or part of the demand component of the customer's rates and charges related to the entire facility if the commission determines that a broader application is beneficial to all customers of the electricity supplier.
(Formerly: Acts 1913, c.76, s.27.) As amended by P.L.59-1984, SEC.16; P.L.133-2013, SEC.3.

8-1-2-25

Sec. 25. The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.
(Formerly: Acts 1913, c.76, s.28.)

8-1-2-26

Sec. 26. Each public utility shall furnish to the commission in such form and at such time as the commission shall require, such accounts, reports, and information as will show in itemized detail:

(1) the depreciation per unit;
(2) the salaries and wages separately per unit;
(3) legal expenses per unit;
(4) taxes and rentals separately per unit;
(5) the quantity and value of material used per unit;
(6) the receipts from residuals, byproducts, services or other sales, separately per unit;
(7) the total and net cost per unit;
(8) the gross and net profit per unit;
(9) the dividends and interest per unit;
(10) surplus or reserve per unit;
(11) the prices per unit paid by consumer;
(12) names of, and amount of fees paid to, legal counsel who are not employees;
(13) names of, and amount of fees paid to, other consultants; and
(14) such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service for the public.

(Formerly: Acts 1913, c.76, s.29.) As amended by P.L.103-1983, SEC.1.

8-1-2-27 Repealed

8-1-2-27(Repealed by Acts 1979, P.L.17, SEC.55.)

8-1-2-28 Repealed

8-1-2-28(Repealed by Acts 1979, P.L.17, SEC.55.)

8-1-2-29

Sec. 29. (a) All facts and information in the possession of the commission and all reports, records, files, books, accounts, papers, and memoranda of every nature whatsoever in its possession shall be open to inspection by the public at all reasonable times subject to IC 5-14-3.

(b) Nothing in this section shall be construed to limit the access of parties to rate and finance proceedings before the commission to information in the possession of another party that is relevant to the issues in the proceeding.
(Formerly: Acts 1913, c.76, s.32.) As amended by P.L.59-1984, SEC.17; P.L.88-1985, SEC.3; P.L.114-1987, SEC.1.

8-1-2-30 Repealed

8-1-2-30(Repealed by P.L.12-1984, SEC.6.)

8-1-2-31 Repealed

8-1-2-31(Repealed by P.L.114-1987, SEC.2.)

8-1-2-32

Sec. 32. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of product or service. These shall be lawful units for the purpose of this chapter.
(Formerly: Acts 1913, c.76, s.35.) As amended by P.L.59-1984, SEC.18.

8-1-2-33

Sec. 33. The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and prescribe reasonable regulations for examinations and testing of such product or service and for the measurement thereof.
(Formerly: Acts 1913, c.76, s.36.)

8-1-2-34

Sec. 34. The commission shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. Nothing contained in this section shall limit in any manner any powers or authority vested in municipal corporations as provided in section 101 of this chapter.
(Formerly: Acts 1913, c.76, s.37.) As amended by P.L.59-1984, SEC.19.

8-1-2-34.5

Sec. 34.5. (a) The Commission shall establish reasonable rules and regulations to govern the relations between public utilities and any or all classes of their customers. Those rules and regulations shall cover the following subjects:

(1) extension of service;
(2) extension of credit;
(3) deposits, including interest thereon;
(4) billing procedures;
(5) termination of service;
(6) complaints; and
(7) information and notice to customers of their rights under the rules.

(b) Notwithstanding IC 8-1-2-54, the commission may investigate and enter orders on complaints filed by individual customers arising under this section. The commission may establish an appeals division to act on its own behalf regarding individual customer complaints. The decision of the division shall be binding on all parties to the complaint. The commission shall review decisions of the appeals division upon timely request by an affected party.

(c) This section does not invalidate any rule or regulation adopted by the commission before July 1, 1979, to govern the relations between public utilities and their consumers if the rule or regulation is consistent with this section.
As added by Acts 1979, P.L.85, SEC.2.

8-1-2-35

Sec. 35. The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance or rate be found unreasonably defective or incorrect to the disadvantage of the consumer or user.
(Formerly: Acts 1913, c.76, s.38.)

8-1-2-36

Sec. 36. The commission may purchase such material, apparatus and standard measuring instruments for such examinations and tests as it may deem necessary.
(Formerly: Acts 1913, c.76, s.39.)

8-1-2-36.5

Sec. 36.5. (a) As used in this section, "building" means any building containing more than one (1) residential unit, including trailer courts and similar multiple user installations, but does not include hotels, motels, or other similar transient lodging.

(b) Notwithstanding any other law, any owner, operator, or manager of a building in which:

(1) units of the building are separately rented or leased; and

(2) units of the building are not individually metered for electricity because the building is exempt from commission rules on master metering or for any other lawful reason;

may install kilowatt hour submetering equipment for each individual dwelling unit to fairly allocate the cost of each individual dwelling unit's electrical consumption and charge the tenant of the dwelling unit for that consumption.

(c) The submetering equipment shall be used to measure the number of kilowatt hours used by a tenant during a particular billing period. The amount that a tenant owes is equal to:

(1) the total number of kilowatt hours consumed by the tenant during a particular billing period; multiplied by

(2) a fraction, the numerator of which is the total electric bill for a master meter, and the denominator of which is the total kilowatt hours consumed on a master meter, all for the same billing period as in subdivision (1).

The total electric bill for a master meter, in addition to the rate per kilowatt hour, includes any sales tax, demand charges, energy component charges, and any other taxes or charges that are lawfully applied to the bill. The owner, operator, or manager of a building or buildings served by a master meter may not impose on the tenant any extra charges over and above the total electric bill for a master meter (which includes the rate per kilowatt hour and any lawful taxes or charges, but does not include a late payment charge) for a particular billing period than is charged to the owner, operator, or manager of a building or buildings served by a master meter.

(d) The commission shall adopt rules in accordance with IC 4-22-2 to govern the following:

(1) Maintenance of adequate records by the owner, operator, or manager of a building or buildings served by a master meter.

(2) Accuracy, testing, and recordkeeping associated with the submeters.

(3) Complaints of violations of this section, filed with and investigated by the consumer affairs department of the commission.

(4) Procedures for the installation of submetering equipment.

(5) Procedures for hearings on complaints filed under subdivision (3).

(6) Any other rules necessary to carry out this section.

(e) In the hearings on complaints under subsection (d)(5), the commission's authority is limited solely to a determination of whether a violation did in fact occur.

(f) The commission shall adopt rules in accordance with IC 4-22-2 to carry out this section.

As added by P.L.60-1984, SEC.1. Amended by P.L.7-1987, SEC.11; P.L.23-1988, SEC.23.

8-1-2-37

Sec. 37. The commission, its agents, experts, or examiners shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this chapter and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

(Formerly: Acts 1913, c.76, s.40.) As amended by P.L.59-1984, SEC.20.

8-1-2-38

Sec. 38. Every public utility shall file with the commission, within a time fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are enforced at the time for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed, without the consent of the commission, the rates, tolls and charges in force January 1, 1913.

(Formerly: Acts 1913, c.76, s.41.)

8-1-2-39

Sec. 39. Every public utility shall file, with and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(Formerly: Acts 1913, c.76, s.42.)

8-1-2-40

Sec. 40. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible to the public and as can be conveniently inspected.
(Formerly: Acts 1913, c.76, s.43.)

8-1-2-41

Sec. 41. Where a schedule of joint rates or charges is or may be in force between two (2) or more public utilities, such schedules shall, in like manner, be printed and filed with the commission and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as provided in sections 38 and 40 of this chapter.
(Formerly: Acts 1913, c.76, s.44.) As amended by P.L.59-1984, SEC.21.

8-1-2-42

Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

(1) the requested increase relates to a different type of utility service;

(2) the commission finds that the utility's financial integrity or service reliability is threatened; or

(3) the increase is based on:

(A) a rate structure previously approved by the commission; or

(B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission.

(b) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned utility which includes or authorizes any changes in charges based upon costs is effective without the approval of the commission. Before the commission approves any changes in the schedule of rates, tolls, and charges of an electric utility, which generates and sells electricity, based upon the cost of fuel to generate electricity or upon the cost of fuel included in the cost of purchased electricity, the utility consumer counselor shall examine the books and records of the public, municipally owned, or cooperatively owned generating utility to determine the cost of fuel upon which the proposed charges are based. In addition, before such a fuel cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the fuel charge. The utility consumer counselor shall conduct his review and make a report to the commission within twenty (20) days after the utility's request for the fuel cost charge is filed. The commission shall hold the summary hearing and issue its order within twenty (20) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a fuel cost charge or such a summary hearing.

(c) Regardless of the pendency of any request for a fuel cost charge by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(d) An electric generating utility may apply for a change in its fuel charge not more often than each three (3) months. When such application is filed the petitioning utility shall show to the commission its cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity, for the period between its last

order from the commission approving fuel costs in its basic rates and the latest month for which actual fuel costs are available. The petitioning utility shall also estimate its average fuel costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric utility the requested fuel cost charge if it finds that:

(1) the electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible;

(2) the actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses;

(3) the fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission, in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned; and

(4) the utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and

(B) the estimated fuel costs for the same latest three (3) calendar months for which actual fuel costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(g) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for changes in gas costs or the cost of gas that have previously been approved by the commission. Gas costs or cost of gas may include the gas utility's costs for gas purchased by it from pipeline suppliers, costs incurred for leased gas storage and related transportation, costs for supplemental and substitute gas supplies, costs incurred for exploration and development of its own sources of gas supplies and other expenses relating to gas costs as shall be approved by the commission. Changes in a gas utility's rates, tolls, and charges based upon changes in its gas costs shall be made in accordance with the following provisions:

(1) Before the commission approves any changes in the schedule of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of gas upon which the proposed changes are based. In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct his review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed. The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and

records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the requested gas cost charge if it finds that:

(A) the gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible;

(B) the pipeline supplier or suppliers of the gas utility has requested or has filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;

(C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and

(D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(Formerly: Acts 1913, c.76, s.45; Acts 1975, P.L.75, SEC.1.) As amended by Acts 1979, P.L.85, SEC.4; P.L.43-1983, SEC.9; P.L.115-1987, SEC.1; P.L.108-1995, SEC.1.

8-1-2-42.1

Sec. 42.1. (a) As used in this section, "substitute natural gas" means pipeline quality gas produced by a facility that uses a gasification process to convert coal into a gas capable of being used:

(1) by a utility to supply gas utility service to end use consumers in Indiana; or

(2) as a fuel used by a utility to produce electric power to supply electric utility service to end use consumers in Indiana.

(b) As used in this section, "customer choice program" means a program under which residential and commercial consumers located in the service area of a gas or electric utility may:

(1) purchase their supply from a provider other than the utility in the service area; and

(2) receive transportation service from the utility in the service area for the delivery of the supply purchased

under subdivision (1) to the consumer's premises.

(c) Subject to IC 8-1-8.9 and notwithstanding any other law, if the commission approves a contract for the purchase of substitute natural gas, or electricity generated in connection with the production of substitute natural gas, by a utility, the commission shall allow the utility to recover the following costs on a timely basis throughout the term of the contract:

(1) All costs incurred in connection with and resulting from the utility's purchases under the contract, including the cost of the substitute natural gas and related costs for generation, transmission, transportation, and storage services.

(2) All costs the utility incurs in obtaining replacement gas if the seller fails to deliver substitute natural gas required to be delivered under the contract, including the price of the gas, and related transportation, storage, and hedging costs, to the extent those costs are not paid by the seller.

(3) Upon petition by the utility, any other costs the commission finds are reasonably necessary in association with the contract.

(d) Any costs recovered under subsection (c):

(1) are in addition to the recovery of other costs; and

(2) shall be made through an adjustment under section 42 of this chapter or another rate adjustment mechanism that allows for comparable timely cost recovery.

(e) If a customer choice program is implemented, expanded, or renewed for a utility during the term of a contract approved by order of the commission under subsection (c) that has the effect of reducing the utility's sales volumes, a condition of the authorization of that program must be the proportionate assignment of the gas or electric utility's substitute natural gas purchase obligation to the service providers in the customer choice program that meets the assignment requirements in the approved contract.

(f) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the term of a contract approved under this section that adversely affects a utility's right to timely recover costs under this section or to otherwise fully recover such costs.

(g) With respect to utilities that are parties to a contract for the purchase of substitute natural gas approved by the commission under this section, the state covenants and agrees that as long as the contract is in effect the state will not limit, alter, or impair a utility's right to recover costs as provided in this section. Notwithstanding any other law, neither the commission nor any other state agency, political subdivision, or governmental unit may take any action that would have the effect of limiting, altering, or impairing a utility's right to recover costs as provided in this section.

As added by P.L.175-2007, SEC.9. Amended by P.L.52-2008, SEC.2.

8-1-2-42.3

Sec. 42.3. (a) As used in this section, "relevant period" means the last month of the twelve (12) month test period considered in the current application before the commission under section 42(d)(3) and 42(g)(3)(c) of this chapter and extending through the longer of the:

(1) immediately preceding fifty-nine (59) months; or

(2) period beginning with the first full month following the last order issued by the commission in which the utility's basic rates and charges were approved.

(b) The commission shall order a reduction in the:

(1) fuel charge applied for under section 42(d)(3) of this chapter; or

(2) gas cost adjustment applied for under section 42(g)(3)(c) of this chapter;

only if the amount determined under subsection (c) is greater than zero.

(c) The commission shall calculate for the relevant period the sum of the differentials (both positive and negative) between the determined return and the authorized return for the respective twelve (12) month test period for each application for the relevant period, in each case as shown directly or indirectly by the commission's findings in each respective order issued under section 42(d) or 42(g) of this chapter.

(d) Consistent with subsection (b), the amount of reduction shall be determined by dividing the lesser of:

(1) the amount determined under subsection (c); or

(2) the amount by which the return in the current application before the commission was more than the authorized return;

by the total number of applications filed during the twelve (12) month test period considered in the current application before the commission.

(e) This section does not apply to a general district corporation within the meaning of IC 8-1-13-23(a).
As added by P.L.108-1995, SEC.2.

8-1-2-42.5

Sec. 42.5. The commission shall by rule or order, consistent with the resources of the commission and the office of the utility consumer counselor, require that the basic rates and charges of all public, municipally owned, and cooperatively owned utilities (except those utilities described in IC 8-1-2-61.5) are subject to a regularly scheduled periodic review and revision by the commission. However, the commission shall conduct the periodic review at least once every four (4) years and may not authorize a filing for an increase in basic rates and charges more frequently than is permitted by operation of section 42(a) of this chapter.
As added by P.L.88-1985, SEC.4.

8-1-2-42.7

Sec. 42.7. (a) For purposes of this section,"average prime rate" means the arithmetic mean, to the nearest one-hundredth of one percent (0.01%), of the prime rate values published in the Federal Reserve Bulletin for the three (3) months preceding the first month of a calendar quarter.

(b) For purposes of this section, "case in chief" includes the following:

(1) Testimony, exhibits, and supporting work papers.
(2) Proposed test year and rate base cutoff dates.
(3) Proposed revenue requirements.
(4) Jurisdictional operating revenues and expenses, including taxes and depreciation.
(5) Balance sheet and income statements.
(6) Jurisdictional rate base.
(7) Proposed cost of capital and capital structure.
(8) Jurisdictional class cost of service study.
(9) Proposed rate design and pro forma tariff sheets.

(c) For purposes of this section, "utility" refers to the following:

(1) A public utility.
(2) A municipally owned utility.
(3) A cooperative owned utility.

(d) In a petition filed with the commission to change basic rates and charges, a utility may designate a test period for the commission to use. The utility must include with its petition the utility's complete case in chief. The commission shall approve a test period that is one (1) of the following:

(1) A forward looking test period determined on the basis of projected data for the twelve (12) month period beginning not later than twenty-four (24) months after the date on which the utility petitions the commission for a change in its basic rates and charges.
(2) A historic test period based on a twelve (12) month period that ends not more than two hundred seventy (270) days before the date on which the utility petitions the commission for a change in its basic rates and charges. The commission may adjust a historic test period for fixed, known, and measurable changes and appropriate normalizations and annualizations.
(3) A hybrid test period based on at least twelve (12) consecutive months of combined historic data and projected data. The commission may adjust the historic data as set forth in subdivision (2).

(e) This subsection does not apply to a proceeding in which a utility is seeking an increase in basic rates and charges and requesting initial relief under IC 8-1-2.5-5 or IC 8-1-2.5-6. If the commission does not issue an order on a petition filed by a utility under subsection (d) within three hundred (300) days after the utility files its case in chief in support of the proposed increase, the utility may temporarily implement fifty percent (50%) of the utility's proposed permanent increase in basic rates and charges, subject to the commission's review and determination under subsection (f). The utility shall submit the proposed temporary rates and charges to the commission at least thirty (30) days before the date on which the utility seeks to implement the temporary rates and charges. The temporary rates and charges may reflect proposed or existing approved customer class allocations and rate designs. However, if the utility uses a forward looking test period described in subsection (d)(1) or a hybrid test period described in subsection (d)(3), the utility may not:

(1) implement the temporary increase before the date on which the projected data period begins; or

(2) object during a proceeding before the commission to a discovery request for historic data as described in subsection (d)(2) solely on the basis that the utility has designated a forward looking or hybrid test period.

(f) The commission shall review the temporary rates and charges to determine compliance with this section. The temporary rates and charges take effect on the latest of the following dates unless the commission determines that the temporary rates and charges are not properly designed in compliance with this section:

(1) The date proposed by the utility.

(2) Three hundred (300) days after the date on which the utility files its case in chief.

(3) The termination of any extension of the three hundred (300) day deadline authorized under subsection (g) or (h).

If the commission determines that the temporary rates and charges are not properly designed in compliance with this section, the utility may cure the defect and file the corrected temporary rates and charges with the commission within a reasonable period determined by the commission.

(g) If the commission grants a utility an extension of the procedural schedule, the commission may extend the three hundred (300) day deadline set forth in subsection (e) by the length of the extension.

(h) The commission may suspend the three hundred (300) day deadline set forth in subsection (e) one (1) time for good cause. The suspension may not exceed sixty (60) days.

(i) If a utility implements temporary rates and charges that differ from the permanent rates and charges approved by the commission in a final order on the petition filed under subsection (d), the utility shall perform a reconciliation and implement a refund, in the form of a credit rider, or a surcharge, as applicable, on customer bills rendered on or after the date the commission approves the credit or surcharge. The refund or surcharge shall be credited or added in equal amounts each month for six (6) months. The amount of the total refund or surcharge equals the amount by which the temporary rates and charges differ from the permanent rates and charges, plus, for a refund only, interest at the applicable average prime rate for each calendar quarter during which the temporary rates and charges were in effect.

As added by P.L.133-2013, SEC.4.

8-1-2-43

Sec. 43. Copies of all new schedules shall be filed as hereinbefore provided in every station or office of such public utility where payments are made by consumers or users ten (10) days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

(Formerly: Acts 1913, c.76, s.46.)

8-1-2-44

Sec. 44. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rates, tolls, or charges not specified in such schedule. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges unless the same are changed as provided in this chapter.

(Formerly: Acts 1913, c.76, s.47.) As amended by P.L.59-1984, SEC.22.

8-1-2-45

Sec. 45. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

(Formerly: Acts 1913, c.76, s.48.)

8-1-2-46

Sec. 46. The commission shall provide for a comprehensive classification of such service for each public utility and such classification may take into account the quantity used, the time when used, the purpose for which used and other reasonable consideration. Each public utility is required to conform its schedules of rates, tolls and charges to such classification.

(Formerly: Acts 1913, c.76, s.49.)

8-1-2-46.1

Sec. 46.1. In providing for a classification of service, the commission shall approve a rate for furnishing traction power for a commuter transportation system (IC 8-5-15) that is equal to or lower than the rate approved for any industrial or commercial consumer of the public utility. The rate established under this section is subject to timely payments as negotiated between the utility and the district for furnishing the traction power.
As added by P.L.385-1987(ss), SEC.1.

8-1-2-47

Sec. 47. The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations of public utilities and other parties before it.

All hearings shall be open to the public.
(Formerly: Acts 1913, c.76, s.50.)

8-1-2-48

Sec. 48. (a) The commission shall inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. If, in its inquiry into the management of any public utility, the commission finds that the amount paid for the services of its officers, employees, or any of them, is excessive, or that the number of officers or persons employed by such utility is not justified by the actual needs of the utility, or that any other item of expense is being incurred by the utility which is either unnecessary or excessive, the commission shall designate such item or items, and such item or items so designated, or such parts thereof as the commission may deem unnecessary or excessive, shall not be taken into consideration in determining and fixing the rates which such utility is permitted to charge for the service which it renders.

(b) For purposes of IC 8-1-2, IC 8-1-8.5, IC 8-1-8.7, IC 8-1-8.8, and IC 8-1-27, wages paid to an independent contractor of a utility for construction or maintenance performed for the utility shall not be found to be excessive merely because the wages are those normally paid for work of the same type and quality in the labor market in which the work for the utility is being performed.

(c) In carrying out its duties and powers under subsection (a) with regard to any utility which sells or generates electricity, the commission may also inquire into or audit a utility's powerplant efficiency and system reliability.
(Formerly: Acts 1913, c.76, s.51; Acts 1927, c.146, s.1.) As amended by Acts 1981, P.L.104, SEC.4; P.L.53-1992, SEC.1; P.L.1-1993, SEC.47; P.L.159-2002, SEC.5.

8-1-2-49

Sec. 49. (1) The commission or any commissioner when authorized by the commission or any person or persons employed by the commission for that purpose shall upon demand have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection. The commission shall have jurisdiction over holders of the voting capital stock of all public utility companies under its jurisdiction to such extent as may be necessary to enable the commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stock. One percent (1%) or more is a substantial interest, within the meaning of this section.

(2) Said commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with utility corporations and other utility companies under the jurisdiction of the commission, to the extent of access to all accounts and records of joint or general expenses, any portion of which may be applicable to such transactions, and to the extent of authority to require such reports to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section only, "affiliated interests" include the following:

(a) Every corporation and person owning or holding directly or indirectly ten percent (10%) or more of the voting capital stock of such utility corporation.

(b) Every corporation and person in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(c) Every corporation ten percent (10%) or more of whose voting capital stock is owned by any person or

corporation owning ten percent (10%) or more of the voting capital stock of such utility corporation or by any person or corporation in any such chain of successive ownership of ten percent (10%) or more of voting capital stock.

(d) Every person who is an officer or director of such utility corporation or of any corporation in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(e) Every corporation which has one (1) or more officers or one (1) or more directors in common with such utility corporation.

(f) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such utility corporation even though such influence is not based upon stockholding, stockholders, directors, or officers to the extent specified in this section.

(g) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such utility corporation in conjunction with one (1) or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such utility corporation within the meaning of this section even though no one of them alone is so affiliated; provided, however, that no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation is otherwise subject to the jurisdiction of the commission or such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such utility corporation during the two (2) year period next preceding.

No management, construction, engineering, or similar contract, made after March 8, 1933, with any affiliated interest, as defined in this section, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing, is hereby authorized to disapprove such contract.

(3) Every annual report of any utility corporation reporting under this chapter to the commission shall contain, in addition to any other information required to be included by or pursuant to law, the following information:

(a) It shall state the name and address of, and the number of shares held by each holder of one percent (1%) or more of the voting capital stock of the reporting corporation, according to its records.

(b) Where one percent (1%) or more of the voting capital stock of the reporting corporation is held by a trustee or trustees, or other intermediate agency, for the beneficial interest of an owner or owners, other than the holder of record, or where one percent (1%) or more of the voting capital stock of the reporting corporation is held by another corporation, such annual report shall state, if the information is available from the records of the reporting corporation, the name and addresses and respective interests of such beneficial owners, and the names and addresses of the officers and directors of any such other corporation and the total number of shares of capital stock thereof held by each, showing separately the number of shares of the voting capital stock, and the names and addresses and respective stockholdings of every stockholder of such other corporation holding one percent (1%) or more of its voting capital stock. Such report shall be accompanied by a certified copy of each trust agreement or other instrument under which any voting capital stock of the reporting corporation is held.

Where the information specified in subsection (3)(b) is not available from the records of the reporting corporation, any such holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, shall file with the commission, a sworn statement, in such form and to be filed within such time as the commission shall prescribe, setting forth whether or not any of such stock held by him or it is so held for the beneficial ownership of any person, firm, limited liability company, or corporation other than the record holder thereof, and, if stated to be so held, the names, addresses, and respective interests of such beneficial owners. If such stockholder is a trustee, he or it also shall file with such statement a certified copy of the trust agreement or other instrument under which such stock is held. A corporation which is the holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, and regardless of whether the information is or is not available or apparently available from the records of the reporting corporation, also shall file with the commission a sworn statement, in such form and to be filed within such time as the commission shall prescribe, or shall include in the sworn statement, if any, required to be filed by it pursuant to other provisions of this chapter a statement setting forth the names and addresses of its officers and directors and the total number of shares of its capital stock, held by each, showing separately the number of shares

of the voting capital stock, and the names and addresses and respective stockholdings of each stockholder thereof holding one percent (1%) or more of its voting capital stock.

(4) If the annual report, or the sworn statements provided for in this section, do not furnish the information desired, because of any chain of successive ownership or of stockholdings, or because of an intermediate agency or agencies, or for any other reason, the commission, by order, may require similar sworn statements from any person or corporation who or which can give the necessary information, as the commission may have discovered from its investigations, to the end that the commission may obtain a complete disclosure of the natural persons, firms, limited liability companies, or corporations and their respective interests, who or which own or control directly or indirectly one percent (1%) or more of the voting capital stock of the reporting corporation.
(Formerly: Acts 1913, c.76, s.52; Acts 1933, c.190, s.6.) As amended by P.L.59-1984, SEC.23; P.L.8-1993, SEC.107.

8-1-2-50

Sec. 50. The commission may require, by order or subpoena to be served on any public utility in the same manner that a summons is served in a civil action in the circuit court, the production, within the state, at such time and place as it may designate, of any books, accounts, papers, or records kept by said public utility in any office or place without the state of Indiana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any public utility failing or refusing, after reasonable written notice, to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00).
(Formerly: Acts 1913, c.76, s.53.)

8-1-2-51

Sec. 51. For the purpose of making any investigation with regard to any public utility, the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties, such agent shall have every power whatsoever of an inquisitorial nature granted in this chapter to the commission. The commission may conduct any number of such investigations contemporaneously through different agents and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all the testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so orders, nor further investigation.
(Formerly: Acts 1913, c.76, s.54.) As amended by P.L.59-1984, SEC.24.

8-1-2-52

Sec. 52. Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of this chapter and shall make specific answers to all questions submitted by the commission.
(Formerly: Acts 1913, c.76, s.55.) As amended by P.L.59-1984, SEC.25.

8-1-2-53

Sec. 53. Any public utility receiving from the commission any blanks, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and, in case it is unable to answer any question, it shall give a good and sufficient reason for such failure, and said answers shall be verified under oath by the president, secretary, superintendent or general manager or person in charge of such public utility and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission for examination any or all maps, profiles, contracts, reports of engineer and all documents, books, accounts, papers and records, or copies of any or all of the same, with a complete inventory of all its property in such form as the commission may direct.
(Formerly: Acts 1913, c.76, s.56.)

8-1-2-54

Sec. 54. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by ten (10) persons, firms, limited liability companies, corporations, or associations, or ten (10) complainants of all or any of the aforementioned classes, or by any public

utility, that any of the rates, tolls, charges or schedules or any joint rate or rates in which such petitioner is directly interested are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act, complained of, shall be entered by the commission without a formal public hearing.
(Formerly: Acts 1913, c.76, s.57.) As amended by P.L.8-1993, SEC.108.

8-1-2-54.1

Sec. 54.1. Notwithstanding any other law, if the commission fails to conduct a formal public hearing or to issue an order within a reasonable period of time upon a complaint that complies with sections 54 or 61 of this chapter, the complainant may bring an action for mandate under IC 34-27 to compel the commission to conduct the hearing or to issue the order. However, notwithstanding IC 34-27 or any other law or rule, the action for mandate may only be filed in the court of appeals. For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.
As added by P.L.106-1989, SEC.1. Amended by P.L.1-1998, SEC.86.

8-1-2-55

Sec. 55. The commission shall, prior to such formal hearing, notify the public utility complained of that a complaint has been made, and ten (10) days after such notice has been given, the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.
(Formerly: Acts 1913, c.76, s.58.)

8-1-2-56

Sec. 56. The commission shall give the public utility and the complainant, if any, ten (10) days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.
(Formerly: Acts 1913, c.76, s.59.)

8-1-2-57

Sec. 57. The commission may, in its discretion, when complaint is made of more than one (1) rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.
(Formerly: Acts 1913, c.76, s.60.)

8-1-2-58

Sec. 58. Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate, or can not be obtained, or that an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice.
(Formerly: Acts 1913, c.76, s.61.)

8-1-2-59

Sec. 59. If, after making such investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matter so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten (10) days after such notice has been given, the commission may proceed to set a time and place for a hearing and an investigation, as hereinbefore provided.
(Formerly: Acts 1913, c.76, s.62.)

8-1-2-60

Sec. 60. Notice of the time and place for such hearing shall be given to the public utility and to such other

interested persons as the commission shall deem necessary, as provided in section 56 of this chapter, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.
(Formerly: Acts 1913, c.76, s.63.) As amended by P.L.59-1984, SEC.26.

8-1-2-61

Sec. 61. (a) Any public utility may make complaint as to any matter affecting its own rates or service. The petition or complaint must include a statement as to whether the utility, if a not-for-profit water utility or municipal utility, has any outstanding indebtedness to the federal government. The public utility shall publish a notice of the filing of such petition or complaint in a newspaper of general circulation published in any county in which the public utility renders service. An order affecting rates or service may be entered by the commission without a formal public hearing, if:

(1) the utility is a not-for-profit water utility or a municipal utility; and

(2) the utility has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government with which the utility has outstanding evidence of indebtedness to the federal government.

The commission may, however, on its own motion require a formal public hearing, and shall, upon a motion filed by the utility consumer counselor, by any public or municipal corporation, or by ten (10) individuals, firms, corporations, limited liability companies, or associations, or ten (10) complainants of all or any of these classes, hold a formal public hearing with respect to any such petition or complaint.

(b) In any general rate proceeding under subsection (a) which requires a public hearing and in which an increase in revenues is sought which exceeds the sum of two million five hundred thousand dollars ($2,500,000), the commission shall conduct at least one (1) public hearing in the largest municipality located within such utility's service area.
(Formerly: Acts 1913, c.76, s.64; Acts 1951, c.161, s.1; Acts 1963, c.187, s.1.) As amended by Acts 1979, P.L.85, SEC.3; P.L.103-1983, SEC.3; P.L.8-1993, SEC.109.

8-1-2-61.5

Sec. 61.5. (a) An order affecting rates of service may be entered by the commission without a formal public hearing in the case of any public or municipally owned utility that:

(1) serves less than five thousand (5,000) customers;

(2) primarily provides retail service to customers; and

(3) does not serve extensively another utility.

(b) The commission may require a formal public hearing on any petition or complaint filed under this section concerning a rate change request by a utility upon its own motion or upon motion of any of the following:

(1) The utility consumer counselor.

(2) A public or municipal corporation.

(3) Ten (10) individuals, firms, limited liability companies, corporations, or associations.

(4) Ten (10) complainants of any class described in this subsection.

(c) A not-for-profit water utility or a not-for-profit sewer utility must include in its petition a statement as to whether it has an outstanding indebtedness to the federal government. When an indebtedness is shown to exist, the commission shall require a formal hearing, unless the utility also has included in its filing written consent from the agency of the federal government with which the utility has outstanding indebtedness for the utility to obtain an order affecting its rates from the commission without a formal hearing.

(d) Notwithstanding any other provision of this chapter, the commission may:

(1) on its own motion; or

(2) at the request of:

(A) the utility consumer counselor;

(B) a water or sewer utility described in subsection (a);

(C) ten (10) individuals, firms, limited liability companies, corporations, or associations; or

(D) ten (10) complainants of any class described in this subsection;

adopt a rule under IC 4-22-2, or issue an order in a specific proceeding, providing for the development, investigation, testing, and use of regulatory procedures or generic standards with respect to water or sewer utilities

described in subsection (a) or their services.

(e) The commission may adopt a rule or enter an order under subsection (d) only if it finds, after notice and hearing, that the proposed regulatory procedures or standards are in the public interest and promote at least one (1) of the following:

(1) Utility cost minimalization to the extent that a utility's quality of service or facilities are not diminished.

(2) A more accurate evaluation by the commission of a utility's physical or financial conditions or needs.

(3) A less costly regulatory procedure for a utility, its consumers, or the commission.

(4) Increased utility management efficiency that is beneficial to consumers.

As added by P.L.88-1985, SEC.5. Amended by P.L.116-1987, SEC.1; P.L.107-1989, SEC.1; P.L.8-1993, SEC.110; P.L.159-1999, SEC.1; P.L.226-2001, SEC.1.

8-1-2-61.6

Sec. 61.6. (a) This section applies to water utilities that serve less than five thousand (5,000) customers.

(b) As used in this section, "purchaser" means a water utility that buys water from another water utility on a wholesale basis.

(c) As used in this section, "supplier" means a water utility that provides water to another water utility on a wholesale basis.

(d) As used in this section, "water utility" means:

(1) an investor owned water utility;

(2) a municipally owned water utility;

(3) a conservancy district (as described in IC 14-33); or

(4) a nonprofit water utility.

(e) Notwithstanding section 42 of this chapter, whenever a supplier petitions the commission for a change in rates or charges that affect its wholesale rates, the supplier shall notify each of its wholesale customers by United States registered mail. The notice must include the cause number assigned to the supplier's petition.

(f) Upon notification by the supplier, the purchaser of a wholesale water supply may notify the secretary of the commission of its intent to monitor its supplier's cause. The commission shall then provide a copy of the supplier's prehearing conference order upon its approval to the purchaser.

(g) If the purchaser requests simultaneous rate relief for its cost of water in conjunction with the relief requested by its supplier, the purchaser shall complete and file forms prescribed by the commission within fourteen (14) days of the supplier's case in chief.

(h) After the purchaser has filed the forms as described in subsection (g), the commission may provide rate relief to the purchaser simultaneously with an order approved for its supplier.

As added by P.L.107-1989, SEC.2. Amended by P.L.1-1995, SEC.54.

8-1-2-61.7

Sec. 61.7. (a) As used in this section, "utility" refers to a wastewater utility that:

(1) is owned or operated by a political subdivision (as defined in IC 36-1-2-13); and

(2) is not under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "wholesale sewage service" means the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste provided by a utility to another utility.

(c) A utility that:

(1) either provides or receives wholesale sewage service; and

(2) negotiates to renew or enter into a new contract for wholesale sewage service on expiration of a contract for the same wholesale sewage service;

may file a petition for review of rates and charges for wholesale sewage service with the commission or the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(d) If a utility files a petition under subsection (c), the following apply:

(1) The utility that provides the wholesale sewage service has the burden of proving that the rates and charges are just and reasonable.

(2) A petition concerning the same rates and charges may not be filed with both the commission and a court.

(3) If multiple petitions concerning the same rates and charges are filed, all petitions filed after the first petition filed must be:

(A) consolidated with the first petition filed; and
(B) heard in the forum in which the first petition was filed.
(4) The petition is not subject to IC 36-9-23 or IC 36-9-25.
(5) If the petition is heard by a court, the court shall hear the petition de novo.
(e) After notice and hearing, the commission may issue an order determining whether the rates and charges that are the subject of a petition filed with the commission under subsection (c) are just and reasonable. The order of the commission is a final order for purposes of IC 8-1-3.
(f) This section does not:
(1) authorize the commission to revise rates and charges of a utility for any other purpose other than as stated in this section; or
(2) otherwise return or subject a utility to the jurisdiction of the commission.
(g) The commission may adopt rules under IC 4-22-2 to implement this section.
As added by P.L.251-2013, SEC.1.

8-1-2-62

Sec. 62. Each of the commissioners and every agent provided for in this chapter shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses, and compel the production of books, accounts, papers, records, documents and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated before the commission, or its authorized agent, it shall be the duty of the circuit or superior court of any county, on application of a commissioner, to compel the obedience to the requirements of a subpoena issued from such court or a refusal to testify therein.
(Formerly: Acts 1913, c.76, s.65.) As amended by P.L.59-1984, SEC.27.

8-1-2-63

Sec. 63. Each witness who shall appear before the commission or its agent by its order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record which shall be audited and paid by the state, in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated; Provided, That the commission shall have power to pass upon, approve and limit the expenditures of a public utility in connection with a rate case which are to be charged against the rate base and to be amortized over a period of years as determined by the commission; it being the intent and purpose to prevent excessive expenditures by the utilities for expert witnesses, legal and stenographic expenses in rate hearings and appraisals.
(Formerly: Acts 1913, c.76, s.66; Acts 1933, c.190, s.7.)

8-1-2-64

Sec. 64. The commission, or any party, may, in any investigation, cause the depositions of witnesses residing without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts.
(Formerly: Acts 1913, c.76, s.67.)

8-1-2-65

Sec. 65. A record shall be kept of all proceedings had before the commission or its agent or any formal investigation had and all testimony shall be taken down by the stenographer appointed by the commission.
(Formerly: Acts 1913, c.76, s.68.)

8-1-2-66

Sec. 66. A transcript copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by the stenographer appointed by the commission, being certified under oath by such stenographer to be a true and correct transcript of all the testimony on the investigation, of a particular witness or of other specific part thereof, carefully prepared by him from his original notes, and to be a correct statement of the evidence and proceedings had on such investigations so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified.

(Formerly: Acts 1913, c.76, s.70.)

8-1-2-67

Sec. 67. A copy of such transcript shall be furnished on terms fixed by the commission to any party to such investigation.
(Formerly: Acts 1913, c.76, s.71.)

8-1-2-68

Sec. 68. Whenever, upon an investigation, the commission shall find any rates, tolls, charges, schedules, or joint rate or rates to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall determine and by order fix just and reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter.
(Formerly: Acts 1913, c.76, s.72.) As amended by P.L.59-1984, SEC.28.

8-1-2-69

Sec. 69. Whenever, upon the investigation made under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts, or service to be unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this chapter, or shall find that any service is inadequate or that any service which can be reasonably demanded can not be obtained, the commission shall determine and declare and by order fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, inadequate, or otherwise in violation of this chapter, as the case may be, and shall make such other order respecting such measurement, regulation, act, practice, or service as shall be just and reasonable.
(Formerly: Acts 1913, c.76, s.73.) As amended by P.L.59-1984, SEC.29.

8-1-2-70

Sec. 70. In its order upon any investigation made under the provisions of this chapter or IC 8-1.5-3, either upon complaint against any municipal utility, or upon the petition of any such municipal utility, or upon the initiation of the commission, the commission shall ascertain and declare the expenses incurred by it upon such investigation, and the municipal utility affected thereby shall pay into the commission public utility fund account described in IC 8-1-6-2 the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty (20) days from the date thereof. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the municipal utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty (20) days after service thereof unless a different time be provided in said order. Any order of the commission as may increase any rate of such municipal utility shall not take effect until such expenses are paid into the commission public utility fund account described in IC 8-1-6-2.
(Formerly: Acts 1913, c.76, s.74; Acts 1925, c.60, s.1; Acts 1963, c.187, s.2; Acts 1969, c.260, s.1.) As amended by P.L.59-1984, SEC.30; P.L.384-1987(ss), SEC.6; P.L.251-2013, SEC.2.

8-1-2-71

Sec. 71. All public utilities to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner and the same shall take effect within such time thereafter as the commission shall prescribe.
(Formerly: Acts 1913, c.76, s.75.)

8-1-2-72

Sec. 72. The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in sections 54 through 67 of this chapter, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served and take effect as provided in this chapter for original orders.

(Formerly: Acts 1913, c.76, s.76.) As amended by P.L.59-1984, SEC.31.

8-1-2-73

Sec. 73. In all trials, actions, and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted in this chapter to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction, or order of said commission to show that the determination, requirement, direction, or order of the commission complained of is unreasonable or unlawful, as the case may be.
(Formerly: Acts 1913, c.76, s.84.) As amended by P.L.59-1984, SEC.32.

8-1-2-74

Sec. 74. No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him would incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person testifying shall be exempted from prosecution or punishment for perjury in so testifying.
(Formerly: Acts 1913, c.76, s.86.) As amended by P.L.59-1984, SEC.33.

8-1-2-75

Sec. 75. Upon application of any person, the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein.
(Formerly: Acts 1913, c.76, s.87.)

8-1-2-75.5

Sec. 75.5. Any public utility within this state organized for the conveyance of messages by telegraph may issue stocks, bonds, commercial paper, or other evidences of indebtedness without the approval of the commission. Such a public utility is exempt from the provisions of sections 76, 77, 78, 79, and 80 of this chapter.
As added by Acts 1980, P.L.66, SEC.1.

8-1-2-76

Sec. 76. No public utility shall hereafter issue for any purposes connected with or relating to any part of its business, any stocks, certificates of stock, bonds, notes or other evidences of indebtedness, payable at periods of more than twelve (12) months, to an amount exceeding that which may from time to time be reasonably necessary, determined as herein provided, for the purpose for which issue of stock, certificates of stock, bonds, notes or other evidences of indebtedness may be authorized.
(Formerly: Acts 1913, c.76, s.88.)

8-1-2-77

Sec. 77. No public utility shall issue any stock or certificate of stock, except in consideration of money or of labor or property at its current fair cash value as found and determined by the commission actually received by it. No stock or certificate of stock shall be sold at a discount or premium without the approval of the commission and if sold at a discount, the commission shall make a record thereof and give such publicity of the facts as it may deem necessary at the expense of the utility. No public utility shall issue any bonds, notes, or other evidences of indebtedness except for money or labor or property estimated at its current fair cash value as found and determined by the commission actually received by it equal to a sum to be approved by the commission not less than seventy-five (75) per cent of the face value thereof. The amount of bonds, notes, and other evidences of indebtedness which any public utility may issue shall be reasonable in aggregate amount, due consideration being given to the nature of the business in which the corporation is engaged, its credit, future prospects, and earnings, and the effect which such issue may have upon the management and efficient operation of the public utility.
(Formerly: Acts 1913, c.76, s.89; Acts 1933, c.190, s.7a; Acts 1939, c.19, s.1; Acts 1941, c.37, s.1.)

8-1-2-78

Sec. 78. A public utility, as defined in section 1 of this chapter, may, with the approval of the commission, issue

stock, certificates of stock, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve (12) months after the date thereof, for the purpose of and to the extent required for obtaining funds sufficient for:

(a) the acquisition of property, material, or working capital;

(b) the construction, completion, extension, or improvement of its facilities, plant, or distributing system;

(c) the improvement of its service;

(d) the discharge or lawful refunding of its obligations; or

(e) the reimbursement of its treasury for money actually expended from income, or from any other money in the treasury of the public utility, for such purposes, not secured or obtained from the issue of stock, bonds, notes, or other evidence of indebtedness of such public utility, where the applicant shall have kept its accounts and vouchers of such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which such expenditure was made.

(Formerly: Acts 1913, c.76, s.90; Acts 1939, c.19, s.2; Acts 1941, c.37, s.2.) As amended by P.L.59-1984, SEC.34.

8-1-2-79 Version a

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 79. (a) Whenever a public utility desires to issue bonds, notes or other evidences of indebtedness, payable more than one (1) year from the execution thereof, or preferred or common stock, it shall file with the commission a petition verified by its president or vice-president, and secretary or assistant secretary, or by two (2) of its incorporators, if it has no such officers, setting forth:

(1) the principal amount of bonds, notes, or other evidences of indebtedness, and the par value or number of shares of preferred and common stock;

(2) the minimum price for which said securities are to be disposed of or sold;

(3) the purposes for which said securities are to be disposed of or sold;

(4) the description, cost, or value of any property acquired or to be acquired from the proceeds of the disposal or sale of said securities;

(5) a balance sheet and income account; and

(6) all other information that may be relevant or that may be required by the commission.

For the purpose of enabling it to determine whether the proposed issue is in the public interest, in accordance with laws touching the issuance of securities by public utilities, and reasonably necessary in the operation and management of the business of the utility in order that the utility may provide adequate service and facilities, the commission also may consider the total outstanding capitalization of the utility, including the proposed issue, in relation to the total value of or investment in the property of the utility, including the property to be acquired by the proposed issue, as shown by the balance sheet, accounts, or reports of the utility, the records of the commission, or other evidence, and the character and proportionate amount of each kind of security, including the proposed issue, and the unamortized discount suffered by the utility in the sale of the outstanding securities. The commission shall make such further inquiry or investigation, hold such hearing or hearings, and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a decision.

(b) An owner, officer, or agent of any public utility who knowingly violates this section, or knowingly makes any material misrepresentation or misstatements in connection with this section, commits a Class D felony.

(Formerly: Acts 1913, c.76, s.91; Acts 1933, c.190, s.8.) As amended by Acts 1978, P.L.2, SEC.801.

8-1-2-79 Version b

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 79. (a) Whenever a public utility desires to issue bonds, notes, or other evidences of indebtedness, payable more than one (1) year from the execution thereof, or preferred or common stock, it shall file with the commission a petition verified by its president or vice-president, and secretary or assistant secretary, or by two (2) of its incorporators, if it has no such officers, setting forth:

(1) the principal amount of bonds, notes, or other evidences of indebtedness, and the par value or number of shares of preferred and common stock;

(2) the minimum price for which said securities are to be disposed of or sold;

(3) the purposes for which said securities are to be disposed of or sold;

(4) the description, cost, or value of any property acquired or to be acquired from the proceeds of the disposal

or sale of said securities;

(5) a balance sheet and income account; and

(6) all other information that may be relevant or that may be required by the commission.

For the purpose of enabling it to determine whether the proposed issue is in the public interest, in accordance with laws touching the issuance of securities by public utilities, and reasonably necessary in the operation and management of the business of the utility in order that the utility may provide adequate service and facilities, the commission also may consider the total outstanding capitalization of the utility, including the proposed issue, in relation to the total value of or investment in the property of the utility, including the property to be acquired by the proposed issue, as shown by the balance sheet, accounts, or reports of the utility, the records of the commission, or other evidence, and the character and proportionate amount of each kind of security, including the proposed issue, and the unamortized discount suffered by the utility in the sale of the outstanding securities. The commission shall make such further inquiry or investigation, hold such hearing or hearings, and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a decision.

(b) An owner, officer, or agent of any public utility who knowingly violates this section, or knowingly makes any material misrepresentation or misstatements in connection with this section, commits a Level 6 felony.

(Formerly: Acts 1913, c.76, s.91; Acts 1933, c.190, s.8.) As amended by Acts 1978, P.L.2, SEC.801; P.L.158-2013, SEC.130.

8-1-2-80

Sec. 80. If the commission shall determine that such proposed issue complies with the provisions of this chapter, such authority shall thereupon be granted, and it shall issue to the public utility a certificate of authority stating:

(a) the amount of such stocks, certificates of stock, bonds, notes, or other evidences of indebtedness, reasonably necessary for the purposes for which they are to be issued and the character of the same; and

(b) the purposes for which they are to be issued and the property or services to be acquired thereby valued in detail.

Such public utility shall not apply the proceeds of such stock, bonds, notes, or other evidences of indebtedness as aforesaid to any purposes not specified in such certificate, nor issue such stock, bonds, notes, or other evidences of indebtedness in greater amounts than specified in such certificate. Nothing contained in this section shall prohibit the commission from giving its consent to the issue of bonds, notes, or other evidences of indebtedness for the reimbursement of moneys actually expended before May 1, 1913, from income for any of the purposes specified in section 78 of this chapter if, in the judgment of the commission, such consent should be granted, provided, application for such consent shall be made prior to January 1, 1915. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a determination. The commission shall have power to impose such conditions upon a public utility in issuing of securities as it may deem reasonable. Such public utilities shall not, without the consent of the commission, apply said issue or any proceeds thereof to any purpose not specified in such order. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation, or to authorize the capitalization of any franchise or the right to own, operate, or enjoy any franchise whatsoever, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. The capitalization of a corporation formed by the merger or consolidation of two (2) or more corporations shall be subject to the approval of the commission, but in no event shall such capitalization exceed the sum of the corporations so consolidated, at the par value thereof, or such sums and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation after May 1, 1913, issue any bonds against or as a lien upon any contract for consolidation or merger.

(Formerly: Acts 1913, c.76, s.92; Acts 1967, c.64, s.1.) As amended by P.L.59-1984, SEC.35.

8-1-2-81

Sec. 81. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Indiana to pay or guarantee in any manner whatsoever any stock or stock certificate or bond, note, or other evidence of indebtedness authorized, issued, or executed under the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.93.) As amended by P.L.59-1984, SEC.36.

8-1-2-82

Sec. 82. Any person or association of persons other than an existing public service corporation, which shall have, or may have hereafter become the owner or assignee of the rights, powers, privileges and franchises of any public utility created or organized by or under the law of this state, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree or proceedings of any court in this state, including the courts of the United States sitting herein, shall within sixty (60) days after such purchase or assignment, organize anew by filing articles of incorporation as provided by law, and thereupon shall have the rights, privileges and franchises which such utility had, or was entitled to have, at the time of such purchase and sale. The new corporation may issue stock, certificates of stock, bonds, notes or other evidences of indebtedness for the property of the former corporation thus acquired, in an amount not to exceed the true value of such property, as found and determined by the commission, in accordance with the provisions hereof.
(Formerly: Acts 1913, c.76, s.94.)

8-1-2-83

Sec. 83. (a) No public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, or contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation, without the approval of the commission after hearing. And no such public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, shall make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

(b) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(c) Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

(d) Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.
(Formerly: Acts 1913, c.76, s.95; Acts 1925, c.54, s.1.) As amended by P.L.59-1984, SEC.37; P.L.23-1988, SEC.24; P.L.8-1993, SEC.111.

8-1-2-84

Sec. 84. (a) With the consent and approval of the commission and with the authority of their stockholders as provided in this chapter, but not otherwise, any two (2) or more public utilities furnishing a like service or product and doing business in the same municipality or locality within Indiana, or any two (2) or more public utilities whose lines intersect or parallel each other within Indiana, may be merged and may enter into contracts with each other which will enable such public utilities to operate their plants or lines in connection with each other. Before any merger shall become effective there shall be filed with the commission proof that the voting stockholders have authorized or consented to such merger. If the law under which the company is incorporated or reorganized so provides, then the authorization and consent of the holders of the majority of the voting stock shall be shown. In all other cases the consent of the holders of three-fourths (3/4) of the outstanding voting stock of the company shall be shown. Such authority and consent may be shown by filing with the commission a certified copy of the minutes of a

stockholders' meeting or by filing with the commission a written consent of such holders or both. In case of such merger, union, or consolidation, dissenting stockholders shall apply to the commission within sixty (60) days after approval by the commission to have the value of their stock assessed and determined. Stockholders not so applying shall be held to have assented. Upon the determination of the value of the stock of such dissenting stockholder, the corporation in which they are stockholders may within sixty (60) days pay the dissenting stockholders for their stock the appraised value thereof, or may elect to abandon the merger, union, or consolidation by filing with the commission notice of such election.

(b) It shall not be necessary for any public utility merging, uniting, or consolidating to comply with such provisions of any law governing the procedure in the merger, union, or consolidation of corporations as are in conflict with the provisions of this chapter. This chapter shall not create any new right of merger or enlarge any such right but is intended only to prescribe and simplify the proceedings in mergers which are authorized by other statutes.

(c) Any such public utility may purchase or lease the used and useful property, plant, or business, or any part thereof, of any other such public utility at a price and on terms approved by the commission. Whenever, in the case of any such purchase, the amount to be paid by the purchaser for the property, plant, or business to be purchased shall be an amount in excess of five percent (5%) of the book cost to the purchaser of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such purchase, or whenever, in the case of any such lease, the book cost to the lessor of the property, plant, or business to be leased shall be an amount in excess of five percent (5%) of the book cost to the lessee of all the properties, plants, and business owned by the lessee at the time application is made to the commission for approval of such lease, there shall be obtained from the holders of three-fourths (3/4) of the voting stock of such purchaser or lessee their consent, authority, and approval to such purchase or lease.

(d) Any such public utility may purchase or lease the used and useful property, plant, or business, or any part thereof, of a municipally owned utility, as used in this chapter, owned or operated by a city having a population of more than one hundred fifty thousand (150,000) but less than five hundred thousand (500,000), with the approval of the commission at a price or rental and on terms approved by the commission.

(e) Any such public utility may sell or lease its used or useful property, plant, or business, or any part thereof, to any other such public utility at a price and on terms approved by the commission. Whenever in the case of any such sale or lease the book cost to the seller or lessor of such property, plant, or business to be sold or leased shall be an amount in excess of five percent (5%) of the book cost to such seller or lessor of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such sale or lease, there shall be obtained from the holders of three-fourths (3/4) of the voting stock of such seller or lessor their consent, authority, and approval to such sale or lease. Whenever in the case of any such sale or lease the book cost to the seller or lessor of such property, plant, or business to be sold or leased shall be an amount in excess of twenty percent (20%) of the book cost to such seller or lessor of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such sale or lease, dissenting stockholders of such seller or lessor shall, if the sale or lease is consummated, be paid for their stock the appraised value thereof as determined by the commission. Dissenting stockholders in such a case shall, within sixty (60) days after publication of notice of the approval by the commission of such sale or lease, apply to the commission to have the value of their stock assessed and determined. Stockholders not so applying shall be held to have assented. Such publication of notice shall be given by the seller or lessor to its stockholders by publishing such notice once each week for three (3) successive weeks in a newspaper of general circulation printed in the English language and published in Marion County, Indiana. Upon determination of the value of the stock of such dissenting stockholders such seller or lessor may within sixty (60) days either pay the dissenting stockholders for their stock the appraised value thereof or elect to abandon the sale or lease by filing with the commission notice of its election to abandon.

(f) No such public utility shall encumber its used and useful property or business or any part thereof without the approval of the commission and the consent, authority, and approval of the owners of three-fourths (3/4) of its voting stock.

(g) Any public utility corporation upon the order of a majority of its board of directors and with the approval of the commission may acquire, purchase or lease any real or personal estate or other property of any other public utility not used and useful in the public service of such other public utility.

(h) Any public utility corporation, upon the order of a majority of its board of directors and with the approval of the commission, may sell and convey or lease to any other public utility corporation any of its real or personal estate

or other property not used and useful in its public service.
(Formerly: Acts 1913, c.76, s.95.5; Acts 1925, c.54, s.2; Acts 1939, c.19, s.3; Acts 1973, P.L.61, SEC.1.) As amended by P.L.23-1988, SEC.25; P.L.1-1989, SEC.15; P.L.12-1992, SEC.57.

8-1-2-85

Sec. 85. The commission shall charge every municipality receiving permission from it to issue any bonds, notes, or other securities an amount equal to twenty-five cents ($.25) for each one hundred dollars ($100) for such bonds, notes, or other securities, but in no case shall the fee be less than one hundred dollars ($100). All of such fees assessed hereunder shall be paid to the secretary of the commission within thirty (30) days of the receipt of the bond proceeds by the municipality and only if the bonds, notes, or other securities are issued. The fees collected by the secretary shall be paid into the state treasury and deposited in the commission public utility fund account established under IC 8-1-6, as if they were fees collected under IC 8-1-6.
(Formerly: Acts 1913, c.76, s.96; Acts 1925, c.71, s.1; Acts 1947, c.317, s.1; Acts 1969, c.260, s.2.) As amended by Acts 1982, P.L.74, SEC.2; P.L.23-1988, SEC.26.

8-1-2-86

Sec. 86. (a) No license, permit, or franchise shall be granted to any person, copartnership, or corporation to own, operate, manage, or control any plant or equipment of any public utility in any municipality where there is in operation a public utility engaged in similar service under a license, franchise, or permit without first securing from the commission a declaration, after a public hearing, of all parties interested, that public convenience and necessity require such second public utility; provided, that any municipality may purchase, condemn, and operate, or construct and operate, a utility in such municipality for the purpose of transportation, production, transmission, delivery, sale, and furnishing of heat, light, water, and/or power to such municipality, and/or the public in and within six (6) miles of the limits of such municipality, without the consent of said commission, although there is operating in said municipality a public utility engaged in a similar service under a license, franchise, or indeterminate permit.

(b) Any permit, license, or franchise in existence on May 1, 1913, which shall contain any term whatsoever interfering with the existence of a second public utility is hereby declared to be against public policy and is hereby amended in such manner as to permit a municipality to grant a license, franchise, or permit for the operation of such second public utility pursuant to the provisions of this chapter.
(Formerly: Acts 1913, c.76, s.97; Acts 1933, c.190, s.9.) As amended by P.L.59-1984, SEC.38.

8-1-2-86.5

Sec. 86.5. (a) As used in this section, "four (4) mile area" means the area within four (4) miles of a municipality's corporate boundaries.

(b) Except as provided in subsection (c), the commission, after notice and hearing, may, by order, determine territorial disputes between all water utilities.

(c) This subsection applies only to a municipality:

(1) having a population of less than seven thousand five hundred (7,500); and

(2) that, as of January 1, 2007, has adopted an ordinance exercising the power to regulate the furnishing of water to the public granted by IC 36-9-2-14 within a four (4) mile area.

The commission may not determine a territorial dispute within a four (4) mile area unless the territorial dispute concerns a geographic area located in more than one (1) four (4) mile area.
As added by P.L.79-1988, SEC.1. Amended by P.L.175-2007, SEC.10.

8-1-2-87

Sec. 87. (a) When used in this section, unless the context otherwise requires:

(1) The term "gas" means natural gas, artificial or manufactured gas, and mixed gas.

(2) The term "necessity certificate" means a certificate of public convenience and necessity issued by the commission pursuant to the provisions of this section, which certificate shall be deemed an indeterminate permit.

(3) The term "rural area" means territory within the state of Indiana that is outside the corporate limits of a municipality.

(4) The term "gas utility" means and includes any public utility selling or proposing to sell or furnish gas directly to any consumer or consumers within the state of Indiana for his, its or their domestic, commercial, or industrial use.

(5) The term "gas distribution service" means the furnishing or sale of gas directly to any consumer within the state of Indiana for his or its domestic, commercial, or industrial use.

(b) It is hereby declared that in order adequately to protect the public interest in the distribution of gas to consumers within the state of Indiana, it is necessary and desirable that to the extent provided in this section the holding of necessity certificates should be required as a condition precedent to the rendering of gas distribution service in rural areas of the state of Indiana.

(c) After February 26, 1945, no gas utility shall commence the rendering of gas distribution service in any rural area in the state of Indiana in which it is not actually rendering gas distribution service on February 26, 1945, without first obtaining from the commission a necessity certificate authorizing such gas distribution service, defining and limiting specifically the rural area covered thereby, and stating that public convenience and necessity require such gas distribution service within such rural area by such gas utility; and no gas utility required by this section to hold a necessity certificate for any rural area shall render gas distribution service within such a rural area to any extent greater than that authorized by such necessity certificate or shall continue to render gas distribution service within such a rural area if and after such necessity certificate has been revoked or transferred as in this section provided.

(d) Whenever any gas utility proposes to commence the rendering of gas distribution service in any rural area in which it is not actually rendering such service on February 26, 1945, it shall file with the commission a verified application for a necessity certificate covering such service by it. The commission shall, by regulations, prescribe the form of application and such application shall conform to such prescribed form. Within a reasonable time after the filing of any such application, the commission shall fix a time and place for a public hearing thereon. Notice of such hearing shall be given in such manner and to such persons as is from time to time required by law or by the regulations of the commission. Such hearing shall be held in the manner prescribed for a hearing in sections 54 through 67 of this chapter, and the provisions of such sections so far as applicable shall apply to such hearing. Any person interested in such proceedings, including without limiting the generality of the foregoing any gas utility rendering gas distribution service within the general service area (including territory within and without municipalities) of which the rural area covered by the application may reasonably be deemed a part, shall be permitted to appear either in person or by attorney and offer evidence in support of or opposition to the application. The applicant shall, at all times, have the burden of proving by evidence each of the matters specified in this subsection as necessary to be found by the commission before a necessity certificate shall be issued by it. If the commission shall find from the evidence, including such evidence, if any, as the commission may cause to be introduced as a result of any investigation which it may have made relative to the matter, that the applicant therefor has lawful power and authority to obtain such necessity certificate and to render the proposed gas distribution service if it obtains such certificate, that he or it has the financial ability to provide the proposed gas distribution service, that public conveyance and necessity require the rendering of the proposed gas distribution service, and that the public interest will be served by the issuance of the necessity certificate to him or it, the application shall be granted, subject to such terms, restrictions, and limitations as the commission shall determine to be necessary and desirable in the public interest; otherwise the application shall be denied.

(e) Upon approval by the commission given after notice and public hearing given and held in the manner provided for in subsection (d) in cases of applications for necessity certificates, but not otherwise, any necessity certificate may:

(1) be sold, assigned, leased, or transferred by the holder thereof to any person, firm, or corporation to whom a necessity certificate might be lawfully issued; or

(2) be included in the property and rights encumbered under any indenture of mortgage or deed of trust of such holder.

(f) Any necessity certificate may, upon application by the holder to the commission, be revoked by the commission, in whole or in part, after notice given and hearing held in the manner provided for in subsection (d). Any necessity certificate may, after notice given and hearing held in the manner provided for in subsection (d), be revoked by the commission, in whole or in part, for the failure of the holder to comply with any applicable order, rule, or regulation prescribed by the commission in the exercise of its powers under this chapter, or with any term, condition, or limitation of such necessity certificate.

(Formerly: Acts 1913, c.76, s.97a; Acts 1945, c.53, s.1.) As amended by P.L.59-1984, SEC.39; P.L.8-1993, SEC.112.

8-1-2-87.5

Sec. 87.5. (a) For purposes of this section, "transportation of gas" means physical transmission, exchange, backhaul, displacement, or any other means of transporting gas, including gathering.

(b) Any person, corporation, or other entity that:

(1) is engaged in the transportation of gas from outside Indiana for direct sale or delivery to any end use consumer or consumers within this state;

(2) is engaged in the transportation of gas solely within this state on behalf of any end use consumer or consumers; or

(3) is an end use consumer engaged in the transportation within this state of gas owned or acquired by such end use consumer for use in this state, other than transportation on the premises where the gas is consumed;

is a public utility as defined in section 1 of this chapter and must obtain a necessity certificate from the commission before it may engage in any activities described in this subsection. This subsection does not apply to a gas utility operating pursuant to an indeterminate permit or necessity certificate issued under section 87 of this chapter, nor to the production, sale, and gathering of natural gas produced in Indiana.

(c) As a condition for receiving the necessity certificate, such person, corporation, or entity desiring to engage in the activities described in subsection (b) shall file an application with the commission. The commission shall hold a public hearing on the application and provide notice in accordance with IC 8-1-1-8. The commission shall prescribe the form of the application, the procedure for the hearing, and the parties to whom notice is to be sent.

(d) Any interested person, including any gas utility authorized to render gas distribution service within the service area covered by the application, may appear either in person or by attorney and offer evidence in support of or in opposition to the application. The applicant has the burden of proving each of the matters specified in this section. The commission may conduct an investigation and introduce any evidence obtained as a result of the investigation at the hearing.

(e) The commission shall grant the necessity certificate only if the commission has found from the evidence that:

(1) the applicant has the power and authority to obtain the certificate and render the requested service;

(2) the applicant has the financial ability to provide the requested service;

(3) public convenience and necessity require the providing of the requested service giving consideration to the availability of gas service from any gas utility authorized to serve end use customers within the geographic area covered by the application; and

(4) the public interest will be served by the issuance of the necessity certificate.

(f) The commission may revoke a necessity certificate in whole or in part after a public hearing is held if:

(1) the holder fails to comply with any applicable order or rule prescribed by the commission;

(2) the holder fails to comply with any term, condition, or limitation of the necessity certificate; or

(3) the holder requests the commission to revoke the necessity certificate.

(g) An end use consumer determined to be a public utility under subsection (b) may not exercise the power of eminent domain granted under IC 8-1-8. The limitations contained in sections 76 through 81 of this chapter do not apply to issues of stock or certificates of stock, bonds, notes, or other evidence of indebtedness issued by an end use consumer determined to be a public utility under subsection (b).

(h) This section applies to sales or transportation of natural gas to end users under contracts or agreements entered into after May 31, 1985. It does not apply to sales or transportation of natural gas to end users under contracts or agreements entered into before June 1, 1985, or any renewals or extensions of those contracts or agreements.

As added by P.L.89-1985, SEC.1.

8-1-2-87.6

Sec. 87.6. (a) Except as provided in this section, the production, gathering, sale, or transportation of Indiana produced natural gas is exempt from this chapter.

(b) Any person, corporation, or other entity engaged in the production, gathering, sale, or transportation of natural gas produced in Indiana may petition the commission to:

(1) require a gas utility certified under section 86 or 87 of this chapter to purchase or transport Indiana produced natural gas owned by the petitioning entity; and

(2) set the rates for the purchase or transportation of that gas.

(c) Upon receiving a petition under subsection (b), the commission may order the gas utility to transport or

purchase the gas, and shall conduct a public hearing to set the purchase or transportation rates. The commission may only require the purchase or transportation of Indiana produced natural gas that:

(1) is of pipeline quality and reliability; and

(2) is to be delivered to a facility of the transporting or purchasing local distribution company that has adequate capacity to accept and transport the volume of gas involved.

The commission shall provide notice of the hearing in accordance with IC 8-1-1-8. The commission shall prescribe the form of the petition, the procedures for the hearing, and the parties to whom notice is to be sent.

(d) If the sale of Indiana produced natural gas to an end use consumer for consumption in the franchise territory of a gas utility with less than five thousand (5,000) customers detrimentally affects the other end use consumers in the utility's franchise territory, the utility may petition the commission to require the seller to instead sell the gas to that utility at a rate and under terms and conditions set by the commission.

(e) Any interested party may appear at a hearing conducted under subsections (c) and (d) either in person or by attorney and offer evidence in support of or in opposition to the petition. The commission may conduct an investigation and introduce any evidence obtained as a result of the investigation at the hearing.

(f) The commission may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.81-1986, SEC.1.

8-1-2-87.7

Sec. 87.7. (a) The commission may, on its own motion or upon petition of any customer, and after appropriate notice and hearing, order any gas utility subject to its jurisdiction to file or change one (1) or more gas transportation tariffs to better meet the needs of the utility's customers.

(b) The commission shall determine and set reasonable rates, terms, and conditions in the tariffs. In determining what is reasonable, the commission may consider the following:

(1) The cost of providing the transportation service according to generally accepted cost of service principles.

(2) The effects of the service on the consumers to whom it would be available.

(3) The effects of the service on the industrial development of the state.

(4) The effects of the transportation rate upon current customers of the utility.

(5) The extent to which a transportation rate will aid the utility in retaining its existing load or create opportunities to lower the cost of gas supplies purchased on behalf of all ratepayers.

(6) Whether or not the proposed tariff is a negotiated tariff between the utility and its customers.

(7) The extent to which the availability of transportation services under the proposed tariff is restricted.

(8) Any other factors bearing upon the tariff resulting from decisions of the Federal Energy Regulatory Commission, other rulings of the commission, or applicable case law.

(9) The effect of contract obligations on the utility relating to unavoidable gas costs for which the utility will be responsible.

(10) Whether or not the amount of transportation offered under the proposed tariff is limited other than for reasons necessitated by operational constraints.

(11) Any other factors the commission considers appropriate.

As added by P.L.117-1987, SEC.1.

8-1-2-88 Repealed

8-1-2-88(Repealed by P.L.27-2006, SEC.62.)

8-1-2-88.5 Repealed

8-1-2-88.5 (Repealed by P.L.27-2006, SEC.62.)

8-1-2-88.6

Sec. 88.6. (a) As used in this section, "telephone company" means any individual, firm, partnership, cooperative organization, unincorporated association, or corporation engaged in the business of furnishing telecommunications service.

(b) Access charges paid by an interexchange carrier for interconnection to local exchange facilities must be reasonable as determined by the commission. A local exchange provider may not make or grant any undue preference or advantage concerning its pricing and provision of access to any telephone company providing interexchange telecommunications service.

As added by P.L.81-1988, SEC.1.

8-1-2-88.7

Sec. 88.7. (a) As used in this section, "financial assistance" means:

(1) a loan or loan guarantee; or

(2) a lien accommodation provided to secure a loan made by another lender;

that is made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(b) As used in this section, "REA borrower" means a telephone company subject to this chapter that is the recipient of financial assistance.

(c) An REA borrower shall charge rates sufficient to enable the REA borrower to:

(1) satisfy its reasonable expenses and obligations; and

(2) earn a rate of return on the property sufficient to cover the REA borrower's cost of capital, including any financial assistance and the interest thereon.

(d) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance regardless of any change in the status of the property, including the full or partial retirement of the property or any other change in the status of the property.

As added by P.L.74-1991, SEC.1. Amended by P.L.27-2006, SEC.5.

8-1-2-89

Sec. 89. (a) As used in this section, unless the context otherwise requires, the following terms have the following meanings:

(1) "Sewage disposal service" means any public utility service whereby liquid and solid waste, sewage, night soil, and industrial waste of any single territorial area is collected, treated, purified, and disposed of in a sanitary manner, and includes all sewage treatment plant or plants, main sewers, submain sewers, local and lateral sewers, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other equipment and appurtenances necessary or useful and convenient for the rendition of such service.

(2) "Sewage disposal company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any sewage disposal service within the rural areas of this state, and all provisions of this chapter pertaining to a public utility shall apply with equal force and effect to a sewage disposal company, except insofar as said provisions may be inconsistent with specific provisions of this section.

(3) "Rural area" means territory lying within the state of Indiana and lying outside the corporate limits of a municipality.

(4) "Certificate of territorial authority" means a certificate of convenience and necessity issued by the commission pursuant to this section, which said certificate shall be deemed an indeterminate permit, unless expressly conditioned otherwise by the commission when issued.

(5) "Notice of hearing" means notice of the time, place, and purpose of a hearing, given by publication in at least one (1) newspaper of general circulation in each of the counties in which the particular sewage disposal company operates or proposes to operate and given also in writing by United States registered mail:

(A) to each other sewage disposal company operating in territory contiguous to the territory in which the particular sewage disposal company operates or proposes to operate;

(B) to each municipality in territory contiguous and nearest to the territory in which the particular sewage disposal company operates or proposes to operate; and

(C) to such other persons or entities which the commission may from time to time require by its rules and forms;

all such notices shall be so mailed as to be received by the recipients at least ten (10) days prior to any hearing, or as otherwise required by the commission.

(b) It is hereby declared to be in the public interest to provide for the orderly development and rendering of sewage disposal service in rural areas within the state of Indiana, and such public interest makes it necessary and desirable that to the extent provided herein the holding of a certificate of territorial authority should be required as a condition precedent to the rendering of such service, and that such operation be under the control, regulation, and supervision of the commission, and such sewage disposal companies shall not be subject to regulation by any municipality or county government or metropolitan regulatory body, or any branch or subdivisions thereof or

substitute therefor in the form of special service districts, with the exception that said sewage disposal company shall be subject to the comprehensive plan, zoning, and subdivision requirements and regulations of the governmental units having jurisdiction in the area. However, all functions, powers, and duties of the state department of health and the water pollution control board shall remain unaffected by this section.

(c) No sewage disposal company shall commence the rendering of sewage disposal service in any rural area in the state of Indiana in which it is not actually rendering sewage disposal service, without first obtaining from the commission a certificate of territorial authority authorizing such sewage disposal service, finding that public convenience and necessity require such sewage disposal service within such rural area by such sewage disposal company, and defining and limiting specifically the rural area covered thereby. No sewage disposal company hereby required to hold such a certificate shall render any additional sewage disposal service within such rural area to any extent greater than that authorized by such certificate or shall continue to render sewage disposal service within such rural area if and after such certificate of territorial authority has been revoked or transferred as in this section provided, unless in such order of revocation or transfer the commission shall require continued service until a new sewage disposal company or municipality actually takes over such service. The commission shall not have the power to require extension of such service by any sewage disposal company into any additional territory than that defined and limited in such a certificate without the consent of such sewage disposal company.

(d) Whenever any sewage disposal company proposes to commence the rendering of sewage disposal service in any rural area, it shall file with the commission a verified application for a certificate of territorial authority to cover the proposed service. The commission shall by rule prescribe the form of the application and the information to be contained therein, and such application by any such company shall conform to such prescribed form. The commission shall set the matter for hearing and notice of such hearing shall be given to the parties and in the manner defined in this section. Any city may, and upon petition to the commission shall, be made a party to any service proposal if its territorial limits lie within five (5) miles of the area to be serviced under this section.

(e) If, after notice of hearing and hearing on any application for a certificate of territorial authority, the commission shall find from the evidence introduced at such hearing, including any evidence which the commission shall have caused to be introduced as a result of any investigation which it may have made into the matter, that the applicant has proved:

(1) lawful power and authority to apply for said certificate and to operate said proposed service;

(2) financial ability to install, commence, and maintain said proposed service; and

(3) public convenience and necessity require the rendering of the proposed service in the proposed rural area by this particular sewage disposal company; however, in the event the service is proposed for a proposed rural real estate addition, division, or development, or any part thereof, the reasonably expected sewage disposal service requirements of the anticipated residents may be found to constitute such public convenience and necessity;

then the certificate of territorial authority, defining and limiting the rural area to be covered thereby, shall be granted to the applicant, subject to such terms, restrictions, limitations, and conditions, including but not limited to a reasonable time in which to commence operations, as the commission shall determine to be necessary and desirable in the public interest.

(f) In cases of applications filed by two (2) or more sewage disposal companies seeking the issuance of a certificate of territorial authority for the same area or areas or any conflicting portions thereof, the commission may either consider such applications separately or by consolidation of two (2) or more or all within a single hearing at its discretion and shall have the power to issue its certificate after notice of hearing and hearing to any single qualified sewage disposal company for a particular rural area, or, in the event that the commission determines and finds that two (2) or more or all applicants seeking the same area or areas or any conflicting portions thereof are both or all qualified, then the commission shall have the power to determine which is the better or best qualified, or whether the same area or areas or any conflicting portions thereof shall be divided between or among such qualified applicants. However, in no event shall such area or areas or portions thereof be greater than that for which the particular applicant applied, unless such sewage disposal company shall consent and agree in writing to such modification of its application and the issuance of such modified certificate.

(g) After the issuance of such certificate, no other sewage disposal company shall render sewage disposal service in the area or areas so determined and so defined in any certificate of territorial authority issued by the commission, except after notice of hearing and hearing, and the determination and finding by the commission that public convenience and necessity require that sewage disposal service in said same area or areas be also rendered or

offered by an additional or another company, and the issuance of a certificate duly granted by the commission as provided in this section.

(h) A sewage disposal company shall be required to furnish reasonable adequate sewage disposal services and facilities for which said service and facilities it shall be entitled to charge reasonable, nondiscriminatory rates, subject to the jurisdiction of the commission for the purpose of fixing said rates to be charged to patrons of such sewage disposal company for sewage disposal service, and for such purpose the commission is given jurisdiction to proceed in the same manner and with like power as is provided by this chapter in the case of public utilities.

(i) To encourage the installation of sewage treatment plants, and sewers, mains, stations, and all other equipment and appurtenances for rendering sewage disposal service in rural areas in close proximity to municipalities, and to ensure that a sewage disposal company which had made such installation in such area can recover the cost of its investment, in the event that the area or areas or any part thereof included within the territory granted under a certificate of territorial authority shall be annexed by any municipality at any time within twelve (12) years from the date that such certificate was granted, a sewage disposal company operating under such certificate shall continue to operate under such certificate of territorial authority, subject to the exclusive jurisdiction and regulation of the commission, for the unexpired portion of such period of twelve (12) years from the date of granting such certificate, or, in the case of a determinate permit specifying a term shorter than twelve (12) years, then for the unexpired portion of such lesser period as specified by such permit from the date of granting such permit. However, the foregoing provisions in regard to continued operation within the corporate limits of a municipality after annexation shall not affect the right of the sewage disposal company to cease its operation of providing sewage disposal service within such annexed territory prior to the termination of said twelve (12) year or lesser determinate permit period, upon thirty (30) days written notice to the commission, the municipality, and all patrons.

(j) Upon approval by the commission given after notice of hearing and hearing, but not otherwise, any certificate of territorial authority may:

(1) be sold, assigned, leased, or transferred by the holder thereof to any sewage disposal company to which a territorial certificate might be lawfully issued; or

(2) be included in the property and rights encumbered under any indenture of mortgage or deed of trust of such holder;

or any sewage treatment plant or plants, sewers, mains, stations, and equipment and appurtenances for the rendering of sewage disposal service, or any part thereof, may be sold, assigned, leased, or transferred by the holder thereof to any municipality if these assets lie within an area which shall have been annexed by such municipality or lie within the given radius of miles from the corporate limits of such municipality into which it is authorized to render such services, if such municipality is prepared to render a comparable sewage disposal service without loss of continuity of service, and if the terms of such sale, assignment, lease, or transfer are reasonable. However, once the commission has given its approval to such transaction and the transaction itself is actually consummated, the commission shall have no control over the sewage disposal service henceforth rendered by such municipality as a municipally owned utility (as defined in this chapter).

(k) Any certificate of territorial authority may, after notice of hearing and hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate sewage disposal service within the area or areas determined and defined in such certificate of territorial authority, or for the failure of the holder thereof to comply with any applicable order or rule prescribed by the commission in the exercise of its powers under this chapter, or for failure to comply with any term, condition, or limitation of such certificate of territorial authority.

(l) After the commission revokes any certificate of territorial authority under subsection (k) or after the county board of health determines the existence of a serious health problem related to the sewage disposal facility, the county commissioners of the county in which the sewage disposal facility is located may acquire the facility, subject to the approval of the acquisition by the county council, except that the county commissioners may not acquire any facility already acquired by any city or town. The county commissioners shall acquire the sewage disposal facility by:

(1) gift, grant, purchase, or condemnation that is funded in the same manner that cities and towns fund sewage treatment acquisitions under IC 36-9; or

(2) a lease arrangement that is funded in the same manner that cities and towns fund leases of sewage disposal facilities under IC 36-9.

After acquisition, the county commissioners shall repair, operate, and maintain the sewage disposal facility and

charge user fees for these services.
(Formerly: Acts 1913, c.76, s.97c; Acts 1957, c.313, s.2.) As amended by Acts 1976, P.L.25, SEC.1; Acts 1981, P.L.11, SEC.41; P.L.143-1985, SEC.186; P.L.23-1988, SEC.27; P.L.2-1992, SEC.76.

8-1-2-90 Repealed

8-1-2-90(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-91

Sec. 91. No license, permit or franchise to own, operate, manage or control any plant or equipment of any public utility shall be hereafter granted or transferred except to a corporation duly organized under the laws of the state of Indiana or to a citizen of such state.
(Formerly: Acts 1913, c.76, s.99.)

8-1-2-92

Sec. 92. (a) Every license, permit, or franchise granted after April 30, 1913, to any public utility shall have the effect of an indeterminate permit subject to the provisions of this chapter, and subject to the provisions that:

(1) the license, franchise, or permit may be revoked by the commission for cause; or

(2) except as provided in IC 8-1-30-6, the municipality may purchase or condemn the property as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable.

A municipality that is authorized to purchase property and a public utility that is required to sell the property under subdivision (2) shall do so at the value and according to the terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable.

(b) If this chapter should be repealed or annulled, then all such indeterminate franchises, permits, or grants shall cease and become inoperative, and in place thereof such utility shall be reinstated in the possession and enjoyment of the license, permit, or franchise surrendered by such utility at the time of the issue of the indeterminate franchise, permit, or grant; but in no event shall such reinstated license, permit, or franchise be terminated within a less period than five (5) years from the date of the repeal or annulment of this chapter.
(Formerly: Acts 1913, c.76, s.100; Acts 1933, c.190, s.11.) As amended by P.L.59-1984, SEC.40; P.L.172-2009, SEC.1; P.L.270-2013, SEC.1.

8-1-2-93

Sec. 93. (a) This section does not apply to a public utility that provides water or sewer utility service unless:

(1) the commission makes a finding under IC 8-1-30-4; and

(2) the procedures and requirements of IC 8-1-30 have been complied with and satisfied.

(b) Notwithstanding subsection (a), this section does apply to the following:

(1) A public utility to the extent that the public utility provides water or sewer utility service in or contiguous to a municipality that, as of July 1, 2012, had established and operated a water utility.

(2) An action brought under:

(A) section 92 of this chapter;

(B) this section; or

(C) IC 8-1.5-2;

before March 1, 2013.

(c) Any public utility accepting or operating under any indeterminate license, permit, or franchise granted after April 30, 1913, shall by acceptance of any such indeterminate license, permit, or franchise be deemed to have consented to a future purchase or condemnation of its property including property located in contiguous territory within six (6) miles of the corporate limits of such municipality by the municipality in which such utility is located, at the value and under the terms and conditions as provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in IC 8-1.5-2, IC 36-9-23, or IC 36-9-25, as applicable, and shall have been deemed to have consented to the revocation of its license, permit, or franchise by the commission for cause.
(Formerly: Acts 1913, c.76, s.102; Acts 1933, c.190, s.12.) As amended by P.L.59-1984, SEC.41; P.L.172-2009, SEC.2; P.L.270-2013, SEC.2.

8-1-2-94 Repealed
8-1-2-94(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-94.1 Repealed
8-1-2-94.1 (Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-95 Repealed
8-1-2-95(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-95.1
Sec. 95.1. Notwithstanding any other provision of this chapter, after February 29, 1980, a municipality, public utility, or corporation organized under IC 8-1-13 may not bring any action in the circuit or superior court of any county against any corporation organized under IC 8-1-13 or any public utility as defendant for the condemnation of its electric utility property for the use of the property in providing electric utility service.
As added by Acts 1980, P.L.69, SEC.2.

8-1-2-96 Repealed
8-1-2-96(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-97 Repealed
8-1-2-97(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-98 Repealed
8-1-2-98(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-99 Repealed
8-1-2-99(Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-100 Repealed
8-1-2-100 (Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-101
Sec. 101. (a) Every municipal council or county executive shall have power:

(1) To determine by ordinance the provisions, not inconsistent with this chapter or IC 8-1-11.1, upon which a public utility or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county, and such ordinance or other determination of such municipality or county executive shall be in force and prima facie reasonable. Upon complaint made by such public utility, department of public utilities, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void.

(2) To require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision (1).

(3) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.

(4) The power and authority granted in this section shall exist and be vested in said municipalities or county executives, anything in this chapter to the contrary notwithstanding.

Provided, however, whenever, after a request by petition in writing of any public utility, department of public utilities, the city, or other political subdivision or other body, having jurisdiction of the matter, shall refuse or fail, for a period of thirty (30) days, to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any additional construction, equipment, or facility, reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public

convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission, which petition shall state, with particularity, the construction, equipment, or other facility desired to be constructed and operated, and show a reasonable public necessity therefor, and also the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission; and the commission shall thereupon give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition; and such commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require. Provided, further, that when the relocation by a public utility or department of public utilities of any of its construction, equipment, or facility located within the corporate limits of two (2) or more adjoining cities is reasonably necessary for the public convenience or interest, and any or either of said cities fail or refuse to give or grant to such public utility or department of public utilities permission and authority to relocate such construction, equipment, or facility, any municipality which has given or granted to such public utility or department of public utilities permission and authority to relocate such construction, equipment, and facility, the public utility or department of public utilities may file a petition with said commission for such right and permission to which petition the city or cities failing or refusing to give or grant the same shall be made a respondent, and such public utility or department of public utilities if not the petitioner shall also be made a respondent, and said commission shall have power to hear and determine such matter and to give or grant such right and permission and to impose such conditions in relation thereto as the public convenience and interest may reasonably require; and if said commission shall give or grant such right and permission, no further public authority to make such relocation as authorized or to go on any street, alley, road, or highway in said city or cities necessary to be used therefor shall be required of said public utility or department of public utilities. All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an unreasonable ordinance or other determination, the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way on a nondiscriminatory basis, including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, and reasonably incurred costs of managing the public right-of-way caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, and reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section, the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

(1) Registering occupants.

(2) Verifying public right-of-way occupation.

(3) Inspecting job sites and restoration projects.

(4) Restoring work inadequately performed after providing notice and the opportunity to correct the work.

(5) Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.

(6) Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way. As used in this section, the term "public right-of-way" does not include the airwaves above the streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification

of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public.

(d) Nothing in this section may be construed to affect franchise agreements between a cable company and a municipality or county.

(Formerly: Acts 1913, c.76, s.110; Acts 1931, c.126, s.1.) As amended by P.L.59-1984, SEC.42; P.L.127-1998, SEC.1.

8-1-2-102 Version a

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 102. (a) The definitions set forth in IC 3-5-2 apply to this section.

(b) No public utility, or any agent or officer thereof, or any agent or officer of a political subdivision constituting a public utility, as defined in this chapter, may offer or give, for any purpose, to any political committee or any member or employee thereof, candidate for, or incumbent of, any office or position under the constitution or laws of Indiana, or under any political subdivision or to any person, at the request, or for the advantage of, any of them, any frank, privilege, or property withheld from any person for any product or service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility or any free product or service.

(c) No political committee, or member or employee thereof, or candidate for or incumbent of any office or position under the constitution or laws of Indiana or under any political subdivision may ask for or accept from any public utility, or any agent or officer thereof, or any agent or officer of any political subdivision constituting a public utility, as defined in this chapter, or use, in any matter or for any purpose, any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility.

(d) A person who knowingly violates this section commits a Class D felony.

(e) This chapter does not:

(1) prevent any public utility, carrier, or agent or officer thereof, from furnishing free or reduced service or transportation to any bona fide employee or officer thereof;

(2) prohibit any carrier from carrying free, or at reduced rates, agricultural experiment and demonstration cars or trains and the lecturers and necessary demonstrators accompanying such trains or cars; or

(3) prohibit any carrier from carrying free, or at reduced rates, its furloughed, pensioned, or superannuated employees, persons who have become disabled or infirm in its service, the remains of any person killed in its service, or the unremarried surviving spouses and dependent children under eighteen (18) years of age of persons who died in its service.

(Formerly: Acts 1913, c.76, s.111; Acts 1915, c.95, s.1; Acts 1973, P.L.63, SEC.1; Acts 1975, P.L.76, SEC.1.) As amended by Acts 1978, P.L.2, SEC.802; P.L.3-1997, SEC.424.

8-1-2-102 Version b

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 102. (a) The definitions set forth in IC 3-5-2 apply to this section.

(b) No public utility, or any agent or officer thereof, or any agent or officer of a political subdivision constituting a public utility, as defined in this chapter, may offer or give, for any purpose, to any political committee or any member or employee thereof, candidate for, or incumbent of, any office or position under the constitution or laws of Indiana, or under any political subdivision or to any person, at the request, or for the advantage of, any of them, any frank, privilege, or property withheld from any person for any product or service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility or any free product or service.

(c) No political committee, or member or employee thereof, or candidate for or incumbent of any office or position under the constitution or laws of Indiana or under any political subdivision may ask for or accept from any public utility, or any agent or officer thereof, or any agent or officer of any political subdivision constituting a public utility, as defined in this chapter, or use, in any matter or for any purpose, any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility.

(d) A person who knowingly violates this section commits a Level 6 felony.

(e) This chapter does not:

(1) prevent any public utility, carrier, or agent or officer thereof, from furnishing free or reduced service or transportation to any bona fide employee or officer thereof;

(2) prohibit any carrier from carrying free, or at reduced rates, agricultural experiment and demonstration cars or trains and the lecturers and necessary demonstrators accompanying such trains or cars; or

(3) prohibit any carrier from carrying free, or at reduced rates, its furloughed, pensioned, or superannuated employees, persons who have become disabled or infirm in its service, the remains of any person killed in its service, or the unremarried surviving spouses and dependent children under eighteen (18) years of age of persons who died in its service.

(Formerly: Acts 1913, c.76, s.111; Acts 1915, c.95, s.1; Acts 1973, P.L.63, SEC.1; Acts 1975, P.L.76, SEC.1.) As amended by Acts 1978, P.L.2, SEC.802; P.L.3-1997, SEC.424; P.L.158-2013, SEC.131.

8-1-2-103

Sec. 103. (a) No public utility, or agent or officer thereof, or officer of any municipality constituting a public utility, as defined in this chapter, may charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person for a like and contemporaneous service. A person who recklessly violates this subsection commits a Class A misdemeanor.

(b) Notwithstanding subsection (a), if a city of less than twenty thousand (20,000) in population according to the most recent federal decennial census, constituting a public water utility, and acting as a public utility prior to May 1, 1913, either as such city, or by any commercial association, chamber of commerce, or committee with the consent of such city, entered into any agreement with any person engaged in manufacturing any articles of commerce to furnish free water for a certain limited time as an inducement to such person so engaged in manufacturing to locate the establishment or manufacturing plant of such person within such city, such city may carry out such agreement to furnish free water to such person for the period of time remaining, as stipulated in such contract. This chapter does not prohibit any public utility from supplying or furnishing free service or service at special rates to any municipality, or any institution or agency of such municipality, in cases where the supplying or furnishing of such free service or service at special rates is stipulated in any provision of the franchise under which such public utility was operating before May 16, 1919, or, in the event that such franchise shall have been surrendered, from supplying or furnishing such free service or service at special rates until such time as the franchise would have expired had it not been surrendered under this chapter; and it shall be the duty of any utility operating under any franchise, stipulating for free service or service at special rates to the municipality, or any institution or agency of such municipality, to furnish such free service or service at special rates.

(c) This subsection applies to a public utility that provides water for public fire protection services in both a county containing a consolidated city and in portions of counties that are adjacent to the county containing a consolidated city. This subsection applies throughout the territory served by the public utility. In the case of a public utility furnishing water and beginning on January 1, 1994, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of the customers of the public utility. However, the construction cost of any fire hydrant installed after December 31, 1993, at the request of a municipality, township, county, or other governmental unit shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by this section shall be reflected in a new schedule of rates to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. The new schedule of rates shall:

(1) eliminate fire protection charges billed directly to governmental units, other than charges for the construction cost for new hydrants installed after December 31, 1993; and

(2) increase the rates charged each customer of the utility, based on equivalent meter size, by an amount equal to:

(A) the revenues lost from the elimination of such fire protection charges; divided by

(B) the current number of equivalent five-eighths (5/8) inch meters.

This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the public utility and is not subject to the notice and hearing requirements applicable to general

rate proceedings. The commission shall approve the new schedule of rates that are to be effective January 1, 1994.

(d) This subsection applies to a public utility or a municipally owned water utility that is not subject to subsection (c). Except as provided in subsection (e), in the case of a public utility or municipally owned water utility furnishing water, if the governing body of any municipality within the service area of the utility adopts an ordinance providing that costs shall be recovered under this subsection, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of all customers of the utility within the municipality. However, on or after a date specified in the ordinance, the construction cost of any fire hydrant installed at the request of a municipality, township, county, or other governmental unit that adopts an ordinance under this subsection shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by the ordinance shall be reflected in a new schedule of rates to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. The new schedule of rates shall:

(1) eliminate fire protection charges billed directly to governmental units, other than charges for the construction cost for new hydrants installed on and after the date specified in the ordinance; and

(2) increase the rates charged each customer of the utility, based on equivalent meter size, by an amount equal to:

(A) the revenues lost from the elimination of such fire protection charges; divided by

(B) the current number of equivalent five-eighths (5/8) inch meters.

This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the utility and is not subject to the notice and hearing requirements applicable to general rate proceedings. The commission shall approve the new schedule of rates that are to be effective on a date specified in the ordinance.

(e) This subsection applies to a municipally owned water utility in a city having a population of more than fifty thousand (50,000) but less than fifty-one thousand (51,000). The city may adopt a plan to recover costs as described in subsection (d) without passing an ordinance, if the plan applies only to customers of the utility residing in a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000). If the city wishes to adopt such a plan, the city shall file a new schedule of rates with the commission, but is not subject to commission approval of the rates.

(f) In the case of a change in the method of recovering public fire protection costs under an ordinance adopted under subsection (d):

(1) on or after July 1, 1997, a customer of the utility located outside the limits of a municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) must be excluded from the increase in rates attributable to the change and must not be included in the number of equivalent five-eighths (5/8) inch meters for purposes of subsection (d)(2)(B); or

(2) before July 1, 1997, the commission may:

(A) in the context of a general rate proceeding initiated by the utility; or

(B) upon petition of:

(i) the utility;

(ii) the governmental unit that passed the ordinance; or

(iii) an affected customer;

prospectively exclude public fire protection costs from the rates charged to customers located outside the limits of any municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) if the commission authorizes a simultaneous increase in the rates of the utility's other customers to the extent necessary to prevent a loss of revenues to the utility.

An increase in the rates of the utility's other customers under subdivision (2) may not be construed to be a general increase in basic rates and charges of the utility and is not subject to the hearing requirements applicable to general rate proceedings. This subsection does not prohibit the commission from adopting different methods of public fire protection cost recovery for unincorporated areas after notice and hearing within the context of a general rate proceeding or other appropriate proceeding.

(Formerly: Acts 1913, c.76, s.112; Acts 1915, c.137, s.1; Acts 1919, c.168, s.1.) As amended by Acts 1977, P.L.2, SEC.37; Acts 1978, P.L.2, SEC.803; Acts 1981, P.L.44, SEC.6; P.L.93-1993, SEC.1; P.L.79-1997, SEC.1;

P.L.80-1997, SEC.1; P.L.2-1998, SEC.33; P.L.170-2002, SEC.57; P.L.176-2002, SEC.5; P.L.119-2012, SEC.82.

8-1-2-104

Sec. 104. It shall be unlawful for any public utility or any municipally-owned utility to demand, charge, collect or receive from any person, firm, limited liability company, or corporation, less compensation for any service rendered or to be rendered by said public or municipally-owned utility in consideration of the furnishing by said person, firm, limited liability company, or corporation of any part of the facilities incident thereto. However, nothing herein shall be construed as prohibiting any such public utility or municipally-owned utility from renting any facilities incident to its business.
(Formerly: Acts 1913, c.76, s.113; Acts 1933, c.190, s.20.) As amended by P.L.8-1993, SEC.114.

8-1-2-105

Sec. 105. (a) No public utility may make or give any undue or unreasonable preference or advantage to any person, or subject any person to any undue or unreasonable prejudice or disadvantage in any respect. A person who violates this section commits a Class B infraction.

(b) Nothing in this chapter shall prevent any public utility from furnishing service free or at reduced rates to any of its employees and officers or retired employees and officers or from providing energy assistance to a heating assistance program administered under IC 4-4-33 to persons eligible for that assistance.
(Formerly: Acts 1913, c.76, s.114; Acts 1917, c.161, s.1; Acts 1967, c.2, s.1.) As amended by Acts 1978, P.L.2, SEC.804; Acts 1979, P.L.18, SEC.3; P.L.384-1987(ss), SEC.7; P.L.3-1989, SEC.50; P.L.2-1992, SEC.77; P.L.181-2006, SEC.47.

8-1-2-106

Sec. 106. It is a Class B infraction for a person knowingly to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or for any service in connection therewith, whereby any such service is rendered free or at a less rate than that named in the published schedules and tariffs in force as provided herein, or whereby any service or advantage is received other than is herein specified.
(Formerly: Acts 1913, c.76, s.115.) As amended by Acts 1978, P.L.2, SEC.805.

8-1-2-107

Sec. 107. If any public utility shall do, or cause to be done or permit to be done, any matter, act, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done by this chapter, such public utility shall be liable to the person, firm, limited liability company, or corporation injured thereby in the amount of damages sustained in consequence of such violation. Provided, that any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.
(Formerly: Acts 1913, c.76, s.116.) As amended by P.L.59-1984, SEC.43; P.L.8-1993, SEC.115.

8-1-2-108

Sec. 108. (a) An officer, agent, or employee of any public utility, or a public utility (as defined in this chapter) who:

(1) fails to fill out and return any blanks as required by this chapter;
(2) fails to answer any question therein propounded;
(3) knowingly gives a false answer to any such question or evades the answer to any such question where the fact inquired of is within his knowledge;
(4) fails, upon proper demand, to exhibit to the commission, any commissioner, any administrative law judge, or any person authorized to examine the same, any book, paper, account, record, or memoranda of the public utility which is in his possession or under his control;
(5) fails to keep his system of accounting, or any part thereof, which is required by the commission; or
(6) refuses to do any act or thing in connection with the system of accounting when so directed by the commission or its authorized representative;

commits a Class B infraction.

(b) A municipally owned and operated utility under the jurisdiction of the commission for approval of rates and charges shall file with the commission, an annual report of the operation of said plant on forms to be furnished by

the commission, which forms are to be substantially the same as for reports filed annually with the commission by public utilities. Such annual reports shall remain in the office of said commission as a public record. Whenever in this chapter public utilities are required to make reports to the commission or are otherwise subject to the commission, municipally owned utilities are exempted from making such reports and are not under the jurisdiction of the commission, except as otherwise provided.
(Formerly: Acts 1913, c.76, s.117; Acts 1933, c.190, s.21.) As amended by Acts 1977, P.L.99, SEC.1; Acts 1978, P.L.2, SEC.806; Acts 1979, P.L.84, SEC.4; P.L.23-1988, SEC.28; P.L.68-1990, SEC.1.

8-1-2-109

Sec. 109. A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.
(Formerly: Acts 1913, c.76, s.118.) As amended by Acts 1978, P.L.2, SEC.807.

8-1-2-110 Repealed

8-1-2-110 (Repealed by Acts 1982, P.L.74, SEC.6.)

8-1-2-111 Repealed

8-1-2-111 (Repealed by Acts 1978, P.L.2, SEC.867.)

8-1-2-112

Sec. 112. Every day during which any public utility or any officer, agent, or employee thereof shall fail to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this chapter, shall constitute a separate and distinct violation of such order or direction of this chapter, as the case may be.
(Formerly: Acts 1913, c.76, s.121.) As amended by P.L.59-1984, SEC.44.

8-1-2-113

Sec. 113. (a) The commission may, when it considers necessary to prevent injury to the business or interests of the people or any public utility of this state in case of any emergency to be judged by the commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, service, practices, schedules, and order relating to or affecting any public utility or part of any public utility in this state. The alterations, amendments, or suspensions of the rates, service, schedules, or practices made by the commission shall apply to one (1) or more of the public utilities in this state or to any portion thereof, as directed by the commission, and shall take effect at the time and remain in force for the length of time prescribed by the commission.

(b) The commission may adopt emergency rules under IC 4-22-2-37.1 to carry out this section.
(Formerly: Acts 1913, c.76, s.122; Acts 1947, c.315, s.1.) As amended by P.L.37-1989, SEC.3; P.L.1-1990, SEC.102.

8-1-2-114

Sec. 114. Every public utility shall, whenever an accident attended with loss of human life occurs within this state upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, which investigation shall be held in the locality of the accident unless, for greater convenience of those concerned, it shall order such investigation to be held at some other place; and said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall give due notice to the public utility of the time and place of the investigation.
(Formerly: Acts 1913, c.76, s.123.)

8-1-2-115

Sec. 115. The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered and suit therein shall be brought in the name of the state of Indiana in the circuit or superior court where the public utility has its principal place of business. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced

shall be prosecuted by the general counsel.
(Formerly: Acts 1913, c.76, s.124.) As amended by P.L.59-1984, SEC.45.

8-1-2-116

Sec. 116. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.
(Formerly: Acts 1913, c.76, s.125.) As amended by P.L.59-1984, SEC.46.

8-1-2-117

Sec. 117. This chapter shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty, or forfeiture which may have arisen before May 1, 1913, or which may arise under any statute of this state; and all penalties and forfeitures accruing under this chapter shall be cumulative and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.
(Formerly: Acts 1913, c.76, s.126.) As amended by P.L.59-1984, SEC.47.

8-1-2-118

Sec. 118. The members of said commission, its secretary and clerk, and such other persons as it may appoint or employ, as provided in this chapter, shall be entitled to receive from the state their actual necessary traveling expenses, which shall include the cost of transportation, hotel, telegraph, and telephone bills while traveling on the business of the commission, which amount shall be paid by the treasurer of state, on warrant of the auditor of state, upon an itemized statement thereof, sworn to by the party who incurred such expense in traveling, and after the same shall have been approved by the commission.
(Formerly: Acts 1913, c.76, s.127.) As amended by P.L.59-1984, SEC.48.

8-1-2-119 Repealed

8-1-2-119 (Repealed by Acts 1972, P.L.13, SEC.7.)

8-1-2-120 Repealed

8-1-2-120 (Repealed by Acts 1978, P.L.2, SEC.867.)

8-1-2-121

Sec. 121. (a) Notwithstanding any other provision of law, from December 1 through March 15 of any year, no electric or gas utility, including a municipally owned, privately owned, or cooperatively owned utility, shall terminate residential electric or gas service for persons who are eligible for and have applied for assistance from a heating assistance program administered under IC 4-4-33. The commission shall implement procedures to ensure that electric or gas utility service is continued while eligibility for such persons is being determined.

(b) Any electric or gas utility, including a municipally owned, privately owned, or cooperatively owned utility, shall provide any residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay the delinquent account. Such an amortization agreement must provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program. An amortization agreement is subject to amendment on the customer's request if there is a change in the customer's financial circumstances.

(c) The commission may establish a reasonable rate of interest which a utility may charge on the unpaid balance of a customer's delinquent bill that may not exceed the rate established by the commission under section 34.5 of this chapter.

(d) The commission shall adopt rules under IC 4-22-2 to carry out the provisions of this section.

(e) This section does not prohibit an electric or gas utility from terminating residential utility service upon a request of a customer or under the following circumstances:

(1) If a condition dangerous or hazardous to life, physical safety, or property exists.

(2) Upon order by any court, the commission, or other duly authorized public authority.

(3) If fraudulent or unauthorized use of electricity or gas is detected and the utility has reasonable grounds to believe the affected customer is responsible for such use.

(4) If the utility's regulating or measuring equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for such tampering.

As added by P.L.43-1983, SEC.10. Amended by P.L.41-1987, SEC.6; P.L.2-1992, SEC.78; P.L.181-2006, SEC.48.

8-1-2-122

Sec. 122. (a) As used in this section:

"Dwelling" means an individual residence, including a mobile home or trailer, or a room or combination of rooms, with facilities for living for a single household.

"Heating season" means the period beginning on November 1 of any year and ending on the following April 1.

(b) A utility, including a municipally owned utility, that provides energy or fuel to an occupied dwelling may not, during the heating season, terminate service to the dwelling because of the failure of the customer to pay his energy or fuel bills until fourteen (14) days after it serves notice upon the customer of its intent to terminate service.

(c) A notice served under this section must be in language that is clear, concise, and easily understandable to a layman. It must, in separately numbered paragraphs:

(1) indicate the date on which service will be terminated;

(2) state the reason and factual basis for the termination of service;

(3) list the telephone number of the utility office that the customer may call during regular business hours in order to question the proposed termination of service or to seek information concerning his rights; and

(4) state that the customer may refer to the pamphlet furnished to him under 170 IAC 4-1-18 for information as to his rights.

(d) Service of a notice under this section must be by:

(1) mail addressed to the customer; or

(2) personal delivery to the customer or to a responsible member of his household;

at the address listed for the customer in the records of the utility.

(e) No notice may be served under this section before the date on which the customer's account becomes delinquent.

As added by P.L.43-1983, SEC.11.

8-1-2-125

Sec. 125. (a) As used in this section, "not-for-profit utility" means a public water or sewer utility that:

(1) does not have shareholders;

(2) does not engage in any activities for the profit of its trustees, directors, incorporators, or members; and

(3) is organized and conducts its affairs for purposes other than the pecuniary gain of its trustees, directors, incorporators, or members.

The term does not include a regional district established under IC 13-26, a conservancy district established under IC 14-33, or, for purposes of subsections (f), (g), (h), (i), (j), and (k), a utility company owned, operated, or held in trust by a consolidated city.

(b) As used in this section, "sewage disposal system" means a privy, cesspool, septic tank, or other similar structure. The term includes a septic tank soil absorption system (as defined in IC 13-11-2-199.5). The term does not include a sewer system operated by a not-for-profit public sewer utility.

(c) A not-for-profit utility shall be required to furnish reasonably adequate services and facilities. The charge made by any not-for-profit utility for any service rendered or to be rendered, either directly or in connection with the service, must be nondiscriminatory, reasonable, and just. Each discriminatory, unjust, or unreasonable charge for the service is prohibited and unlawful.

(d) A reasonable and just charge for water or sewer service within the meaning of this section is a charge that will produce sufficient revenue to pay all legal and other necessary expense incident to the operation of the not-for-profit utility's system, including the following:

(1) Maintenance and repair costs.

(2) Operating charges.

(3) Interest charges on bonds or other obligations.

(4) Provision for a sinking fund for the liquidation of bonds or other evidences of indebtedness.

(5) Provision for a debt service reserve for bonds or other obligations in an amount not to exceed the maximum annual debt service on the bonds or obligations.

(6) Provision of adequate funds to be used as working capital.

(7) Provision for making extensions and replacements.

(8) The payment of any taxes that may be assessed against the not-for-profit utility or its property.

The charges must produce an income sufficient to maintain the not-for-profit utility's property in sound physical and financial condition to render adequate and efficient service. A rate too low to meet these requirements is unlawful.

(e) Except as provided in subsections (f) and (h), a not-for-profit public sewer utility may require connection to its sewer system of property producing sewage or similar waste and require the discontinuance of use of a sewage disposal system if:

(1) there is an available sanitary sewer within three hundred (300) feet of:

(A) the property line, if the property is:

(i) located in a consolidated city;

(ii) adjacent to a body of water, including a lake, river, or reservoir; or

(iii) any part of a subdivision, or land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale; or

(B) for all other properties, the improvement or other structure from which the sewage or similar waste is discharged; and

(2) the utility has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before the date for connection stated in the notice.

The notice given under subdivision (2) must also inform the property owner, other than an owner of property located in a consolidated city, that the property owner may qualify for an exemption as set forth in subsection (f).

(f) Subject to subsection (h), a property owner is exempt from the requirement to connect to a not-for-profit public sewer utility's sewer system and to discontinue use of a sewage disposal system if the following conditions are met:

(1) The property owner's sewage disposal system is a septic tank soil absorption system that was new at the time of installation and approved in writing by the local health department.

(2) The property owner, at the property owner's expense, obtains a written determination from the local health department or the department's designee that the septic tank soil absorption system is not failing. The local health department or the department's designee shall provide the owner with a written determination not later than sixty (60) days after receipt of the owner's request. If the local health department or the department's designee fails to provide a written determination within the time established in this subdivision, the owner, at the owner's expense, may obtain a written determination from a qualified inspector. If the local health department or the department's designee determines that a septic tank soil absorption system is failing, the property owner may appeal the determination to the board of the local health department. The decision of the board is final and binding.

(3) The property owner provides the not-for-profit public sewer utility with:

(A) the written notification of potential qualification for the exemption described in subsection (i); and

(B) the written determination described in subdivision (2);

within the time limits set forth in subsection (i).

(g) If a property owner, within the time allowed under subsection (i), notifies a not-for-profit public sewer utility in writing that the property owner qualifies for the exemption under this section, the not-for-profit public sewer utility shall, until the property owner's eligibility for an exemption under this section is determined, suspend the requirement that the property owner discontinue use of a sewage disposal system and connect to the not-for-profit public sewer utility's sewer system.

(h) A property owner who qualifies for the exemption provided under this section may not be required to connect to the not-for-profit public sewer utility's sewer system for a period of ten (10) years beginning on the date the new sewage disposal system was installed. A property owner may apply for two (2) five (5) year extensions of the exemption provided under this section by following the procedures set forth in subsections (f) and (g). If ownership of an exempt property is transferred during a valid exemption period, including during an extension of an initial exemption:

(1) the exemption applies to the subsequent owner of the property for the remainder of the exemption period during which the transfer occurred; and

(2) the subsequent owner may apply for any remaining extensions.

However, the total period during which a property may be exempt from the requirement to connect to a district's sewer system under this section may not exceed twenty (20) years, regardless of ownership of the property.

(i) To qualify for an exemption under this section, a property owner must:

(1) within sixty (60) days after the date of the written notice given to the property owner under subsection (e), notify the not-for-profit public sewer utility in writing that the property owner qualifies for the exemption under this section; and

(2) within one hundred twenty (120) days after the not-for-profit public sewer utility receives the written notice provided under subdivision (1), provide the not-for-profit public sewer utility with the written determination required under subsection (f)(2).

(j) When a property owner who qualifies for an exemption under this section subsequently discontinues use of the property owner's sewage disposal system and connects to the not-for-profit public sewer utility's sewer system, the property owner may be required to pay only the following to connect to the sewer system:

(1) The connection fee the property owner would have paid if the property owner connected to the sewer system on the first date the property owner could have connected to the sewer system.

(2) Any additional costs:

(A) considered necessary by; and

(B) supported by documentary evidence provided by;

the not-for-profit public sewer utility.

(k) A not-for-profit public sewer utility may not require a property owner to connect to the not-for-profit public sewer utility's sewer system if:

(1) the property is located on at least ten (10) acres;

(2) the owner can demonstrate the availability of at least two (2) areas on the property for the collection and treatment of sewage that will protect human health and the environment;

(3) the waste stream from the property is limited to domestic sewage from a residence or business;

(4) the system used to collect and treat the domestic sewage has a maximum design flow of seven hundred fifty (750) gallons per day; and

(5) the owner, at the owner's expense, obtains and provides to the district a certification from the local health department or the department's designee that the system is not failing.

(l) A property owner who connects to a not-for-profit public sewer utility's sewer system may provide, at the owner's expense, labor, equipment, materials, or any combination of labor, equipment, and materials from any source to accomplish the connection to the sewer system, subject to inspection and approval by the not-for-profit public sewer utility.

(m) This section does not affect the authority of the state department of health, a local health department, or a county health officer with respect to a sewage disposal system.

(n) For purposes of this section, a sewage disposal system is "failing" if one (1) or more of the following apply:

(1) The system refuses to accept sewage at the rate of design application and interferes with the normal use of plumbing fixtures.

(2) Effluent discharge exceeds the absorptive capacity of the soil into which the system discharges, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters.

(3) Effluent discharged from the system contaminates a potable water supply, ground water, or surface waters.

(o) As used in this section, "qualified inspector" means any of the following:

(1) An employee of a local health department who is designated by the local health department as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

(2) An individual who is certified by the Indiana Onsite Wastewater Professionals Association as an onsite sewage system installer or inspector.

(3) An individual listed by the state department of health or the local health department with jurisdiction over the service area of the property inspected as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

As added by P.L.82-1986, SEC.1. Amended by P.L.35-1990, SEC.25; P.L.78-1996, SEC.1; P.L.97-2012, SEC.1; P.L.178-2013, SEC.1; P.L.292-2013, SEC.1.

8-1-2-126

Sec. 126. A public utility or municipally owned utility may not purchase or transmit any electrical power generated in a country outside of the borders of the United States, unless the commission determines that the purchase or transmission is necessary for the health and welfare of the citizens of Indiana.

As added by P.L.119-1987, SEC.1.

8-1-2-127

Sec. 127. A public utility shall:

(1) indicate separately and conspicuously on each customer's bill the total charge attributable to any tax imposed under federal law on the basis of British Thermal Units or any other measure of the energy content of energy consumed by the customer during the billing period; and

(2) identify the charge described under subdivision (1) as a federal energy tax.

As added by P.L.35-1993, SEC.2.

Chapter 2.7. Local Water Corporations; Indiana Utility Regulatory Commission Jurisdiction

8-1-2.7

8-1-2.7-1 Repealed

8-1-2.7-1 (Repealed by P.L.82-1997, SEC.19 and P.L.80-1997, SEC.24.)

8-1-2.7-1.2 Repealed

8-1-2.7-1.2 (Repealed by P.L.159-1999, SEC.21.)

8-1-2.7-1.3

Sec. 1.3. (a) This chapter applies to the following:

(1) A public utility established to provide water service that is:

(A) privately owned and serves less than three hundred (300) customers;

(B) a not-for-profit utility (as defined by IC 8-1-2-125(a));

(C) a cooperative corporation exempt from state and federal income taxation; or

(D) a conservancy district established under IC 14-33-2 that:

(i) has as a purpose of the district the provision of a water supply, including the treatment and distribution of water, for domestic, industrial, and public use; and

(ii) provides water service to less than two thousand (2,000) customers.

(2) A public utility established to provide sewage disposal service (as defined in IC 8-1-2-89(a)(1)) that holds a certificate of territorial authority as required by IC 8-1-2-89, and that is:

(A) privately owned and serves less than three hundred (300) customers;

(B) a not-for-profit utility (as defined in IC 8-1-2-125(a)); or

(C) a cooperative corporation exempt from state and federal income taxation.

(3) Except as provided in subsection (b), a legal entity providing only sewage treatment service to a not-for-profit sewage disposal company.

(b) Subsection (a)(3) does not include a sewage treatment provider that is otherwise subject to the commission's jurisdiction.

As added by P.L.82-1997, SEC.2 and P.L.80-1997, SEC.2. Amended by P.L.159-1999, SEC.2; P.L.78-2007, SEC.1.

8-1-2.7-1.4

Sec. 1.4. As used in this chapter, "members" of a not-for-profit water or sewage disposal company and "shareholders" of a privately owned water or sewage disposal company shall also include the customers of that utility.

As added by P.L.80-1997, SEC.3 and P.L.82-1997, SEC.3. Amended by P.L.159-1999, SEC.3.

8-1-2.7-1.5 Repealed

8-1-2.7-1.5 (Repealed by P.L.159-1999, SEC.21.)

8-1-2.7-1.6

Sec. 1.6. (a) As used in this chapter, "sewage treatment provider" means a legal entity that provides only sewage treatment service to a not-for-profit sewage disposal company.

(b) As used in this chapter, "sewage treatment recipient" means a not-for-profit sewage disposal company that

receives sewage treatment service from another legal entity.
As added by P.L.159-1999, SEC.4.

8-1-2.7-1.7

Sec. 1.7. (a) This section does not apply to a sewage treatment provider that is otherwise subject to the jurisdiction of the commission.

(b) When a sewage treatment provider contracts to provide only sewage treatment service to a sewage treatment recipient, the sewage treatment provider is not subject to the jurisdiction of the commission, regardless of whether the sewage treatment recipient is subject to the jurisdiction of the commission.
As added by P.L.80-1997, SEC.5 and P.L.82-1997, SEC.5. Amended by P.L.159-1999, SEC.5.

8-1-2.7-2

Sec. 2. (a) This chapter provides the exclusive statutory manner for a utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter to withdraw from the jurisdiction of the commission for the approval of the following:

(1) Rates and charges.
(2) Stocks, bonds, notes, or other evidence of indebtedness.
(3) Rules.
(4) The annual report filing requirement.

(b) Notwithstanding any other provision in this article, a sewer disposal company described in section 1.3(a)(2) of this chapter shall not initiate operations or provide service or seek commission authority to do so within a territory for which the commission has granted operating and territorial authority to any other entity, which has not been revoked.

(c) A sewage disposal company described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction under this chapter shall offer service to all customers within the territory for which the commission has granted the utility territorial authority.
As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.6; P.L.82-1997, SEC.6; P.L.159-1999, SEC.6.

8-1-2.7-3

Sec. 3. A utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter that proposes to withdraw from the jurisdiction of the commission must first obtain approval from its members or shareholders.
As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.7; P.L.82-1997, SEC.7; P.L.159-1999, SEC.7.

8-1-2.7-4

Sec. 4. The board of directors of a utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter must conduct a referendum among its members or shareholders to determine whether the members or shareholders approve the withdrawal from commission jurisdiction.
As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.8; P.L.82-1997, SEC.8; P.L.159-1999, SEC.8.

8-1-2.7-5

Sec. 5. The referendum must be conducted at a special meeting called by the board. Written notice of the meeting must be sent to every member or shareholder of the withdrawing utility and to the secretary of the commission not less than thirty (30) days before the date of the meeting. The notice must contain the following information:

(1) The place, date, and hour of the meeting.
(2) The purpose of the meeting, including an explanation of what the withdrawal from commission jurisdiction entails.
(3) The fact that no proxies will be permitted.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.9; P.L.82-1999, SEC.9; P.L.159-1999, SEC.9.

8-1-2.7-6

Sec. 6. A quorum consisting of not less than five percent (5%) of the members must be present at the meeting to transact business and to take official action regarding the jurisdiction question.
As added by P.L.108-1989, SEC.1.

8-1-2.7-7

Sec. 7. The board shall distribute secret written ballots to the members or shareholders present at the meeting. The form of the ballots must be as follows:

[] YES, I want to withdraw from the jurisdiction of the commission.

[] NO, I want to remain under the jurisdiction of the commission.

Only those members or shareholders present at the meeting are eligible to vote, and proxy votes are not permitted. Each member or shareholder present is entitled to one (1) vote on the question of withdrawal from commission jurisdiction. If a majority of members or shareholders present vote in favor of the utility withdrawing from commission jurisdiction, the withdrawal becomes effective thirty (30) days after the date of the vote. If less than a majority of the members or shareholders present vote in favor of withdrawal from commission jurisdiction, the utility is prohibited from seeking withdrawal for two (2) years following the date of the vote.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.10; P.L.82-1997, SEC.10; P.L.159-1999, SEC.10.

8-1-2.7-8 Repealed

8-1-2.7-8 (Repealed by P.L.159-1999, SEC.21.)

8-1-2.7-9

Sec. 9. (a) Except as provided under subsection (c) or section 15 of this chapter, when a utility successfully withdraws from commission jurisdiction, the commission does not have authority to regulate the following:

(1) Rates and charges.

(2) Stocks, bonds, notes, or other evidence of indebtedness.

(3) Rules.

(4) The annual report filing requirement.

(b) When the number of patrons served by a withdrawn utility described in section 1.3(a)(1)(A) or 1.3(a)(2)(A) of this chapter reaches five thousand (5,000), the utility:

(1) becomes subject to the annual report filing requirement described in IC 8-1-2-16; and

(2) shall immediately notify the commission of the number of patrons served by the utility.

Upon receiving notice under subdivision (2), the commission may reassert jurisdiction over the utility, in whole or in part, after notice and hearing if the commission finds that the public interest so requires.

(c) As used in this subsection, "utility" refers to a utility described in section 1.3(a)(1)(B) of this chapter that is located in a county having a population of more than sixteen thousand (16,000) but less than seventeen thousand (17,000). When one (1) utility has successfully withdrawn from commission jurisdiction under this chapter, upon the filing of a complaint by another utility that has not withdrawn from commission jurisdiction under this chapter, the commission shall reassert jurisdiction over the withdrawn utility with respect to the withdrawn utility's:

(1) rates and charges;

(2) rules; and

(3) operating and territorial authority;

that have been or may be established concerning the purchase of water for resale by the complaining utility from the withdrawn utility. The rates and charges described in subdivision (1) are subject to the requirements of IC 8-1-2-125. The burden of proof that the rates and charges described in subdivision (1) comply with IC 8-1-2-125 is on the withdrawn utility.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.12; P.L.82-1997, SEC.12; P.L.159-1999, SEC.11; P.L.226-2001, SEC.2; P.L.170-2002, SEC.58; P.L.119-2012, SEC.83.

8-1-2.7-10

Sec. 10. (a) If a utility successfully withdraws from commission jurisdiction, the board of directors shall, within five (5) days of the meeting, send written confirmation to the secretary of the commission containing the following information:

(1) The total membership or number of shareholders of the utility.

(2) The total number present at the meeting.

(3) The vote totals both for and against withdrawal.

(4) Written verification of notice of the meeting.

(5) An affidavit, signed by all of the members of the board of directors, stating that all of the requirements of this chapter have been met.

(b) If a utility successfully withdraws from commission jurisdiction, the utility is not required to pay the public utility fee imposed under IC 8-1-6.

(c) Notwithstanding any other provision of this chapter, a utility described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction remains subject to commission jurisdiction with regard to the requirements of IC 8-1-2-89(f).

(d) Whenever two (2) or more utilities described in section 1.3(a)(1) or 1.3(a)(2) of this chapter propose to consolidate, and at least one (1), but not all of the utilities have withdrawn from commission jurisdiction, then the following apply:

(1) For purposes of the consolidation, all of the utilities are under the commission's jurisdiction.

(2) The new corporation that is formed as a result of the consolidation is under the commission's jurisdiction for all purposes and must fully comply with this chapter in order to withdraw from commission jurisdiction.

(e) If two (2) or more utilities described in section 1.3(a)(1)(C) or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the cooperatives have withdrawn from commission jurisdiction, the new utility continues to operate outside the commission's jurisdiction under the terms of this section.

(f) The commission's approval is not required for consolidation of two (2) or more utilities that have all withdrawn from commission jurisdiction.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.13; P.L.82-1997, SEC.13; P.L.159-1999, SEC.12.

8-1-2.7-11

Sec. 11. (a) Whenever the members or shareholders of a utility desire to return to commission jurisdiction, they must petition the commission. A petition signed by:

(1) at least fifteen percent (15%) of the members or shareholders; or

(2) the board of directors of the utility;

must first be submitted to the commission, informing that body of the utility's intent to conduct a referendum concerning the return to commission jurisdiction. The procedures outlined in sections 2 through 7 of this chapter must be followed when conducting a referendum under this section, except that the form of the ballots must be as follows:

[] YES, I want to return to the jurisdiction of the commission.

[] NO, I want to remain outside of the jurisdiction of the commission.

(b) The question of returning to commission jurisdiction may not be submitted to the members or shareholders within four (4) years after the date the utility withdrew from commission jurisdiction.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.14; P.L.82-1997, SEC.14; P.L.159-1999, SEC.13.

8-1-2.7-12

Sec. 12. If a utility returns to commission jurisdiction, the commission assumes jurisdiction thirty (30) days after the date of the vote over the following:

(1) Rates and charges.

(2) Stocks, bonds, notes, or other evidence of indebtedness.

(3) Rules.

(4) The annual report filing requirement.

If less than a majority of the members or shareholders present vote in favor of returning to commission jurisdiction, a referendum on the question may not be conducted for four (4) years following the date of the vote.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.15; P.L.82-1997, SEC.15; P.L.159-1999, SEC.14.

8-1-2.7-13

Sec. 13. If a utility attempts to return to commission jurisdiction, the board of directors shall, within five (5) days following the meeting, send written confirmation to the secretary of the commission containing the following information:

(1) The total membership or number of shareholders of the utility.

(2) The total number present at the meeting.

(3) The vote totals both for and against the return.

(4) Written verification of notice of the meeting.
(5) An affidavit, signed by all the members of the board of directors, stating that all of the requirements of this chapter have been met.

As added by P.L.108-1989, SEC.1. Amended by P.L.82-1997, SEC.16; P.L.80-1997, SEC.16; P.L.159-1999, SEC.15.

8-1-2.7-14

Sec. 14. When a utility returns to commission jurisdiction, the commission may order the utility to file an annual report of the operation of its plant for each of the three (3) calendar years immediately preceding its return to commission jurisdiction on a form prescribed by the commission.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.17; P.L.82-1997, SEC.17; P.L.159-1999, SEC.16.

8-1-2.7-14.5

Sec. 14.5. (a) This section applies when a utility fails to follow the procedures provided in this chapter for withdrawal from or return to the commission's jurisdiction.

(b) To contest compliance with this chapter:

(1) parties aggrieved by the decision to withdraw from commission jurisdiction; or
(2) other interested parties;

must file an action in the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(c) An action filed under this section must be filed not later than thirty (30) days after the date of the vote regarding commission jurisdiction over the utility.

As added by P.L.159-1999, SEC.17.

8-1-2.7-15

Sec. 15. (a) This section applies after a utility has properly withdrawn from commission jurisdiction under this chapter.

(b) The commission shall revoke or limit the withdrawal from the jurisdiction of the commission of a utility if the lesser of:

(1) one hundred (100); or
(2) more than fifty percent (50%);

of the utility's customers file, individually or collectively, a verified petition with the commission and prove that the public interest requires the commission to revoke or limit the withdrawal from the jurisdiction of the commission.

(c) A petition may be filed with the commission under this section at any time following the withdrawal of the utility.

As added by P.L.82-1997, SEC.18. Amended by P.L.159-1999, SEC.18.

Chapter 5.5. Drinking Water Quality Tests

8-1-5.5

8-1-5.5-1

Sec. 1. Within thirty (30) days before the date that the authority to supply piped drinking water is transferred from a city or town to a person other than a city or town, the state department of health shall conduct a test to determine the quality of the drinking water supplied by the city or town. The state department of health shall adopt rules under IC 4-22-2 concerning the test that is required under this section.

As added by Acts 1981, P.L.105, SEC.1. Amended by P.L.2-1992, SEC.79.

8-1-5.5-2

Sec. 2. After August 31, 1981, if the authority to supply piped drinking water is transferred from a city or town to a person other than a city or town, the piped drinking water must, at the time of transfer, be at least equal in quality to the water tested under section 1 of this chapter which was supplied by the city or town. A person shall comply with this section within ten (10) days of the date on which it is found by the state department of health that the person supplies drinking water that does not comply with this section.

As added by Acts 1981, P.L.105, SEC.1. Amended by P.L.2-1992, SEC.80.

8-1-5.5-3

Sec. 3. A person, other than a city or town, to whom the authority to supply piped drinking water is transferred from a city or town, shall maintain, to the extent practicable and reasonable, the quality of water required at the time of transfer of such authority, under section 2 of this chapter.
As added by Acts 1981, P.L.105, SEC.1.

8-1-5.5-4

Sec. 4. A person who supplies drinking water that does not comply with section 2 of this chapter commits a Class B infraction for each day he is in violation.
As added by Acts 1981, P.L.105, SEC.1.

Chapter 6. Public Utility Fees

8-1-6

8-1-6-1

Sec. 1. (a) It is declared to be the public policy of this state that in order to maintain and foster the effective regulation of the public utilities, in the interests of the people of the state of Indiana and the public utilities as well, the public utilities subject to regulation and which enjoy the privilege of operating as public utilities in this state shall bear the expense of administering the provisions of IC 8-1-1 and IC 8-1-2 by means of a public utility fee on such privilege measured by the annual gross revenue of such public utilities in the manner provided in this chapter. That expense shall be determined by totaling the budgets, approved by the general assembly in its appropriation act for the years to be billed, of the commission and the utility consumer counselor, including expert witness fees. The sum of two hundred fifty thousand dollars ($250,000) shall be added to that total for the use of the commission and the utility consumer counselor as a contingency fund, with expenditures from that fund subject to prior approval of the governor and state budget agency. The proceeds from the public utility fee shall be paid to the commission and deposited in the public utility fund which is hereby created in the state treasury. If the reports required to be submitted to the commission under section 5 of this chapter reveal that the amounts to be collected for the fiscal year from the public utilities, when added together, plus the unexpended balance of the public utility fund account at the end of the fiscal year will exceed the total of the expenses plus the contingency fund, the commission shall compute the amount of each public utility's proportionate share of the excess sum. The commission shall, as promptly as possible, notify each public utility of the amount of its proportionate share of such excess and that amount shall be deducted from the subsequent payment of any fees imposed on such utility under section 4 of this chapter.

(b) If the sum of the actual expenditures of the commission and the utility consumer counselor are less than the appropriations therefor by the general assembly, the difference between the actual expenditures and the appropriations shall be subject to the credit provision provided in this section and each utility's proportionate share of that difference shall be deducted from the subsequent payment of any fee imposed on that utility under section 4 of this chapter.
(Formerly: Acts 1969, c.360, s.1; Acts 1974, P.L.28, SEC.1; Acts 1975, P.L.77, SEC.1.) As amended by Acts 1977, P.L.101, SEC.1; P.L.23-1988, SEC.37.

8-1-6-2

Sec. 2. (a) All fees herein prescribed shall be paid into the treasury of the state of Indiana through the secretary of the commission, a quietus shall be issued, and the fees shall be deposited into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the consumer counselor in amounts not in excess of their respective appropriations by the general assembly, plus the contingency fund. All appropriations under this chapter paid out of the commission public utility fund account shall be subject to the prior approval of the general assembly, the governor, and the state budget agency.

(b) Fees collected from municipalities under IC 8-1-2-85 and amounts paid by municipal utilities under IC 8-1-2-70 shall also be deposited in the commission public utility fund account, as if they were fees collected from

public utilities under this chapter.
(Formerly: Acts 1969, c.360, s.2; Acts 1975, P.L.77, SEC.2.) As amended by Acts 1977, P.L.101, SEC.2; Acts 1982, P.L.74, SEC.3; P.L.23-1988, SEC.38; P.L.1-2010, SEC.42; P.L.251-2013, SEC.3.

8-1-6-3

Sec. 3. The term "public utility", as used in this chapter, shall mean and embrace every corporation, company, cooperative organization of any kind, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever that on or after March 15, 1969, may own, operate, manage, or control any plant or equipment within the state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery, or furnishing of heat, light, water, or power, or for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste, for service directly or indirectly to the public, but said term shall not include a municipality that may after March 14, 1969, acquire, own, or operate any of the foregoing facilities.

The term "gross revenue", as used in this chapter, shall include all intrastate operating revenue received by a public utility for the conveyance of telegraph or telephone messages or for the production, transmission, delivery, or furnishing of heat, light, water, or power, or for the collection, treatment, purification, or disposal in any sanitary manner of liquid or solid waste, sewage, night soil, and industrial waste for service directly or indirectly to the public. Provided, however, that such term shall not include revenue derived by a public utility in the sale of public utility services, products, or commodities to another public or municipal utility for resale by the latter.
(Formerly: Acts 1969, c.360, s.3.) As amended by P.L.59-1984, SEC.53.

8-1-6-4

Sec. 4. A public utility fee is imposed upon each public utility subject to the provisions of this chapter equal to .0015 of its gross revenue for the preceding calendar year. The commission may not bill or collect a public utility fee that is fifty dollars ($50) or less under this calculation.
(Formerly: Acts 1969, c.360, s.4.) As amended by Acts 1977, P.L.101, SEC.3; P.L.159-1999, SEC.19.

8-1-6-5

Sec. 5. On or before May 1 of each year, public utilities subject to the provisions of this chapter shall file with the commission a report of their annual gross revenue for the preceding calendar year and a statement of the amount of public utility fee due on the basis of said report. Forms for said report or returns shall be devised and supplied by the commission.
(Formerly: Acts 1969, c.360, s.5.) As amended by Acts 1979, P.L.84, SEC.5.

8-1-6-6

Sec. 6. All returns submitted to the commission by a public utility as provided by this chapter shall be sworn to by an appropriate officer of the public utility. The commission may audit each such return submitted and may take such measures as are necessary to ascertain the correctness of the returns submitted. The commission is hereby vested with the power to direct the filing of any return required by this chapter.
(Formerly: Acts 1969, c.360, s.6.) As amended by P.L.59-1984, SEC.54.

8-1-6-7

Sec. 7. One quarter (1/4) of the annual fee imposed under section 4 of this chapter shall be paid to the commission on or before the first day of July of the year in which the fee is imposed and one quarter (1/4) on the first day of each of the months of October, January, and April following immediately thereafter; or the entire amount of such fee may, at the election of the utility, be paid in full on or before July 1 of such year.
(Formerly: Acts 1969, c.360, s.7.) As amended by P.L.59-1984, SEC.55.

8-1-6-8

Sec. 8. Each installment or required payment of the fee imposed by section 4 of this chapter becomes delinquent at midnight of the last day for payment thereof as provided in section 7 of this chapter. If a public utility has failed to pay, or has underpaid, the proper amount of any quarterly installment or payment, it shall pay a penalty to the commission of one percent (1%) of the amount so due on any quarterly installment or payment for each month or fraction thereof that such amount is unpaid. The commission may enforce the collection of any delinquent installment or payment, or portion thereof by legal action or in any other manner by which the collection of debts

due the state of Indiana may be enforced under the laws of this state.
(Formerly: Acts 1969, c.360, s.8.) As amended by P.L.59-1984, SEC.56.

8-1-6-9

Sec. 9. All sums collected by the commission under the provisions of this chapter shall be paid not less than fifteen (15) days after receipt of the same, accompanied by a detailed statement thereof to the treasurer of the state of Indiana and deposited into the public utility fund.
(Formerly: Acts 1969, c.360, s.9.) As amended by P.L.59-1984, SEC.57.

Chapter 8. Condemnation by Utilities

8-1-8

8-1-8-1

Sec. 1. (a) A public utility, except in cities of the third class, engaged in the production, transmission, delivery, or furnishing of heat, light, water, or power or for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid sewage or furnishing facilities for transmission of intelligence by electricity to towns and cities and to the public in general or for the furnishing of elevator or warehouse service, either directly or indirectly, to or for the public, for the purpose of enabling it to perform its functions, may appropriate and condemn lands of individuals and private corporations, or any easement in any lands, necessary to the carrying out of its objects, whether the same be for its building, structures, dams, line of poles, wires, mains, conduits, and pipelines, or right-of-way to accommodate railway siding or switch tracks connecting its plant or plants with the tracks of any common carrier, overflowage by backwater from its dams, waste, or sluiceways.

(b) However, within the limits of any incorporated town or city, the authority to appropriate does not:

(1) extend to lands situated in any city block in which more than fifty percent (50%) of the frontage is devoted to residence purposes;

(2) extend to common carriers engaged in the transportation of freight or passengers; or

(3) give to any public utility any right or authority to:

(A) appropriate any land or easement within the corporate limits of any city for overflowage by backwater from any dam;

(B) appropriate or acquire any dam, race, or sluiceway existing on May 31, 1921, or any interest in either, except to use water for condensation purposes;

(C) appropriate or acquire any pipeline laid or contained within the limits of private property; or

(D) authorize any corporation developing hydroelectric power to unreasonably interfere with or disturb the natural flow of the stream from which power may be derived. Lands or easements in lands acquired by appropriation and condemnation shall be held and enjoyed by the company for those purposes as though the land or easement had been acquired by purchase.

(c) If a not-for-profit sewer utility (as described in IC 8-1-2-125(a)) appropriates or condemns land to acquire an easement or right-of-way necessary to carry out the not-for-profit sewer utility's objectives, the easement or right-of-way may not exceed fifty (50) feet in width.

(d) The appropriation and condemnation of lands and easements in lands authorized by this section must be done under the terms and conditions and in the manner prescribed by IC 32-24-1.
(Formerly: Acts 1921, c.98, s.1; Acts 1961, c.195, s.1.) As amended by P.L.59-1984, SEC.59; P.L.2-2002, SEC.36; P.L.97-2012, SEC.2.

8-1-8-2 Repealed

8-1-8-2 (Repealed by P.L.59-1984, SEC.60.)

8-1-8-3

Sec. 3. This chapter shall be construed as supplemental legislation and not as repealing any statutes in force on May 31, 1921.
(Formerly: Acts 1921, c.98, s.3.) As amended by P.L.59-1984, SEC.61.

Chapter 15. Water Utilities-Vacation or Relocation of Roads

8-1-15

8-1-15-1

Sec. 1. Any corporation organized under the laws of the state of Indiana and authorized by its articles of incorporation to furnish water to any town or city or the inhabitants thereof, through or adjoining whose land any highway has heretofore been located and established, which desires to vacate or to relocate such highway or a portion thereof, may file with the circuit or a superior court in the county in which such lands or the major part thereof are located, its petition setting forth the following:

(a) The name of the petitioner.

(b) A distinct description of the highway or part thereof which petitioner seeks to be vacated or relocated and in case of relocation, a distinct description of the proposed new route, which may be over existing highways or right-of-way.

(c) A statement that petitioner has determined that such vacation or relocation is reasonably necessary or desirable in connection with petitioner's construction or maintenance of an impounding water reservoir.

(d) A statement that said vacation or relocation of said highway or portion thereof will not increase by more than four (4) miles the distance necessary for anyone to travel over highways which are or will be substantially similar to that proposed to be vacated or relocated.

(e) In case of vacation, the names and addresses of owners of the abutting land affected by the vacation proceedings.

(Formerly: Acts 1959, c.196, s.1.)

8-1-15-2

Sec. 2. Upon the filing of the petition described in section 1 of this chapter, the court shall set a time for hearing not less than fourteen (14) days nor more than twenty-one (21) days thereafter and notice shall be given of the filing of said petition and the time set for hearing thereof by publication for two (2) full weeks in some newspaper, daily or daily except Sunday, of general circulation in each county wherein any portion of said highway is located. The notice shall be directed to the inhabitants of said county or counties and shall set forth a description of the highway or portion thereof which petitioner seeks to be vacated or relocated and in case of relocation, a distinct description of the proposed new route shall be given. A copy of the notice shall be personally served on the board of commissioners of each county in which said highway or any portion thereof is located in the same manner as a summons is served in civil cases. In case of vacation, the clerk of the court shall also send a copy of the published notice by registered mail to each of the owners of the abutting land affected by the vacation proceedings as set out in the petition, provided that the attorney of record who files said vacation proceedings shall deliver to said clerk sufficient postage and copies of the published notice to cover the mailing to such abutting owners.

(Formerly: Acts 1959, c.196, s.2.) As amended by P.L.59-1984, SEC.72.

8-1-15-3

Sec. 3. Any person feeling himself aggrieved by the proposed vacation or relocation may file a written remonstrance with the court at any time prior to the time set forth for hearing upon any one or more of the following grounds and no other to wit:

(a) That the highway or portion thereof proposed to be vacated or relocated is necessary to the growth of the county or counties in which it is located.

(b) That the proposed vacation or relocation will leave the real estate of the remonstrant without means of ingress or egress by a public highway.

(c) That such vacation or relocation will deny the public access to some public building, church or school or public grounds.

(d) That the material allegations of the petition or any of them are not true.

(Formerly: Acts 1959, c.196, s.3.)

8-1-15-4

Sec. 4. If no such remonstrance shall be filed in writing with the court before the time set for hearing, the court shall grant the prayer of the petition. If remonstrance thereto be made, the court shall set the time for hearing and trial by the court and if the facts alleged in said petition are found true and the facts in said remonstrance are found not true the court shall overrule the remonstrance and grant the prayer of the petition. In either case, all costs of the

proceedings shall be paid by the petitioner.
(Formerly: Acts 1959, c.196, s.4.)

Chapter 28. Water Utility Environmental Compliance Plans

8-1-28

8-1-28-1

Sec. 1. As used in this chapter, "Clean Water Act" refers to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and regulations adopted under the Federal Water Pollution Control Act.
As added by P.L.76-1991, SEC.2.

8-1-28-2

Sec. 2. As used in this chapter, "environmental compliance plan" means a plan developed by a public utility to comply in whole or in part with the requirements of the Safe Drinking Water Act or the Clean Water Act.
As added by P.L.76-1991, SEC.2.

8-1-28-3

Sec. 3. As used in this chapter, "public utility" means a public utility, a municipally owned utility, or a cooperatively owned utility.
As added by P.L.76-1991, SEC.2.

8-1-28-4

Sec. 4. As used in this chapter, "Safe Drinking Water Act" refers to the federal Safe Drinking Water Act (Public Health Service Act, 42 U.S.C. 300f et seq.) and regulations adopted under the Safe Drinking Water Act.
As added by P.L.76-1991, SEC.2.

8-1-28-5

Sec. 5. (a) A public utility that is subject to provisions of the Safe Drinking Water Act or Clean Water Act may voluntarily submit an environmental compliance plan that sets forth the manner in which the public utility intends to comply with requirements of the Safe Drinking Water Act or the Clean Water Act to the commission for the commission's review and approval under this chapter.

(b) An environmental compliance plan described in subsection (a) must include any information that the commission may require. The commission shall require a plan described in subsection (a) to include at least the following information:

(1) A description of the requirements of the Safe Drinking Water Act or Clean Water Act applicable to the operations of the public utility.
(2) A description of the measures the public utility proposes to implement to comply with the requirements.
(3) The schedule under which the public utility proposes to implement the measures.
(4) An estimate of the cost of implementing each of the measures proposed by the public utility.
(5) An analysis of the comparative estimated costs of meeting the applicable requirements of the Safe Drinking Water Act or Clean Water Act through the measures proposed by the public utility and other alternative compliance measures considered by the public utility.

As added by P.L.76-1991, SEC.2.

8-1-28-6

Sec. 6. The commission shall hold a public hearing for each environmental compliance plan submitted by a public utility under this chapter. The public utility shall publish a notice of the filing of its petition for approval of an environmental compliance plan in one (1) newspaper of general circulation published in each county in which the utility renders service. The provisions of IC 8-1-2-62 through IC 8-1-2-67 shall apply to a public hearing under this section.
As added by P.L.76-1991, SEC.2.

8-1-28-7

Sec. 7. The commission shall issue an order approving an environmental compliance plan if the commission:

(1) finds that the environmental compliance plan:
(A) is reasonably designed to meet or exceed applicable requirements of the Safe Drinking Water Act or Clean Water Act;
(B) constitutes a reasonable and least cost strategy consistent with providing reliable, efficient, and economical water service; and
(C) is in the public interest; and
(2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.
As added by P.L.76-1991, SEC.2.

8-1-28-8

Sec. 8. (a) If the commission finds that an environmental compliance plan submitted by a public utility does not satisfy the requirements of section 7 of this chapter, the commission may reject the plan.
(b) If the public utility's environmental compliance plan is rejected by the commission, the public utility may voluntarily submit to the commission a modified plan intended to satisfy the requirements of section 7 of this chapter.
(c) A modified plan submitted under subsection (b) shall be considered by the commission under sections 6 and 7 of this chapter.
(d) A public utility may withdraw a proposed environmental compliance plan without prejudice.
As added by P.L.76-1991, SEC.2.

8-1-28-9

Sec. 9. A public utility shall submit its environmental compliance plan or modified environmental compliance plan to any applicable state government environmental agency on or before the date that the public utility submits the plan to the commission under this chapter. If there is a conflict between the commission and a federal or state government environmental agency concerning the necessary components of a public utility's environmental compliance plan or modified environmental compliance plan, the determination by the government environmental agency shall control.
As added by P.L.76-1991, SEC.2.

8-1-28-10

Sec. 10. If a public utility:
(1) chooses to; or
(2) because of action by a federal or state government environmental agency, is required to;
modify a portion of an environmental compliance plan that has previously been approved by the commission in order to comply with the requirements of the Safe Drinking Water Act or Clean Water Act, the public utility shall submit a modified environmental compliance plan to the commission for the commission's review. The conflict provisions of section 9 of this chapter apply to a modified environmental compliance plan submitted under this section.
As added by P.L.76-1991, SEC.2.

8-1-28-11

Sec. 11. (a) If the commission issues an order approving an environmental compliance plan submitted by a public utility under this chapter, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to do the following:
(1) If a public utility is allowed by law to earn a return on the public utility's investment, the public utility may add to the fair value of the public utility's property the fair value of a completed capital project, or part of a capital project, that:
(A) is constructed and consists of:
(i) new systems, equipment, or facilities; or
(ii) modifications to existing systems, equipment, or facilities; and
(B) is part of the environmental compliance plan approved by the commission;
up to the amount approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable.

(2) The public utility may recover the costs and expense incurred by the public utility in the development and implementation of the approved environmental compliance plan, up to the amount approved under section 7(2) or 12 of this chapter, whichever is applicable.

(b) The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

As added by P.L.76-1991, SEC.2.

8-1-28-12

Sec. 12. (a) If a public utility makes a substantial change in a cost and schedule estimate for developing and implementing an environmental compliance plan or a modified environmental compliance plan after the estimate has been approved by the commission under this chapter, the public utility shall file with the commission for the commission's review and approval the revised cost and schedule estimate.

(b) To the extent the commission approves a revised cost and schedule estimate, the estimate shall be the approved cost and schedule estimate for the plan.

As added by P.L.76-1991, SEC.2.

8-1-28-13

Sec. 13. If the commission issues an order under section 7 or 15 of this chapter that approves modifications to a public utility's environmental compliance plan, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to recover under section 11 of this chapter, to the extent permitted under section 11 of this chapter, the following:

(1) The public utility's expenditures made under the environmental compliance plan before the date the commission issued the order approving the modified environmental compliance plan.

(2) The public utility's expenditures made under the modified environmental compliance plan after the date the commission issued the order approving the modified environmental compliance plan.

As added by P.L.76-1991, SEC.2.

8-1-28-14

Sec. 14. If a public utility cancels the implementation of a measure set forth in an environmental compliance plan as a result of an order issued by the commission under section 15 or 16 of this chapter that withdraws the commission's approval of the inclusion of the measure in the environmental compliance plan, the public utility may, absent fraud, concealment, or gross mismanagement, recover:

(1) over a reasonable time; and

(2) through the rates of the public utility;

the costs incurred by the public utility in implementing the measure and a reasonable return on the unamortized balance, to the extent the implementation and the costs were approved previously by the commission. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) of this chapter unless the commission finds that the additional costs were necessary and prudent.

As added by P.L.76-1991, SEC.2.

8-1-28-15

Sec. 15. (a) If the commission, after an investigation commenced upon its own initiative or upon a petition of a class of persons satisfying the standing requirements of IC 8-1-2-54 (including the office of the utility consumer counselor), finds that substantial changes:

(1) in the need for or estimated cost of an approved environmental compliance plan have occurred; or

(2) in the estimated cost of alternative compliance measures have occurred;

the commission may commence a review of the approval of the environmental compliance plan.

(b) If the commission finds that all or part of an environmental compliance plan no longer meets the requirements of section 7 of this chapter, the commission may, consistent with sections 7 and 9 of this chapter, issue an order:

(1) withdrawing the commission's approval of all or part of the environmental compliance plan, whichever is applicable; or

(2) approving modifications to the environmental compliance plan.

(c) If the commission approves modifications to an environmental compliance plan under subsection (b), the modified environmental compliance plan shall constitute the public utility's approved environmental compliance plan for purposes of this chapter.
As added by P.L.76-1991, SEC.2.

8-1-28-16

Sec. 16. (a) In addition to the review of the continued appropriateness of an environmental compliance plan under section 15 of this chapter, the commission shall, at the request of a public utility, conduct an ongoing review of the cost and implementation of the public utility's approved environmental compliance plan. The public utility shall submit to the commission:

(1) each year; or

(2) at other times the commission and the public utility agree on;

a progress report that includes any information the commission may require.

(b) If the commission approves the cost and implementation of the part of the environmental compliance plan under review, then, absent fraud, concealment, or gross mismanagement, the approval forecloses subsequent challenges to:

(1) the recovery in rates of those costs; and

(2) if the public utility is allowed by law to earn a return on the public utility's investment, the addition to the fair value of the public utility's property of the fair value of a completed capital project, or portion of a capital project, that:

(A) is constructed and consists of:

(i) new systems, equipment, or facilities; or

(ii) modifications to existing systems, equipment, or facilities; and

(B) is part of the environmental compliance plan implementation approved by the commission;

up to the amount approved under section 7(2) or 12 of this chapter, whichever is applicable. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

(c) If the commission does not issue an order disapproving all or part of the implementation of the part of the environmental compliance plan under review within six (6) months of the commencement of the action seeking the commission's approval, the commission shall be considered to have approved all of the implementation of that part of the environmental compliance plan unless the commission issues an order extending the time for such review.
As added by P.L.76-1991, SEC.2.

8-1-28-17

Sec. 17. If the commission disapproves all or part of the implementation of the part of the environmental compliance plan under review:

(1) the commission may, consistent with section 9 of this chapter, issue an order withdrawing the commission approval of all or part of the environmental compliance plan; and

(2) the public utility may voluntarily submit a modified environmental compliance plan to the commission for the commission's approval under this chapter.

If the commission issues an order approving all or part of the modified environmental compliance plan, the environmental compliance plan constitutes the public utility's approved environmental compliance plan to the extent of the approval for purposes of this chapter.
As added by P.L.76-1991, SEC.2.

8-1-28-18

Sec. 18. In a general rate proceeding following the issuance of an order by the commission approving an environmental compliance plan under this chapter, the commission shall, in reviewing and authorizing the public utility's return, give due consideration to any change in risk to the public utility as a result of the commission's approval of the environmental compliance plan and include in the order issued with respect to the general rate proceeding a finding on the change.
As added by P.L.76-1991, SEC.2.

8-1-28-19

Sec. 19. (a) Use of the procedure in this chapter is voluntary to a public utility. The failure of a public utility to use the approval provisions of this chapter may not create a presumption of imprudence or nonrecovery in rates for environmental compliance plan costs.

(b) This chapter does not require a public utility to utilize this chapter to recover a cost or expense otherwise recoverable in the public utility's rates. A higher standard for the recovery of such costs or for determining the appropriateness of an environmental compliance plan may not be imposed because of a public utility's election not to use the provisions of this chapter.

(c) An order of the commission approving an environmental compliance plan under this chapter may not limit or define the measures that may be proposed in a compliance plan submitted by another public utility or approved by the commission.

As added by P.L.76-1991, SEC.2.

Chapter 30. Operation of Certain Water and Sewer Utilities

8-1-30

8-1-30-1

Sec. 1. The definitions in IC 8-1-2-1 apply throughout this chapter.

As added by P.L.145-1999, SEC.7.

8-1-30-2

Sec. 2. As used in this chapter, "utility company" refers to either of the following:

(1) A public utility that provides water or sewer service.

(2) A regional sewer and water district.

The term does not include a municipally owned utility.

As added by P.L.145-1999, SEC.7.

8-1-30-3

Sec. 3. (a) The commission may review any of the following or any combination of the following aspects of a utility company's operations:

(1) Technical, financial, and managerial capacity.

(2) Physical condition and capacity of the utility company's plant.

(3) Compliance with Indiana or federal law or the commission's orders.

(4) Provision of service to customers.

(b) The commission may conduct a review under this section upon its own motion, a request of the office of the utility consumer counselor, or upon the filing of a complaint by a customer of the utility company. The commission's order for review must state facts to justify a review by the commission.

As added by P.L.145-1999, SEC.7.

8-1-30-4

Sec. 4. The commission may issue orders under section 5 of this chapter if the commission finds either of the following:

(1) The utility company has continued violations of:

(A) law regulating the utility company after the commission has ordered compliance; or

(B) commission orders.

(2) The commission finds after a review conducted under section 3 of this chapter that the utility company has severe deficiencies that the utility company has failed to remedy.

As added by P.L.145-1999, SEC.7.

8-1-30-5

Sec. 5. (a) As used in this section, "subject utility company" refers to a utility company that is the subject of a finding by the commission under section 4 of this chapter.

(b) If the commission makes a finding under section 4 of this chapter, the commission may, after notice and

hearing, make appropriate orders to do any of the following:

(1) Provide for the acquisition of the subject utility company by another utility company, a municipally owned utility, or by another person that has the ability to operate the subject utility company:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(2) Provide for the appointment of a receiver to operate the subject public utility:

(A) in compliance with law and the commission's orders; and

(B) to remedy any deficiencies found by the commission.

(c) Before making an order under subsection (b), the commission shall give notice of the hearing to the following:

(1) The subject utility company.

(2) Other utility companies in Indiana.

(3) Appropriate public agencies and political subdivisions, including all municipalities, located in the subject utility company's service territory.

(d) An order under subsection (b)(1) must provide:

(1) that the person acquiring the subject utility company must pay the fair market value of the subject utility company at the time of acquisition; and

(2) the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject utility company is to be determined.

(e) An order under subsection (b)(1) may provide cost recovery mechanisms for costs associated with improvements to the acquired system that are immediate and necessary to remedy deficiencies, including any of the following:

(1) A mechanism for expediting any adjustments to the rate base and rates of the person acquiring the subject utility company.

(2) Surcharges on customers of the acquired utility company system to pay for extraordinary costs.

(3) A plan for deferring certain improvement costs and recovering costs in phases.

(4) A plan for equalizing rates of the subject utility company with the rates of the person acquiring the subject utility company, if necessary.

(5) Other incentives to the person acquiring the subject utility company, including adjustments to the allowed rate of return.

(f) If the commission makes an order under subsection (b)(2), the attorney general shall file an action in a court with jurisdiction on behalf of the commission for the appointment of a receiver under IC 32-30-5. The receiver appointed by the court:

(1) has the same rights and duties under Indiana law as a utility company providing water or sewer service; and

(2) shall continue to operate the subject utility company until the court finds that the subject utility company:

(A) has the ability to comply and will comply with Indiana law and the commission's orders relating to the operation of the utility company; and

(B) has the ability to operate without any of the deficiencies found by the commission.

As added by P.L.145-1999, SEC.7. Amended by P.L.2-2002, SEC.37.

8-1-30-6

Sec. 6. (a) This section does not apply to the following:

(1) A municipality that, as of July 1, 2012, had established and operated a water utility.

(2) An action brought under:

(A) IC 8-1-2-92;

(B) IC 8-1-2-93; or

(C) IC 8-1.5-2;

before March 1, 2013.

(b) A municipality or other governmental unit may not require a utility company that provides water or sewer service to sell property used in the provision of such service to the municipality or governmental unit under IC 8-1-2-92, IC 8-1-2-93, or otherwise, unless:

(1) the commission has made all necessary findings under section 4 of this chapter; and

(2) the procedures and requirements of this chapter have been complied with and satisfied.
As added by P.L.145-1999, SEC.7. Amended by P.L.270-2013, SEC.3.

Chapter 30.5. Water Utility Resource Data

8-1-30.5

8-1-30.5-1

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.
As added by P.L.87-2012, SEC.1.

8-1-30.5-2

Sec. 2. As used in this chapter, "water utility" means:
(1) a public utility (as defined in IC 8-1-2-1(a));
(2) a municipally owned utility (as defined in IC 8-1-2-1(h));
(3) a not-for-profit utility (as defined in IC 8-1-2-125(a));
(4) a cooperatively owned corporation;
(5) a conservancy district established under IC 14-33; or
(6) a regional water district established under IC 13-26;
that provides water service to the public in Indiana for a fee, regardless of whether the entity described in subdivisions (1) through (6) is under the jurisdiction of the commission.
As added by P.L.87-2012, SEC.1.

8-1-30.5-3

Sec. 3. (a) For each calendar year, beginning with the calendar year ending December 31, 2012, each water utility shall submit to the commission, on a form or in the manner prescribed by the commission, a report on the following:
(1) The types of use of the water resources used by the water utility in providing water service to the water utility's Indiana customers.
(2) The water utility's operations and maintenance costs in providing water service to the water utility's Indiana customers.
(b) The commission shall prescribe the form of the report and the process, deadlines, and other requirements for submitting the report required under this section. However, the commission shall collect the following information for each water utility with respect to the calendar year for which a particular report is submitted:
(1) The number of Indiana customers served by the water utility.
(2) A description of the water utility's service territory in Indiana.
(3) The total utility plant in service with respect to the water utility's Indiana customers.
(4) The amount and location of the water resources used by the water utility to provide water service to the water utility's Indiana customers.
(5) The availability and location of additional water resources that could be used, if necessary, by the water utility to provide water service to Indiana customers.
(6) The amount of funding received, including the purpose of the funding, from the following sources:
(A) A state revolving loan program under IC 13-18.
(B) The office of community and rural affairs established by IC 4-4-9.7-4.
(C) United States Department of Agriculture rural development loans and grants.
(D) The Indiana bond bank.
(E) The issuance of any debt instruments for the purpose of raising capital to fund infrastructure projects.
(c) Upon receiving the annual reports required under this section, the commission shall compile and organize the data and information contained in the reports. Subject to subsection (d)(1), the commission shall include a summary of the data and information contained in the reports, along with the recommendations described in subsection (d)(2), in:
(1) an annual report to be submitted by the commission to the legislative council not later than November 1 of each year; and

(2) the commission's annual report on the water and wastewater industries provided to the regulatory flexibility committee established by IC 8-1-2.6-4.

The annual report to the legislative council required by subdivision (1) must be in an electronic format under IC 5-14-6.

(d) In making the reports required under subsection (c), the commission shall:

(1) use aggregated data in a manner that:

(A) protects the confidential information of individual water utilities; and

(B) is consistent with IC 5-14-3-4; and

(2) include in the reports recommendations concerning:

(A) the efficient use of financial resources by water utilities;

(B) necessary infrastructure investments by water utilities; and

(C) actions designed to minimize impacts on the rates and charges imposed on water and wastewater customers.

As added by P.L.87-2012, SEC.1.

8-1-30.5-4

Sec. 4. (a) Subject to subsection (b), the commission may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

(b) Any emergency rules adopted by the commission under subsection (a) must take effect by a date that enables a water utility subject to this chapter to comply with the requirements of this chapter with respect to the calendar year ending December 31, 2012.

As added by P.L.87-2012, SEC.1.

Chapter 31. Distribution System Improvement Charges

8-1-31

8-1-31-1

Sec. 1. The definitions in IC 8-1-2-1 apply throughout this chapter.

As added by P.L.94-2000, SEC.1.

8-1-31-2

Sec. 2. As used in this chapter, "DSIC" refers to distribution system improvement charge.

As added by P.L.94-2000, SEC.1.

8-1-31-3

Sec. 3. As used in this chapter, "DSIC costs" means depreciation expenses and pretax return associated with eligible distribution system improvements.

As added by P.L.94-2000, SEC.1.

8-1-31-4

Sec. 4. As used in this chapter, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

As added by P.L.94-2000, SEC.1.

8-1-31-5

Sec. 5. As used in this chapter, "eligible distribution system improvements" means new used and useful water utility plant projects that:

(1) do not increase revenues by connecting the distribution system to new customers;

(2) are in service; and

(3) were not included in the public utility's rate base in its most recent general rate case.

As added by P.L.94-2000, SEC.1.

8-1-31-6

Sec. 6. As used in this chapter, "pretax return" means the revenues necessary to:

(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by the net original cost of eligible distribution system improvements; and

(2) pay state and federal income taxes applicable to such income.

As added by P.L.94-2000, SEC.1.

8-1-31-7

Sec. 7. As used in this chapter, "public utility" means a:

(1) public utility (as defined in IC 8-1-2-1(a)); or

(2) municipally owned utility (as defined in IC 8-1-2-1(h)).

As added by P.L.94-2000, SEC.1.

8-1-31-8

Sec. 8. (a) Except as provided in subsection (d), a public utility providing water service may file with the commission rate schedules establishing a DSIC that will allow the automatic adjustment of the public utility's basic rates and charges to provide for recovery of DSIC costs.

(b) The public utility shall serve the office of the utility consumer counselor a copy of its filing at the time of its filing with the commission.

(c) Publication of notice of the filing is not required.

(d) A public utility may not file a petition under this section in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

As added by P.L.94-2000, SEC.1.

8-1-31-9

Sec. 9. (a) When a petition is filed under section 8 of this chapter, the commission shall conduct a hearing.

(b) The office of the utility consumer counselor may examine information of the public utility to confirm that the system improvements are in accordance with section 5 of this chapter, to confirm proper calculation of the proposed charge, and submit a report to the commission not later than thirty (30) days after the petition is filed.

(c) The commission shall hold the hearing and issue its order not later than sixty (60) days after the petition is filed.

(d) If the commission finds that a DSIC petition complies with the requirements of this chapter, the commission shall enter an order approving the petition.

As added by P.L.94-2000, SEC.1.

8-1-31-10

Sec. 10. (a) Except as provided in subsection (b), a public utility may, but is not required to, file a petition for a change in its DSIC not more often than one (1) time every twelve (12) months.

(b) Except as provided in section 15 of this chapter, a public utility may not file a petition for a change in its DSIC in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

As added by P.L.94-2000, SEC.1.

8-1-31-11

Sec. 11. In determining an appropriate pretax return, the commission may consider the following factors:

(1) The current state and federal income tax rates.

(2) The public utility's actual regulatory capital structure.

(3) The actual cost rates for the public utility's long term debt and preferred stock.

(4) The public utility's cost of common equity.

(5) Other components that the commission considers appropriate.

As added by P.L.94-2000, SEC.1.

8-1-31-12

Sec. 12. The cost of common equity to be used in the calculation of the charge shall be the most recent

determination by the commission in a general rate proceeding of the public utility. If the commission finds that the last such determination is no longer representative of current conditions, the commission may make a new determination of the common equity cost rate for use in determining the charge, after notice and hearing. The most recent prior determination shall be used pending any redetermination.
As added by P.L.94-2000, SEC.1.

8-1-31-13

Sec. 13. The commission may not approve a DSIC to the extent it would produce total DSIC revenues exceeding five percent (5%) of the public utility's base revenue level approved by the commission in the public utility's most recent general rate proceeding.
As added by P.L.94-2000, SEC.1.

8-1-31-14

Sec. 14. The DSIC may be calculated based on a reasonable estimate of sales in the period in which the charge will be in effect. At the end of each twelve (12) month period the charge is in effect, and using procedures approved by the commission, the public utility shall reconcile the difference between DSIC revenues and DSIC costs during that period and recover or refund the difference, as appropriate, through adjustment of the charge.
As added by P.L.94-2000, SEC.1.

8-1-31-15

Sec. 15. A public utility that has implemented a DSIC under this chapter shall file revised rate schedules resetting the charge if new basic rates and charges become effective for the public utility following a commission order authorizing a general increase in rates and charges that includes in the utility's rate base eligible distribution system improvements reflected in the DSIC.
As added by P.L.94-2000, SEC.1.

8-1-31-16

Sec. 16. For purposes of IC 8-1-2-42(a), the filing of a DSIC and a change in a DSIC is not a general increase in basic rates and charges.
As added by P.L.94-2000, SEC.1.

8-1-31-17

Sec. 17. The commission may adopt by rule under IC 4-22-2 or by order other procedures not inconsistent with this chapter that the commission finds reasonable or necessary to administer a DSIC.
As added by P.L.94-2000, SEC.1.

Chapter 32. Water Wells

8-1-32

8-1-32-1

Sec. 1. This chapter applies only to a subject area located entirely or partially within:
(1) a city; or
(2) a county having a consolidated city.
As added by P.L.94-2000, SEC.2.

8-1-32-2

Sec. 2. The definitions in IC 8-1-2-1 apply throughout this chapter.
As added by P.L.94-2000, SEC.2.

8-1-32-3

Sec. 3. As used in this chapter, "health agency" refers to either of the following:
(1) The state department of health.
(2) A local health department (as defined in IC 16-18-2-211).
As added by P.L.94-2000, SEC.2.

8-1-32-4

Sec. 4. As used in this chapter, "project" refers to the extension of water utility service to a subject area.
As added by P.L.94-2000, SEC.2.

8-1-32-5

Sec. 5. As used in this chapter, "subject area" refers to an area described in section 6 of this chapter.
As added by P.L.94-2000, SEC.2.

8-1-32-6

Sec. 6. (a) Notwithstanding IC 8-1-2-103(a), if a health agency determines that an area located within a city or within a county having a consolidated city:

(1) is served by private water wells;

(2) suffers from a health hazard due to the presence of at least one (1) contaminant; and

(3) incorporates at least a portion of at least one (1) census track or block having a median household income of less than two hundred percent (200%) of the most recently determined federal income poverty level;

the health agency may direct the nearest public utility that is authorized to provide water utility service within the municipality to prepare and provide to the commission an estimate of the cost of extending water utility service to the subject area and request the commission to approve the project.

(b) The costs estimated under subsection (a) may include the following:

(1) Installing the mains and connecting service lines on properties within the subject area.

(2) Abandoning and plugging existing wells in accordance with IC 25-39-2-14 and rules adopted under IC 25-39 on properties within the subject area.

(3) Restoration of areas disturbed by the project.

(4) Other reasonable costs of extending water utility service to the subject area.

As added by P.L.94-2000, SEC.2.

8-1-32-7

Sec. 7. If the commission approves the project, the commission shall, at the request of the health agency, direct the local public utility to undertake and complete the project. The commission shall enter such an order only if both of the following apply:

(1) The commission's order authorizes an increase in the local public utility's water rates in an amount sufficient to cover the local public utility's depreciation expense related to its investment in the project and provide the local public utility an after-tax return on the undepreciated portion of the project at a rate not less than the rate of return allowed the local public utility on its rate base in its most recent general rate order as:

(A) set out in the order; or

(B) stipulated by the local public utility and the office of the utility consumer counselor.

(2) The rate adjustment associated with the project will not increase the local public utility's rates by more than one percent (1%).

As added by P.L.94-2000, SEC.2.

8-1-32-8

Sec. 8. A rate adjustment authorized under section 7 of this chapter must be reflected in an amended rate schedule filed with the commission not later than thirty (30) days after the commission enters the order, effective upon completion of the project.
As added by P.L.94-2000, SEC.2.

8-1-32-9

Sec. 9. A rate adjustment authorized under section 7 of this chapter:

(1) is not considered as a general increase in the local public utility's basic rates and charges for purposes of IC 8-1-2-42(a); and

(2) may be further adjusted by the commission to reflect actual project costs upon petition by the local public utility or the office of the utility consumer counselor.

As added by P.L.94-2000, SEC.2.

8-1-32-10

Sec. 10. If the commission orders a project under this chapter, the health agency shall require owners of properties in the subject area to connect those properties to a project main and to abandon and plug their existing wells in accordance with IC 25-39-2-14 and rules adopted under IC 25-39.
As added by P.L.94-2000, SEC.2.

8-1-32-11

Sec. 11. (a) Upon completion of a project, the local public utility shall be responsible for operating and maintaining:

(1) the mains installed; and

(2) any portion of the connecting service lines that are located in a public right-of-way.

(b) Upon completion of a project, each property owner shall be responsible for maintaining, repairing, and replacing, if necessary, the portion of the service line on the property served that is not required to be serviced by the local public utility under subsection (a).
As added by P.L.94-2000, SEC.2.

8-1-32-12

Sec. 12. This chapter does not reduce or supersede the commission's jurisdiction under IC 8-1-2-86 and IC 8-1-2-86.5.
As added by P.L.94-2000, SEC.2.

Chapter 3. Operation of Municipally Owned Utilities Generally

8-1.5-3

8-1.5-3-1

Sec. 1. This chapter applies to all municipalities, except consolidated cities, that own or operate utilities.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-2

Sec. 2. As used in this chapter, "board" refers to the board operating a municipally owned utility as determined under section 3 of this chapter.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-3

Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

(1) the municipal works board;

(2) a board consisting of the members of the municipal legislative body;

(3) a utility service board established under subsection (f) or established before January 1, 1983, under IC 8-1-2-100 (repealed); or

(4) the board of directors of a department of waterworks established under IC 8-1.5-4.

The legislative body of a third class city also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a third class city's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the third class city's municipally owned utilities to a board described in this subsection.

(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of a third class city's storm water facilities to a board described in subsection (a) the third class city has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that

the question of the creation of a utility service board be submitted to a referendum. The petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

(d) Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

(e) Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of _____ adopt an ordinance providing for the appointment of a utility service board to operate _____ (Insert name of utility here)?".

(f) If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members must be residents of the area served by the board. The ordinance must provide for:

(1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;

(2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;

(3) the salaries, if any, to be paid to the members; and

(4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

(g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections (c) through (e).

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.16-1983, SEC.6; P.L.3-1987, SEC.500; P.L.12-1995, SEC.100; P.L.282-2003, SEC.1.

8-1.5-3-3.3

Sec. 3.3. For purposes of section 3 of this chapter, a utility service board that:

(1) was established before January 1, 1983, under IC 8-1-2-100 (before its repeal and formerly Acts 1913, c.76, s.109, as amended);

(2) has continued in existence without interruption since its creation; and

(3) was established without submitting the question of its creation to the voters of the municipality for approval in a referendum;

is legalized and its actions validated.

As added by P.L.220-2011, SEC.187.

8-1.5-3-4

Sec. 4. (a) The board has general supervisory powers over the utilities under its control, with responsibility for the detailed supervision of each utility to be vested in its superintendent, who is responsible to the board for the business and technical operation of the utility. The board shall:

(1) fix the number and compensation of employees;

(2) adopt rules governing the appointment of employees including making proper classifications and rules to:

(A) determine the eligibility of applicants;

(B) determine by competitive examination the relative fitness of applicants for positions;

(C) establish eligible lists arranged according to the ratings secured;

(D) provide for the appointment of those having the highest ratings; and

(E) provide for the promotion of employees;

(3) subject to IC 36-4-9-2, appoint a superintendent or manager of each utility under its control who is responsible to the board for the business and technical operation of the utility; the board shall make the appointment on the basis of fitness to manage the particular utility to which he is to be assigned, taking into account his executive ability and his knowledge of the utility industry;

(4) subject to IC 36-4-9-12, hire attorneys when required for the operation of the utility;

(5) hire professional or expert personnel when required for the operation of the utility;

(6) submit a budget of its financial needs for the next year in the detail required by the municipal legislative body;
(7) recommend to the legislative body reasonable and just rates and charges for services to the patrons of each utility;
(8) appropriate, lease, rent, purchase, and hold all real and personal property of the utility;
(9) enter upon lands for the purpose of surveying or examining the land to determine the location of any plant or appurtenances;
(10) award contracts for:
(A) the purchase of capital equipment;
(B) the construction of capital improvements; or
(C) other property or purposes that are necessary for the full and efficient construction, management, and operation of each utility;
(11) adopt rules for the safe, economical, and efficient management and protection of each utility;
(12) deposit at least weekly with the municipal fiscal officer all money collected from each utility to be kept in a separate fund subject to the order of the board; and
(13) make monthly reports to the fiscal officer of the receipts and disbursements of money belonging to each utility and an annual report of the condition of the utility.

(b) The board may purchase by contract electricity, water, gas, power, or any other commodity or service for the purpose of furnishing the commodity or service to the patrons of the municipally owned utility or to the municipality itself.

(c) If the board wants to purchase the commodity or service from a public utility and the parties cannot agree on a rate or charge to be paid for it, either party may apply to the commission or other appropriate state or federal regulatory agency to establish a fair and reasonable rate or charge to be paid for the commodity or service.

(d) The board may discontinue water service by a waterworks to:
(1) a water consumer; or
(2) any property;
upon failure by the water consumer or the property owner to pay charges legally due for sewer or sewage disposal plant service. However, the water service may not be discontinued for nonpayment of sewer or sewage disposal plant service charges until the charges have been due and unpaid for at least thirty (30) days.

(e) Before water service is discontinued under subsection (d), the board must give written notice to the water consumer or property owner of its intention to discontinue water service if the unpaid sewer or sewage disposal plant service charges are not paid before a date specified in the notice. The notice must be mailed not less than ten (10) days before water service is to be discontinued and addressed to the water consumer or the property owner at his last known address.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-4.5

Sec. 4.5. (a) This section applies to the award of a contract under this chapter by acceptance of bids, proposals, or quotations.

(b) A bid, proposal, or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:
(1) beneficiary of the trust; and
(2) settlor empowered to revoke or modify the trust.
As added by P.L.336-1989(ss), SEC.19.

8-1.5-3-5

Sec. 5. (a) The superintendent of each utility shall:
(1) appoint, supervise, and dismiss all employees of the utility;
(2) employ unskilled labor when needed, without competitive examination;
(3) investigate all claims against the utility;
(4) oversee the operation of the utility and any construction work, repairs, or alterations to the system; and
(5) advise the board in all matters that will bring about an efficient and economical operation and maintenance of the utility.

(b) The superintendent is entitled to the compensation for his services that is determined by resolution of the board.

(c) The superintendent shall give bond in a sum not less than double the estimated amount of money that may be in his hands at any time. The bond shall be conditioned upon the faithful discharge of his duties and the payment to the proper person of all money in his hands. The bond is subject to the approval of the executive of the municipality.

(d) The superintendent may be removed by the board for cause at any time after notice and a hearing.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-6

Sec. 6. (a) The board may purchase, sell, and advertise, for the purpose of sale, load building appliances.

(b) Load building appliances shall be designed to be used in:

(1) the consumption of the products; or

(2) the use of the services;

that the utility furnishes or is equipped to furnish to its customers.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-7

Sec. 7. The board may set up a retirement account for the benefit of the employees and past employees of each utility. The board may provide for the method, manner, and amount of contributions by the utility out of its earnings, reserves, or earned surplus, and by employees if required by the plan, and may create an account for the utilities and allocate to the account contributions sufficient to establish the plan on a sound actuarial basis, including contributions for past services of employees. However, the plan may not require contributions from an employee to exceed six percent (6%) of his wage or salary.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-8

Sec. 8. (a) A municipality owning a utility under this chapter shall furnish reasonably adequate services and facilities.

(b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.

(c) "Reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to:

(1) pay all the legal and other necessary expenses incident to the operation of the utility, including:

(A) maintenance costs;

(B) operating charges;

(C) upkeep;

(D) repairs;

(E) depreciation;

(F) interest charges on bonds or other obligations, including leases; and

(G) costs associated with the acquisition of utility property under IC 8-1.5-2;

(2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;

(3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;

(4) provide adequate money for working capital;

(5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and

(6) provide money for the payment of any taxes that may be assessed against the utility.

(d) It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful.

(e) The board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

(f) Rates and charges established under this section are subject to the approval of:

(1) the municipal legislative body by ordinance; and

(2) the commission, in accordance with the procedures set forth in IC 8-1-2.

The commission shall approve rates and charges that are sufficient, in addition to the cash revenue requirements set forth in subsection (c), to include a reasonable return on the utility plant of the municipality if the legislative body so elects.

(g) Except for a municipally owned utility taxed under IC 6-1.1-8-3, the commission shall approve rates and charges sufficient to compensate the municipality for taxes that would be due the municipality on the utility property were it privately owned. These rates and charges in lieu of taxes may be transferred to the municipal general fund, if the legislative body so elects.

(h) The commission shall grant a request that an increase in rates and charges not be effective until after the occurrence of a future event if the legislative body so requests.

(i) A municipality that acquires and operates a utility under IC 8-1.5-2 by exercising the power of eminent domain may not impose a special rate, charge, surcharge, or other fee, other than rates and charges approved under this section or otherwise authorized by law, on the customers of the utility in order to pay for the costs associated with acquiring the utility through the exercise of the power of eminent domain.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.105-1983, SEC.2; P.L.35-1990, SEC.28; P.L.172-2009, SEC.5.

8-1.5-3-8.1

Sec. 8.1. (a) As used in this section, "utility" refers to a municipally owned:

(1) water utility;

(2) wastewater utility; or

(3) combined water and wastewater utility;

that is not under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "works" refers to water or wastewater utility works.

(c) After the introduction of the ordinance establishing the rates and charges under section 8 of this chapter, but before the ordinance is finally adopted, the municipal legislative body shall hold a public hearing at which users of the works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed rates and charges. Notice of the hearing, setting forth the proposed schedule of rates and charges, shall be:

(1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through IC 5-3-1-9);

(2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for water or wastewater service to vacant or unimproved property; and

(3) mailed to users of the works for service to property located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of hearing is conspicuous. The hearing may be adjourned from time to time. Notice mailed under subdivision (3) must include a statement that, following adoption of the ordinance, the users described in subdivision (3) may be entitled to petition the commission under section 8.3 of this chapter to review and adjust the rates and charges imposed on the users if a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance has not been filed.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the rates and charges, either as originally introduced or as modified. A copy of the schedule of rates and charges adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. An ordinance adopted after March 31, 2012, that imposes different rates and charges for service to property located outside the corporate boundaries of the municipality as compared to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges.

(e) The rates and charges established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(f) The municipal legislative body may change or readjust the rates and charges in the same manner as they were established.

(g) Rates and charges collected under this chapter are considered revenues of the utility.

As added by P.L.77-1991, SEC.1. Amended by P.L.139-2012, SEC.1.

8-1.5-3-8.2

Sec. 8.2. (a) As used in this section:

(1) "utility"; and

(2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(b) Owners of property connected or to be connected to and served by the works authorized under this chapter may file a written petition objecting to the rates and charges of the utility so long as:

(1) the petition contains the names and addresses of the petitioners;

(2) the petitioners attended the public hearing provided under section 8.1 of this chapter;

(3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 8.1 of this chapter;

(4) the written petition states specifically the ground or grounds of objection; and

(5) a petition has not been filed with the commission under section 8.3 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges of the utility.

(c) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined by the court.

(d) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(e) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(f) If the court sustains the petition, or if the petition is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court.

As added by P.L.77-1991, SEC.2. Amended by P.L.139-2012, SEC.2.

8-1.5-3-8.3

Sec. 8.3. (a) This section applies to a utility that provides service to property located outside the corporate boundaries of the municipality.

(b) As used in this section:

(1) "utility"; and

(2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(c) This subsection applies if a municipal legislative body adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifteen percent (15%), but not more than fifty percent (50%), the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality. Not later than September 30, 2012, the municipality may petition the commission to approve the percentage difference between rates and charges established in the ordinance for property within and property outside the corporate boundaries. In the petition, the municipality shall set forth the following:

(1) The date on which the ordinance took effect.

(2) The percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries of the municipality.

(3) Whether the works that is the subject of the ordinance is a water utility works, a wastewater utility works, or both a water and wastewater utility works.

If the commission determines that a petition filed under this subsection satisfies the requirements of this subsection,

the commission shall approve the petition, including the percentage difference between rates and charges described in subdivision (2). If the commission determines that a petition filed under this subsection does not satisfy the requirements of this subsection, the commission shall disapprove the petition. However, if the percentage difference imposed in the ordinance was the subject of an objecting petition that was filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the percentage difference is considered approved without the filing of a petition under this subsection.

(d) If a municipality that files, or that is exempt from filing, a petition under subsection (c) adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved or considered approved by the commission under subsection (c) plus fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

(1) The municipality.

(2) The lesser of:

(A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition filed under this subsection must be filed not more than fourteen (14) days after the date on which the ordinance referred to in this subsection is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter appealing the same rates and charges.

(e) If a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than fifteen percent (15%), either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

(1) The municipality.

(2) The lesser of:

(A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition must be filed not more than fourteen (14) days after the date on which the ordinance is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges.

(f) The filing of a petition with the commission under subsection (d), (e), or (m) stays the ordinance adopted under section 8.1 of this chapter or under IC 36-9-23-26. The rates and charges in effect before the adoption of the ordinance remain in effect until:

(1) the commission approves or disapproves the petition; and

(2) if applicable, the commission adjusts the rates and charges imposed by the ordinance on users of the works whose property is located outside the corporate boundaries of the municipality.

(g) The commission shall prescribe the form and manner in which a petition must be filed under subsection (d), (e), or (m). A petition filed under subsection (d)(2), (e)(2), or (m)(2) must be signed by:

(1) each individual user seeking review by the commission; or

(2) one (1) or more attorneys licensed to practice law in Indiana who represent the individual users seeking review by the commission.

The burden of proof to demonstrate that the proposed rates and charges are nondiscriminatory, reasonable, and just is on the municipality, regardless of who petitions the commission. The commission shall approve or disapprove a petition within one hundred twenty (120) days after the petition is filed in the form and manner prescribed by the commission. However, the commission may extend the one hundred twenty (120) day deadline for up to sixty (60) days for good cause if all parties to the proceeding agree. A petition is automatically disapproved if the petitioner

has filed a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance.

(h) For purposes of determining whether the percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission:

(1) may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality; and

(2) may not consider any connection fees or capital surcharges imposed on users of the works for service to property that is located outside the corporate boundaries of the municipality that are specifically designated to pay for the costs associated with main extensions to the users of the works.

(i) If the commission determines that the percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is not nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission may:

(1) establish nondiscriminatory, reasonable, and just rates and charges for users of the works for service to property located outside the corporate boundaries of the municipality; and

(2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges.

However, with respect to rates and charges imposed in an ordinance that was the subject of an objecting petition filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the commission may not establish rates and charges such that the percentage difference between rates and charges established by the commission is less than the percentage difference between rates and charges imposed in the ordinance.

(j) This section does not:

(1) authorize the commission to review or revise rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality; or

(2) otherwise return or subject a utility to the jurisdiction of the commission for the approval of rates and charges.

(k) The commission may adopt rules under IC 4-22-2 to implement this section.

(l) The commission may not impose a fee with respect to proceedings under this section.

(m) This subsection applies if a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifty percent (50%) the rates and charges imposed on users of the works for service to property located anywhere within the corporate boundaries of the municipality. Not later than December 31, 2013, either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality:

(1) The municipality.

(2) Subject to subsection (n), the lesser of:

(A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

(n) At least twenty (20) days before a group of users described in subsection (m)(2) may petition the commission under subsection (m), the group of users must file the petition with the municipal legislative body. The municipal legislative body and the group of users shall attempt to resolve the issues set forth in the petition concerning the rates and charges imposed on the group of users. If the group of users and the municipal legislative body are unable to resolve the issues within ten (10) days, the group of users may petition the commission under subsection (m).

As added by P.L.139-2012, SEC.3. Amended by P.L.163-2013, SEC.1; P.L.270-2013, SEC.8.

8-1.5-3-9

Sec. 9. (a) This subsection applies to a municipally owned utility that before June 1, 1987, was taken out of the

jurisdiction of the commission for the approval of rates and charges. A utility to which this subsection applies is removed from the jurisdiction of the commission for approval of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(b) Except as provided in subsection (a), a municipal legislative body that wants to be taken out of the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?".

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3 and submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor taking the municipally owned utility out of the jurisdiction of the commission, the utility:

(1) is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness; and

(2) shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the utility's withdrawal.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.124-1987, SEC.1; P.L.23-1988, SEC.62; P.L.10-1988, SEC.217; P.L.12-1995, SEC.101.

8-1.5-3-9.1

Sec. 9.1. (a) This section applies to the following:

(1) Water utilities that are owned or operated by second class cities.

(2) Third class cities.

(3) Towns.

(b) In addition to section 9 of this chapter, a municipally owned utility to which this section applies may be removed from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, if the municipal legislative body adopts an ordinance removing the utility from commission jurisdiction. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to all ratepayers of the utility and to the commission. For a second class city the municipal legislative body must hold two (2) public meetings before the final vote on an ordinance removing the utility from commission jurisdiction may be adopted. An explanation of the removal process must be provided at each public meeting under this section. Each public meeting must be held in a different location.

(c) The ordinance described in subsection (b) takes effect sixty (60) days after adoption by the municipal legislative body.

(d) The question of removal from commission jurisdiction shall be submitted to the registered voters of the municipality if, within the sixty (60) day period described in subsection (c), the legislative body receives a petition:

(1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) that requests the legislative body to submit the question of removal from commission jurisdiction to the registered voters of the municipality at the next election.

The municipal legislative body shall certify the public question in subsection (e) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(e) If the legislative body receives a petition described in subsection (d) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the Indiana utility regulatory

commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?".

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(f) If a majority of those voting on the question described in subsection (e) favor taking the municipally owned utility out of the jurisdiction of the commission, the utility is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidences of indebtedness.

(g) If the legislative body receives a petition in proper form under subsection (d), the ordinance does not take effect until after removal is approved by a majority of those voting. If a majority of those voting vote against removal, the utility remains under the jurisdiction of the commission and the ordinance does not take effect.

(h) In addition to the notice required by subsection (b), if the municipal legislative body adopts the ordinance, described in subsection (b), the municipal legislative body shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the ordinance becomes effective.

(i) Notwithstanding this section or section 9 of this chapter, the commission may require a municipally owned utility that generates electric power to provide information to the permanent forecasting group under IC 8-1-8.5-3.5.

(j) This section does not affect the obligations of a municipally owned utility under IC 8-1-2.3, IC 8-1-8.5, IC 8-1-22.5, or IC 8-1.5-3-14.

(k) Notwithstanding subsection (a) and the procedure set forth in section 9 of this chapter, if a city adopts an ordinance under this section before January 1, 2013, to remove the city's municipally owned electric utility from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, the removal of the city's municipally owned electric utility from the commission's jurisdiction for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness is effective for all purposes and is legalized and validated.

As added by P.L.82-1988, SEC.6. Amended by P.L.77-1991, SEC.3; P.L.12-1995, SEC.102; P.L.163-2013, SEC.2.

8-1.5-3-9.5

Sec. 9.5. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9 of this chapter, including a municipally owned utility described in section 9(a) of this chapter.

(b) A municipal legislative body that wants to return a municipally owned utility to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?".

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(e) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(f) If a municipally owned utility is returned to the jurisdiction of the commission under this section, the municipal legislative body shall mail written notice to the commission.

As added by P.L.82-1988, SEC.7. Amended by P.L.12-1995, SEC.103.

8-1.5-3-9.6

Sec. 9.6. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9.1 of this chapter.

(b) The municipal legislative body may adopt an ordinance returning the municipally owned utility to the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness if it receives a petition:

(1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) that requests the legislative body to adopt an ordinance returning the municipally owned utility to the jurisdiction of the commission.

If the municipal legislative body fails to adopt an ordinance under this subsection within ninety (90) days after receipt of the petition, a petition requesting the adoption of an ordinance to return to commission jurisdiction may not be submitted for four (4) years from the date the last petition was submitted under this subsection.

(c) If the municipal legislative body fails to adopt the ordinance described in subsection (b) within ninety (90) days after receipt of the petition, the public question of the return to commission jurisdiction shall be submitted to the registered voters of the municipality if the legislative body receives a second petition:

(1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot;

(2) that requests the legislative body to submit the question of the return to commission jurisdiction to the registered voters of the municipality at the next election; and

(3) that is submitted to the legislative body after the expiration of the ninety (90) day period described in this subsection.

The municipal legislative body shall certify the public question described in subsection (d) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(d) If the legislative body receives a petition described in subsection (c) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?".

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(e) If a majority of those voting on the question described in subsection (d) favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(f) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction. In addition, a petition requesting the adoption of an ordinance under subsection (b) may not be submitted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(g) If a municipally owned utility is returned to commission jurisdiction under this section, the municipal legislative body shall mail written notice to the commission.

As added by P.L.82-1988, SEC.8. Amended by P.L.12-1995, SEC.104.

8-1.5-3-10

Sec. 10. Whenever a municipality operates an electric utility that provides service outside the corporate boundaries of the municipality, the charges for service outside the corporate boundaries may not differ from the charges for service inside the corporate boundaries unless the utility clearly demonstrates significant cost factors that make different charges nondiscriminatory, reasonable, and just.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-11

Sec. 11. (a) The money belonging to each municipally owned utility shall be kept by the municipal fiscal officer as separate funds as required by any bond ordinance or accounting procedures established by the commission or the state board of accounts. The municipal legislative body, with the approval of the board, may transfer surplus earnings of the utility to the general fund. The money may not, however, be transferred unless the terms and conditions of any bond ordinance, resolution, indenture, contract under IC 8-1-2.2, or similar instrument binding upon the utility are complied with.

(b) A cash reserve fund shall be created by ordinance and carried on the records of the utility or utilities by providing for monthly contributions or transfers to the cash reserve fund of surplus earnings of the utility or utilities.

(c) "Surplus earnings" are those cash earnings remaining after provision has been made to take care of current obligations, including:

(1) operating expense;
(2) depreciation or replacement fund;
(3) bond and interest sinking fund;
(4) retirement fund; or
(5) any other priority fund requirements fixed by law.

(d) After creation of the cash reserve fund, the legislative body may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund.

(e) If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30.

(f) A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-3-12

Sec. 12. (a) A municipality may, by ordinance of its legislative body, borrow money from a utility owned by the municipality for any of the following purposes:

(1) Current purposes in anticipation of taxes levied and to be collected during the current or following year.
(2) Carrying out an eligible efficiency project (as defined in IC 36-9-41-1.5) within the municipality.

(b) The board may by resolution lend money to the municipality if the utility has on hand:

(1) a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year;
(2) the amount necessary to meet current expenses during the year; and
(3) the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.

(c) A loan made under subsection (a)(1) may not be made for a sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes.

(d) A loan under this section:

(1) must be evidenced by an obligation of the municipality;
(2) must be signed by the executive;
(3) is due:
(A) on or before thirty (30) days after the last day for the payment of anticipated taxes, in the case of a loan made under subsection (a)(1); and
(B) on a date determined by the board (but not more than six (6) years after the date of the loan), in the case of a loan made under subsection (a)(2); and
(4) may bear interest at any rate as determined by the board, payable at maturity.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.88-2009, SEC.2.

8-1.5-3-13

Sec. 13. The municipal legislative body may, by ordinance, authorize officers charged by law with custodial care, expenditure, and investment of utility money to invest or reinvest surplus money of a utility in the manner prescribed by IC 5-13-9.
As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.20.

8-1.5-3-14

Sec. 14. (a) A municipally owned utility under the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness shall file with the commission an annual report of the operation of the plant on forms prescribed by the commission. The annual reports shall be kept in the office of the commission as a public record. A municipally owned utility that has withdrawn from commission jurisdiction under IC 8-1-2-100 (before its repeal on January 1, 1983) or section 9 or 9.1 of this chapter is not required to file the annual report required by this section.

(b) The state board of accounts shall examine all accounts of every municipally owned utility at regular intervals. In the examination, inquiry shall be made as to:

(1) the financial condition and resources of the utility;
(2) whether the laws of the state have been complied with; and
(3) the methods and accuracy of the accounts and reports of the utilities examined.

The examination shall be made without notice, and its cost shall be paid out of the funds of the utility.
As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.68-1990, SEC.2.

8-1.5-3-15

Sec. 15. A utility operated under IC 8-1-11.1 retains the rights and powers conferred by IC 8-1-11.1-3.1, notwithstanding section 1 of this chapter.
As added by Acts 1982, P.L.74, SEC.1.

Chapter 3.5. Water Bill Adjustments for Undetected Leaks

8-1.5-3.5

8-1.5-3.5-1

Sec. 1. As used in this chapter, "unusually large bill" means a residential water bill that reflects monthly water usage, in whatever units measured, that is at least two (2) times the customer's average monthly usage at the premises.
As added by P.L.53-2004, SEC.1. Amended by P.L.2-2005, SEC.26.

8-1.5-3.5-2

Sec. 2. As used in this chapter, "utility" refers to a water utility owned or operated by a municipality.
As added by P.L.53-2004, SEC.1. Amended by P.L.2-2005, SEC.27.

8-1.5-3.5-3

Sec. 3. Notwithstanding IC 8-1-2-103(a), a utility may adjust an unusually large bill if the excess usage reflected in the bill is caused by physical damage to any facility or equipment supplying water to the premises and the damage:

(1) is not visible or detectable on the customer's premises except upon excavation or some other disturbance of the property; and
(2) is not the result of an act of the customer, or of any agent or contractor hired by the customer.

As added by P.L.53-2004, SEC.1.

8-1.5-3.5-4

Sec. 4. A utility that elects to adjust unusually large bills must do so in accordance with policies adopted by the utility. The utility's policies must specify the procedures by which a customer may request an adjustment and prove the damage described in section 3 of this chapter.

As added by P.L.53-2004, SEC.1.

Chapter 4. Department of Waterworks in Certain Municipalities

8-1.5-4

8-1.5-4-0.3

Sec. 0.3. Notwithstanding the amendments made to section 14 of this chapter by P.L.93-1993, in the case of a public utility that is described in IC 8-1-2-103(c), as amended by P.L.93-1993, the effective date for the implementation of the amendments made to section 14 of this chapter by P.L.93-1993 is July 1, 1993.
As added by P.L.220-2011, SEC.188.

8-1.5-4-1

Sec. 1. This chapter applies to all municipalities that:

(1) own or operate waterworks; and

(2) adopt the provisions of this chapter by ordinance.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-1.5

Sec. 1.5. (a) A municipality having and operating a waterworks through a department of waterworks before January 1, 1982, under IC 19-3-15 (before its repeal on January 1, 1983) or under IC 19-3-27 (before its repeal on January 1, 1983) shall be deemed to have established a department of waterworks, as authorized by section 2 of this chapter, having the same number of board members as the board operating before January 1, 1982, and having the same powers, obligations, and duties as would be the case if the legislative body of the municipality had adopted an ordinance doing so before January 1, 1983, in accordance with Acts 1982, P.L.74, SECTION 5(b).

(b) Except as provided in subsection (c), the board of directors of the department of waterworks shall operate as both the board and the municipal legislative body for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.

(c) This subsection applies to water utilities that have been removed from the jurisdiction of the Indiana utility regulatory commission under IC 8-1.5-3-9.1 after June 30, 1991. The board of directors of the department of waterworks shall operate as the board for the purposes of IC 8-1.5-3-4 and IC 8-1.5-3-8.
As added by P.L.105-1983, SEC.3. Amended by P.L.16-1984, SEC.7; P.L.3-1990, SEC.29; P.L.56-1992, SEC.1.

8-1.5-4-2

Sec. 2. (a) If the legislative body of a municipality, by ordinance, adopts the provisions of this chapter, there is established a department of waterworks to be controlled by a board of directors (referred to as "the board" in this chapter). The board consists of either three (3) or five (5) directors, as determined by ordinance, who shall be appointed by the municipal executive.

(b) In case there are three (3) directors, not more than two (2) may be of the same political party. In case there are five (5) directors, not more than three (3) may be of the same political party.

(c) The terms of directors shall be prescribed by ordinance, but initial terms must be prescribed so that the directors' terms will be staggered. Each director shall give a bond, which shall be fixed by the municipal fiscal officer and is subject to his approval.

(d) The executive may remove a director at any time when, in his judgment, it is for the best interest of the department.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-3

Sec. 3. The department of waterworks has jurisdiction over a special taxing district (referred to as "the waterworks district" in this chapter) that consists of:

(1) in the case of a second class city located in a county having a population of more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000), all the territory within that county; or

(2) in the case of any other municipality, all the territory within the corporate boundaries of the municipality, or the territory served by the waterworks if larger or smaller than the corporate boundaries.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.12-1992, SEC.59; P.L.170-2002, SEC.60; P.L.119-2012,

SEC.84.

8-1.5-4-4

Sec. 4. The board has the powers and duties prescribed by IC 8-1.5-3-4. In addition, the board:

(1) may hold hearings following public notice;

(2) may make findings and determinations;

(3) may design, order, contract for or construct pumping plants or stations, filtration plants, reservoirs, water mains, hydrants, and other equipment, structures, and appurtenances and rebuild, equip, improve, extend, and repair plants, equipment, and structures;

(4) may build or have built all roads, levees, walls, or other structures that may be necessary or desirable in connection with waterworks;

(5) make all necessary or desirable improvements of the grounds and premises under its control;

(6) may issue and sell bonds for the construction, alteration, addition, or extension to the waterworks, in the manner prescribed by law, including the provisions of IC 8-1.5-2; and

(7) shall furnish an adequate supply of water to consumers within the waterworks district.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-5

Sec. 5. The acquisition, construction, installation, operation, and maintenance of facilities and land for water filtration and water service may be financed through proceeds from tax levies, proceeds of special taxing district bonds of the waterworks district, service rates, revenue bonds, or any other available funds.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-6

Sec. 6. The board may fix and set aside:

(1) the proportion of the revenues of the waterworks department necessary for reasonable and proper operation and maintenance;

(2) the proportion of the revenues for a proper and adequate depreciation account; and

(3) the fixed proportion of the revenues to be applied to the payment of the principal and interest of the authorized bonds.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-7

Sec. 7. (a) In fixing the proportion of the revenues of the waterworks department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the waterworks, and may not set aside into the special fund a greater amount of the revenues and proceeds than, in its judgment, is required for the operation and maintenance.

(b) If a surplus is accumulated in the operating and maintenance fund, and that surplus is equal to the cost of maintaining and operating the waterworks system during the remainder of the current calendar, operating, or fiscal year and during the next calendar, operating, or fiscal year, any excess over that surplus may be transferred by the board to either the depreciation account, to be used for any improvements, extensions, or additions to the waterworks, or to the bond and interest redemption account.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-8

Sec. 8. (a) The fixed proportion set aside for the payment of the principal and interest of the authorized bonds shall, from month to month, as accrued and received, be set apart and paid into a special account identified as "the bond and interest redemption account".

(b) In fixing and determining the amount that is to be set aside for the payment of the principal and interest of the authorized bonds, the board may provide that the amount to be set aside and paid into the bond and interest redemption account for any year or years should not exceed a fixed sum, which must be at least sufficient to provide for the payment of the interest and principal of the bonds maturing and becoming payable in each year, together with a surplus or margin of ten percent (10%) in excess.

(c) If a surplus created in the bond and interest redemption account exceeds the interest and principal of any

bonds becoming payable during the current calendar, operating, or fiscal year and during the next calendar, operating, and fiscal year, the board may transfer any excess over the surplus to either the operation and maintenance account, or the depreciation account, as the board may designate.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-9

Sec. 9. (a) The proportion set aside to the depreciation account shall be expended in making good depreciation in the waterworks or in new construction, extensions, or additions to the property of the waterworks.

(b) Any accumulations in the depreciation account may be invested by the board, and if invested, the income from the investment shall be carried in the depreciation account. The board may invest the funds in accordance with IC 5-13-9.
As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.21.

8-1.5-4-10

Sec. 10. (a) The board may authorize and set apart bonds equal to the amount of any secured debt or charge subject to which a waterworks may be purchased or acquired in any proceeding, and shall set aside for interest and sinking fund from the income and revenue of the waterworks a sum sufficient to comply with the requirements of the instrument creating the lien or securing the charge.

(b) If the instrument does not make any provision, the board shall set aside into the secured-debt account from month to month for interest on the secured debt or charge an amount sufficient to provide for the payment of the interest on the secured debt or charge, and at the option of the board either an annual amount sufficient to retire the secured debt or charge at maturity or bonds issued under this chapter equal to the secured debt or charge. Any surplus after satisfying the secured debt or charge may be transferred to the bond and interest redemption account.

(c) Waterworks bonds set aside for a debt may, from time to time, be issued in an amount sufficient with the amount then in the sinking fund to pay and retire the debt or any part thereof. The bonds may not be issued at less than par value in exchange for, or satisfaction of, the secured debt or charge, or may be sold in the manner provided by this chapter, and the proceeds applied in payment of the same at maturity or before maturity by agreement with the holder. A municipality acquiring a waterworks does not assume any liability for the payment of a secured debt or charge, other than the obligation to apply the revenues in the manner prescribed in the ordinance.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-11

Sec. 11. (a) The bonds and the interest issued against the special redemption fund:

(1) are a valid claim of the holders only against that fund and the fixed proportion or amount of the revenues pledged to that fund; and

(2) are exempt from taxation in Indiana as provided by IC 6-8-5.

(b) The bonds may be issued either as registered bonds or as coupon bonds payable to bearer. Coupons and bearer bonds may be registered as to principal in the holder's name on the books of the municipality, registration being noted on the bond by the municipal clerk or other designated officer, after which no transfer is valid unless made on the books of the municipality by the registered holder and similarly noted on the bonds. Any bond so registered as to principal may be discharged from registration by being transferred to bearer, after which it is transferable by delivery but may be again registered as to principal as before. The registration of the bonds as to the principal does not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and the interest made payable only to the registered holder of the bonds. If the coupons are surrendered, the surrender and cancellation shall be noted on the bond, and interest on the bond is then payable to the registered holder on order in cash or at his option by check or draft payable at the place or one (1) of the places where the coupons were payable.

(c) Bonds shall be sold in accordance with IC 5-1-11.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-12

Sec. 12. A board acquiring waterworks and paying for them and for extensions and betterments authorized at the time of acquisition may provide for the extension, addition, or improvement of the waterworks by an additional issue or issues of bonds. A board may issue new bonds in the manner provided in this chapter and secured in the same manner, to provide funds for the payment of the principal and interest of any bonds then outstanding.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-13

Sec. 13. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition of the waterworks and the cost of the issuance of the bonds.

(b) Any holder of the bonds or of any of the coupons attached to them may, by action or other proceeding, compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the making and collecting of reasonable and sufficient rates lawfully established for service rendered by the waterworks, the segregation of the income and revenues of the utility, and the application of the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the waterworks on behalf of the municipality and the bondholders, with power to:

(A) charge and collect rates lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the waterworks; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the waterworks.

Under a sale ordered as provided by subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the waterworks to supply water to the municipality and its citizens.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-14

Sec. 14. (a) This subsection applies to a municipality that is not subject to IC 8-1-2-103(c) or has not adopted an ordinance to become subject to IC 8-1-2-103(d). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes or by maintaining hydrants and other facilities for fire protection shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(b) This subsection applies to a municipality that is subject to IC 8-1-2-103(c), that has adopted an ordinance to become subject to IC 8-1-2-103(d), or that has adopted a plan described in IC 8-1-2-103(d) as prescribed in IC 8-1-2-103(e). The reasonable cost and value of any service rendered to the municipality by the waterworks by furnishing water for public purposes shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the current revenues of the municipality, collected or in process of collection, and the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

Except as provided in subsection (d), the cost and value of maintaining hydrants and other facilities for fire protection shall be excluded from the charges against the municipality and shall be recovered from the other customers of the waterworks beginning on January 1, 1994, in a municipality subject to IC 8-1-2-103(c) and beginning on a date provided in the ordinance for a municipality that adopts an ordinance under IC 8-1-2-103(d). The change in the recovery of current revenue authorized by this section shall be reflected in a schedule of new rates to be filed with the commission at least thirty (30) days before the time the schedule of new rates is to take effect.

(c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be paid into the separate and special fund created by setting aside the income and revenues of the waterworks and is subject to apportionment to the operating, maintenance, depreciation, and bond and interest redemption accounts.

(d) This subsection applies to a city having a population of more than forty-seven thousand (47,000) but less than forty-nine thousand (49,000). The cost and value of maintaining hydrants and other facilities for fire protection may be recovered from customers of the waterworks residing in either of the following, beginning on a date determined by the city:

(1) In a county having a population of more than two hundred fifty thousand (250,000) but less than two

hundred seventy thousand (270,000).

(2) In a township having a population of more than nine thousand (9,000) but less than nine thousand five hundred (9,500) located in a county having a population of more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000).

The city shall file a new schedule of rates with the commission as set forth in subsection (b), but is not subject to commission approval of the rates.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.93-1993, SEC.2; P.L.80-1997, SEC.18; P.L.133-1998, SEC.1; P.L.170-2002, SEC.61; P.L.119-2012, SEC.85.

8-1.5-4-15

Sec. 15. (a) If, upon investigation, the board finds:

(1) that the waterworks, plant, system, or equipment is insufficient to furnish the necessary supply of water to properly protect the public health and welfare and safeguard the property within the waterworks district; or

(2) that it is necessary to rebuild, repair, extend, and improve the waterworks, plant, systems, and equipment and to acquire lands, construct, erect, or acquire other plants, reservoirs, systems, and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the rights are to be acquired, whether by purchase or appropriation, along with a description of any other lands that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution:

(1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the waterworks district and the safeguarding of the property within the district;

(2) declaring that it is of public utility and benefit;

(3) appropriating the property described in the resolution;

(4) stating the maximum proposed cost of any land to be purchased; and

(5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption, the resolution, and the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine their public utility and benefit. Notice shall be mailed to the owners of all lands appropriated by the resolution. If a landowner is a nonresident and his place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then he is considered notified of the pendency of the proceedings by the publication of notice.

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

(e) All persons affected by the proceedings, including all taxpayers in the waterworks district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the land an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land surveyors. Such an option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-16

Sec. 16. (a) All lands, rights-of-way, or other property, when acquired, either by purchase or appropriation, shall be taken and held in the name of the municipality.

(b) At the time fixed for the hearing or before the hearing, the following persons may file a written remonstrance with the board:

(1) The owner of land, rights-of-way, or other property to be appropriated under the resolution.

(2) A person injuriously affected by the appropriation.
(3) A person owning real or personal property within the waterworks district.
(c) The board shall hear all persons interested in the proceedings, hear all the remonstrances that have been filed, and take final action on the resolution. The final action shall be recorded.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-17

Sec. 17. (a) A person who has remonstrated in writing and is aggrieved by the decision of the board may, within thirty (30) days, take an appeal to the circuit or superior court of the county in which the waterworks district is located.
(b) A remonstrator desiring to appeal from the action of the board shall, within thirty (30) days after the final action of the board, file in the office of the clerk of the circuit or superior court a copy of the order of the board and the remonstrance, together with a bond conditioned to pay the costs of the appeal, should the appeal be determined against him.
(c) The court may hear the appeal only if the question is whether the board acted arbitrarily or capriciously in adopting the resolution.
(d) The cause shall be tried to the court without a jury.
(e) All remonstrances upon which appeals are taken may be consolidated and heard as one (1) claim for relief by the court.
As added by Acts 1982, P.L.74, SEC.1.

8-1.5-4-18

Sec. 18. (a) To procure money to pay for the required property and the erection and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the municipality, the special taxing district bonds of the waterworks district. The bonds may exceed the total cost of the work and property to be acquired as provided for in the resolution, including:
(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and
(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.
(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The bonds shall be executed by the municipal executive and attested by the fiscal officer. The bonds are exempt from taxation as provided by IC 6-8-5. All bonds issued by the board shall be sold by the fiscal officer under IC 5-1-11.
(c) The board may not issue bonds of the waterworks district, payable by special taxation, when the total of the outstanding bonds of the district, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15.
(d) The bonds are not a corporate obligation or indebtedness of the municipality, but are an indebtedness of the waterworks district. The bonds and interest are payable out of a special benefit tax levied upon all of the property of the waterworks district, or by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.
(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued. An action to question the validity of the bonds issued for the waterworks district or to prevent their issuance may not be brought after the date fixed for the sale of the bonds.
As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.6-1997, SEC.131.

8-1.5-4-19

Sec. 19. (a) To raise the necessary revenues to pay for the bonds issued, and interest on the bonds, the board:
(1) may levy a special benefit tax upon all the property of the waterworks district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and
(2) shall certify the tax levied each year to the fiscal officers of the municipality and of the county in which the waterworks district is located, at the same time the levy of the municipality is certified.
The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and

enforced in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the waterworks plant and system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the waterworks plant and system; and

(2) may, in lieu of making the levy in this section, set aside, by resolution, a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be accumulated and kept in a separate fund to be known as the "waterworks district bond fund", and applied to the payment of the district bonds and interest as they severally mature and are payable. All accumulations in the fund before their use for the payment of bonds and interest shall be deposited at interest with the depository of other public funds of the municipality, and all interest collected belongs to that fund.

(d) If the board adopts the resolution, the board may not use any part of the amount set aside out of its net revenues for any purpose other than the monthly payment of the bonds and interest to the sinking fund. Any amount of net revenues derived from the operation of the waterworks plant and system under the jurisdiction of the board, not required for the payment of the principal and interest on the outstanding waterworks district bonds, shall be paid over to the municipality and deposited in the sinking fund established for the purpose of redeeming and retiring outstanding bonds that the municipality may have issued for the benefit of its waterworks plant. This section does not relieve the municipality from the obligation to pay outstanding bonds according to their terms and conditions.
As added by Acts 1982, P.L.74, SEC.1.

Chapter 5. Department of Storm Water Management

8-1.5-5

8-1.5-5-1

Sec. 1. This chapter applies to each:

(1) municipality; and

(2) county that:

(A) does not have a consolidated city; and

(B) receives notification from the department of environmental management that the county will be subject to storm water regulation under 327 IAC 15-13;

that adopts the provisions of this chapter by ordinance.
As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.2.

8-1.5-5-1.5

Sec. 1.5. The definitions in IC 36-1-2 apply throughout this chapter.
As added by P.L.282-2003, SEC.3.

8-1.5-5-2

Sec. 2. As used in this chapter, "board" means the following:

(1) For a consolidated city, the board of public works established by IC 36-3-5-6.

(2) For all other municipalities, the:

(A) board of directors described in section 4 of this chapter; or

(B) board that controls the third class city's municipally owned utilities under IC 8-1.5-3-3(a) if the city has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities.

(3) For a county:

(A) the county executive; and

(B) the county surveyor.

As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.3; P.L.98-1993, SEC.1; P.L.282-2003, SEC.4.

8-1.5-5-3

Sec. 3. As used in this chapter, "department" means the following:

(1) For a consolidated city, the department of public works.
(2) For all other municipalities, the department of storm water management established under section 4 of this chapter.
(3) For a county, the department of storm water management established under section 4.5 of this chapter.
As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.4; P.L.98-1993, SEC.2; P.L.282-2003, SEC.5.

8-1.5-5-3.5

Sec. 3.5. As used in this chapter, "district" means the special taxing district established by section 5 of this chapter.
As added by P.L.93-1993, SEC.5 and P.L.98-1993, SEC.3.

8-1.5-5-4

Sec. 4. (a) This section applies to all municipalities except a consolidated city.
(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.
(c) Except as provided in subsections (f) and (g), the board consists of three (3) directors. The executive of the municipality shall appoint the directors, not more than two (2) of whom may be of the same political party.
(d) Except as provided in subsections (f) and (g), the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.
(e) The executive may remove a director at any time when, in the judgment of the executive, it is for the best interest of the department.
(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.
(g) If a third class city:
(1) has a board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a); and
(2) has adopted an ordinance under IC 8-1.5-3-3(a) that provides for the control of any or all of the city's storm water facilities by the board that controls the city's municipally owned utilities;
the members of the board that controls the city's municipally owned utilities shall serve as the board of directors of the department of storm water management, subject to any transition procedure specified in the ordinance under IC 8-1.5-3-3(b). The terms of the members of the board of directors are the same as the terms of the members of the board that controls the city's municipally owned utilities under IC 8-1.5-3-3(a), subject to the completion of any transition procedure specified in the ordinance under IC 8-1.5-3-3(b).
(h) A member of the board of directors of the department of storm water management who:
(1) is appointed under subsection (f); or
(2) is a member of the board under subsection (g) and receives a salary as a member of the board that controls the third class city's municipally owned utilities;
is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.
As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.6; P.L.98-1993, SEC.4; P.L.5-1998, SEC.1; P.L.282-2003, SEC.6.

8-1.5-5-4.5

Sec. 4.5. (a) This section applies to a county.
(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.
(c) An ordinance adopted under this section shall provide for the appointment of:
(1) the members of the county executive; and
(2) the county surveyor;
as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive is coextensive with the member's term of office on the county executive. The

term of the surveyor or the surveyor's designee as a member of the board is coextensive with the surveyor's term of office.

(d) A member of the board of directors is not entitled to a salary or per diem for serving as a member of the board of directors. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

As added by P.L.282-2003, SEC.7.

8-1.5-5-5

Sec. 5. (a) The ordinance adopting the provisions of this chapter creates a special taxing district that includes the following:

(1) For a consolidated city, all of the territory of the county containing the consolidated city.

(2) For all other municipalities, all territory within the corporate boundaries of the municipality.

(3) For a county, all the territory in the county that is not located in a municipality.

(b) All the territory within the district constitutes a special taxing district for the purpose of providing for the collection and disposal of storm water of the district in a manner that protects the public health and welfare and for the purpose of levying special benefit taxes for purposes of storm water collection and disposal. All territory in the district and all territory added to the district is considered to have received a special benefit from the storm water collection and disposal facilities of the district equal to or greater than the special taxes imposed on the territory under this chapter in order to pay all or part of the costs of such facilities.

As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.7; P.L.98-1993, SEC.5; P.L.282-2003, SEC.8.

8-1.5-5-6

Sec. 6. The board has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition, the board may:

(1) hold hearings following public notice;

(2) make findings and determinations;

(3) install, maintain, and operate a storm water collection and disposal system;

(4) make all necessary or desirable improvements of the grounds and premises under its control; and

(5) issue and sell bonds of the district in the name of the unit served by the department for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the board.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.9.

8-1.5-5-7

Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

(1) proceeds of special taxing district bonds of the storm water district;

(2) the assumption of liability incurred to construct the storm water system being acquired;

(3) service rates;

(4) revenue bonds; or

(5) any other available funds.

(b) Except as provided in IC 36-9-23-37, the board, after holding a public hearing with notice given under IC 5-3-1 and obtaining the approval of the fiscal body of the unit served by the department, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system. The amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system. The assessment and collection of user fees under this subsection by the board of a county must also be approved by the county executive.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) The board shall use one (1) or more of the following factors to establish the fees authorized by this section:

(1) A flat charge for each lot, parcel of property, or building.

(2) The amount of impervious surface on the property.

(3) The number and size of storm water outlets on the property.

(4) The amount, strength, or character of storm water discharged.

(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the storm water district.

(7) Any other factors the board considers necessary.

(e) The board may exercise reasonable discretion in adopting different schedules of fees or making classifications in schedules of fees based on:

(1) variations in the costs, including capital expenditures, of furnishing services to various classes of users or to various locations;

(2) variations in the number of users in various locations; and

(3) whether the property is used primarily for residential, commercial, or agricultural purposes.

As added by P.L.125-1987, SEC.1. Amended by P.L.176-2002, SEC.6; P.L.282-2003, SEC.10; P.L.114-2008, SEC.3.

8-1.5-5-8

Sec. 8. The board may fix and set aside:

(1) revenues of the department necessary for reasonable and proper operation and maintenance;

(2) revenues for a proper and adequate depreciation account; and

(3) revenues to be applied to the payment of the principal and interest of the authorized bonds.

As added by P.L.125-1987, SEC.1.

8-1.5-5-9

Sec. 9. (a) In fixing the revenues of the department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the department.

(b) If a surplus is accumulated in the operating and maintenance account, the board may transfer any excess over that surplus to:

(1) the depreciation account, to be used for any improvements, extensions, or additions to the storm water system; or

(2) the bond and interest redemption account.

As added by P.L.125-1987, SEC.1.

8-1.5-5-10

Sec. 10. (a) The revenues set aside for the payment of the principal and interest of the authorized bonds shall be deposited and credited to a special account identified as "the bond and interest redemption account".

(b) In determining the amount that is to be set aside for the payment of the principal and interest of the authorized bonds, the board may provide that the amount to be set aside and paid into the bond and interest redemption account for any year or years should not exceed a fixed sum, which must be at least sufficient to provide for the payment of the interest and principal of the bonds maturing and becoming payable in each year.

(c) If a surplus is created in the bond and interest redemption account, the board may transfer any excess over the surplus to:

(1) the operation and maintenance account; or

(2) the depreciation account.

As added by P.L.125-1987, SEC.1.

8-1.5-5-11

Sec. 11. The revenues set aside to the depreciation account shall be expended for:

(1) the repair of the storm water system;

(2) new acquisition, construction, extensions, or additions to the property of the storm water system; or

(3) transfer to the bond and interest redemption account to prevent a default.

As added by P.L.125-1987, SEC.1.

8-1.5-5-12

Sec. 12. (a) If the board acquires a storm water system and assumes the liability incurred by the seller to construct the storm water system, the principal and interest on the liability so assumed shall be paid from the bond and interest redemption account in the same manner as bonds of the district would be paid, and the board shall set aside sufficient revenues to comply with the requirements of the instrument creating the liability.

(b) A unit acquiring a storm water system may not assume any liability for the payment of a secured debt or charge other than the obligation to apply the revenues in the manner prescribed in the ordinance.

(c) The board may issue bonds in exchange for, or satisfaction of, the liability assumed in the acquisition of a storm water system. The bonds so issued may not be issued at less than ninety-seven percent (97%) of the par value thereof in exchange for, or satisfaction of, the liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.11.

8-1.5-5-13

Sec. 13. (a) The bonds of the district are:

(1) a valid claim of the holders only against the bond and interest redemption account and the revenues of the storm water system; and

(2) exempt from taxation in Indiana as provided by IC 6-8-5.

(b) The bonds may be issued either as registered bonds or as coupon bonds payable to the bearer.

(c) Except as provided in this chapter or IC 5-1-5, bonds shall be sold in accordance with IC 5-1-11. The registration of bonds does not affect negotiability.

As added by P.L.125-1987, SEC.1.

8-1.5-5-14

Sec. 14. A board acquiring a storm water system and paying for it and for extensions and betterments authorized at the time of acquisition may provide for the combined cost in one (1) issue of bonds. The board shall issue and secure the bonds in the manner provided in this chapter to provide funds for the original construction of a storm water system.

As added by P.L.125-1987, SEC.1.

8-1.5-5-15

Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

(1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.

(2) Segregating the income and revenues of the department.

(3) Applying the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the unit served by the department and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the unit served by the department and its citizens.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.12.

8-1.5-5-16

Sec. 16. (a) This section applies to a municipality.

(b) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against the municipality; and
(2) paid for as the service accrues out of:
(A) the current revenues of the municipality, collected or in process of collection; or
(B) the tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(c) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.13.

8-1.5-5-16.5

Sec. 16.5. (a) This section applies to a county.

(b) The reasonable cost and value of any service rendered to the county by the storm water system by furnishing storm water collection and disposal shall be:
(1) charged against all the territory in the county, except territory within a municipality; and
(2) paid for as the service accrues out of:
(A) the current revenues of the county, collected or in process of collection; or
(B) the tax levy of the county made by the county to raise money to meet the county's necessary current expenses.

(c) The compensation for the service provided to the county shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

As added by P.L.282-2003, SEC.14.

8-1.5-5-17

Sec. 17. (a) If, upon investigation, the board finds that:
(1) the storm water system is insufficient to furnish the necessary collection and disposal of storm water to properly protect the public health and welfare and safeguard the property within the district; or
(2) it is necessary to acquire, construct, rebuild, repair, extend, and improve the storm water system and equipment, to acquire lands, or to construct, erect, or acquire other systems and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the rights are to be acquired, whether by purchase or appropriation, along with a description of any other property that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution approving the project by:
(1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the storm water district and the safeguarding of the property within the district;
(2) declaring that it is of public utility and benefit;
(3) appropriating the property described in the resolution;
(4) stating the maximum proposed cost of any land to be purchased; and
(5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption of the resolution and of the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine the public utility and benefit of the project. Notice shall be mailed to the owners of all property appropriated by the resolution. If a landowner is a nonresident and the landowner's place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then the owner is considered notified of the pendency of the proceedings by the publication of notice.

(d) Separate descriptions of each piece or parcel of land are not required in the resolution and notice, but it is a sufficient description of the property purchased or to be purchased, or to be appropriated or damaged, to give a description of the entire tract, whether it is one (1) or more lots or parcels and whether it is owned by one (1) or more persons.

(e) All persons affected by the proceedings, including all taxpayers in the storm water district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the

original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the property an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land appraisers. An option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

As added by P.L.125-1987, SEC.1.

8-1.5-5-18

Sec. 18. (a) At the time fixed for the hearing or before the hearing, the following persons may file a written remonstrance with the board:

(1) The owner of real property, rights-of-way, or other property to be appropriated under the resolution.

(2) A person injuriously affected by the appropriation.

(3) A person owning real or personal property within the storm water district.

(b) The board shall:

(1) hear all persons interested in the proceedings;

(2) hear all the remonstrances that have been filed; and

(3) take action to confirm, modify, or reject the resolution.

As added by P.L.125-1987, SEC.1.

8-1.5-5-19

Sec. 19. (a) A person who has remonstrated in writing and is aggrieved by the decision of the board may, within thirty (30) days, take an appeal to the circuit or superior court of the county in which the storm water district is located.

(b) A remonstrator desiring to appeal the action of the board shall, within thirty (30) days after the final action of the board, file in the office of the clerk of the circuit or superior court a copy of the order of the board and the remonstrance, together with a bond conditioned to pay the costs of the appeal, should the appeal be determined against the remonstrator.

(c) The court may hear the appeal only if the question is whether the board acted arbitrarily or capriciously in adopting the resolution.

(d) The cause shall be tried by the court without a jury.

(e) All remonstrances upon which appeals are taken may be consolidated and heard as one (1) claim for relief by the court.

As added by P.L.125-1987, SEC.1.

8-1.5-5-20

Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the unit served by the department.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.15.

8-1.5-5-21

Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the unit served by the department, special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:

(1) all expenses necessarily incurred for supervision and inspection during the period of construction; and

(2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the fiscal officer, who shall then prepare the bonds. The executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the

district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the unit but are an indebtedness of the storm water district. The bonds and interest are payable:

(1) out of a special benefit tax levied upon all of the property of the storm water district; or

(2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

As added by P.L.125-1987, SEC.1. Amended by P.L.6-1997, SEC.132; P.L.282-2003, SEC.16.

8-1.5-5-22

Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

(1) after approval by the fiscal body of the unit served by the department, shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and

(2) shall certify the tax levied each year to the fiscal officer of the unit served by the department at the same time and in the same manner as other levies of the unit are certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and

(2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.17.

8-1.5-5-23

Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the fiscal body of the unit served by the department.

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

As added by P.L.125-1987, SEC.1. Amended by P.L.282-2003, SEC.18.

8-1.5-5-24

Sec. 24. (a) Whenever work on a storm water system (that is combined with a sanitary sewer system) necessitates the repair or replacement of all or part of a sanitary sewer system, the entity that owns or maintains the sanitary sewer system shall assume a proportionate share of the cost of repairing or replacing the sanitary sewer system.

(b) The board and the entity that owns or manages the sanitary sewer system shall negotiate the division of the costs described in subsection (a).

(c) If the parties cannot agree to a division of the costs, they shall petition the circuit court of the county where the majority of the systems are located to divide the costs. The circuit court shall hold a hearing on the division of costs within sixty (60) days after receiving the petition. The court shall publish notice of the hearing in accordance with IC 5-3-1. The decision of the court is binding on both parties.

As added by P.L.125-1987, SEC.1.

8-1.5-5-25

Sec. 25. (a) Revenues received by the department may be used to pay for bonds issued to acquire, construct, install, operate, and maintain facilities and land for storm water collection and disposal systems.

(b) If there are bonds outstanding for which user fees were pledged, the board may not rescind user fees or reduce them below a rate that would produce one hundred twenty-five percent (125%) of the highest annual debt

service on the bonds issued under this chapter to their final maturity, based on an average of the immediately preceding three (3) years of user fee collections, if the user fees have been levied for the preceding three (3) years. If the user fees have not been levied for the preceding three (3) years, the board may not reduce user fees below a rate that would produce one hundred twenty-five percent (125%) of the highest debt service, based upon a study by a qualified public accountant or financial adviser.
As added by P.L.125-1987, SEC.1.

8-1.5-5-26

Sec. 26. With respect to bonds for which a pledge has been made under section 25 of this chapter, the general assembly covenants with the holders of these bonds that:

(1) this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the user fees under this chapter; and

(2) this chapter will not be amended in a manner that will change the purpose for which revenues from the user fees imposed under this chapter may be used;

as long as those bonds are outstanding.
As added by P.L.125-1987, SEC.1.

8-1.5-5-27

Sec. 27. If the department:

(1) uses private property for storm water collection or disposal; and

(2) obtains the consent of the owner of the private property to maintain the private property;

the department shall maintain the private property.
As added by P.L.282-2003, SEC.19.

8-1.5-5-28

Sec. 28. A person may not be required to screen a storm water outfall if the pipe diameter of the storm water outfall is less than twenty-four (24) inches.
As added by P.L.282-2003, SEC.20.

8-1.5-5-29

Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a city that before January 1, 2005, adopted an ordinance establishing procedures for the collection of unpaid user fees under this chapter through the enforcement of a lien.

(b) Fees assessed against real property under this chapter constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (c) and (d), the lien attaches when notice of the lien is filed in the county recorder's office under section 30 of this chapter.

(c) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If property is conveyed before a lien is filed, the department shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(e) The department shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.
As added by P.L.131-2005, SEC.1.

8-1.5-5-30

Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars ($5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(e) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(f) Upon receipt of the list under subsection (c), the county auditor of each county shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(g) After certification of liens under subsection (d), the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

(h) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(i) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars ($40).

As added by P.L.131-2005, SEC.2.

8-1.5-5-31

Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

As added by P.L.131-2005, SEC.3.

8-1.5-5-32

Sec. 32. (a) This section applies to excluded cities and towns in a county containing a consolidated city.

(b) A municipality to which this section applies may withdraw from the district established by the consolidated city if the municipal legislative body adopts an ordinance withdrawing the municipality from the district. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to the following:

(1) All owners of lots and parcels within the municipality that are subject to storm water user fees imposed in the district by the department of public works of the consolidated city.

(2) The department of public works of the consolidated city.

(c) An ordinance described in subsection (b) takes effect sixty (60) days after adoption by the municipal legislative body.

(d) In addition to the notice required by subsection (b), if a municipal legislative body adopts an ordinance under subsection (b), the municipal legislative body shall mail written notice of the withdrawal from the district to the department of public works of the consolidated city not more than thirty (30) days after the ordinance becomes effective.

(e) If on the date of a municipality's withdrawal from the district there are bonds outstanding that have been issued by the board of public works of the consolidated city, the municipality is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the municipality bears to the assessed valuation of all property included in the district on the date one (1) day before the date of withdrawal, as shown in the most recent assessment for taxation before the date of withdrawal.

(f) If a municipal legislative body adopts an ordinance under subsection (b), the municipality is entitled to receive the following:

(1) An annual lump sum payment equal to the total amount of property taxes paid and allocated to the district's flood debt service fund from all property taxpayers within the municipality, to the extent the property taxes are not necessary to pay the indebtedness owed by the municipality under subsection (e). A payment under this subdivision is required for property taxes assessed beginning on the January 1 preceding the effective date of the municipality's withdrawal from the district.

(2) The total amount of storm water user fees collected by the department of public works of the consolidated city from the lots and parcels in the municipality beginning on the January 1 preceding the effective date of the municipality's withdrawal from the district.

(g) Payments received under subsection (f):

(1) shall be deposited by the municipality in a dedicated fund; and

(2) may be used by the municipality only for purposes of storm water management in the municipality and may not be diverted, directly or indirectly, in any manner to any use other than the purposes of storm water management in the municipality.

As added by P.L.52-2006, SEC.1 and P.L.175-2006, SEC.1. Amended by P.L.154-2006, SEC.65.

Chapter 9. Waterway Management Districts

8-10-9

8-10-9-1

Sec. 1. This chapter applies to a city having a population of more than twenty-nine thousand six hundred (29,600) but less than twenty-nine thousand nine hundred (29,900).

As added by P.L.56-1994, SEC.2. Amended by P.L.170-2002, SEC.65; P.L.119-2012, SEC.89.

8-10-9-2

Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Confined disposal facility" means a structure, an enclosure, a receptacle, or a disposal area established:

(1) by an agency or instrumentality of the state or federal government; and

(2) for the purpose of storing, retaining, disposing of, isolating, or holding dredgings or excavated material from the banks or bottom of a waterway;

within a district created by this chapter.

(c) "District" means a waterway management district established under section 3 of this chapter.

(d) "Waterway" means a canal, river, channel, or stream that is navigable for a substantial portion of its length by boats, barges, ships, or other watercraft for both commercial and recreational purposes.

As added by P.L.56-1994, SEC.2.

8-10-9-3

Sec. 3. (a) There is established in each city to which this chapter applies a waterway management district.

(b) The district includes all territory, including both dry land and water, within a distance of one-half (1/2) mile on either side of the center line of any waterway within the city in which the district is established, excluding the land and water occupied by any marina owned by a unit of government located in the corridor (as defined in IC 36-7-13.5-1).

(c) The district boundary is formed by an imaginary line one-half (1/2) mile distant from the center line of a waterway in all directions. However, the boundary of the district does not extend beyond the boundaries of the city in which the district is located in those areas where the city boundary is located less than one-half (1/2) mile from the center line of a waterway.

As added by P.L.56-1994, SEC.2. Amended by P.L.1-1995, SEC.57; P.L.197-2011, SEC.34.

8-10-9-4

Sec. 4. (a) The district is a body corporate and politic that may sue or be sued and plead and be impleaded. The district has the powers and jurisdiction provided in this chapter.

(b) The exercise by the district of the district's powers is an essential governmental function of the state and the city in which the district is located, but the district is not immune from liability.

As added by P.L.56-1994, SEC.2.

8-10-9-5

Sec. 5. The district is established for the following purposes:

(1) To manage and supervise, in conjunction with other state and federal authorities, the industrial, commercial, and recreational development of the waterways in the city in which the district is formed.

(2) To assist other agencies of local, state, and federal governments to manage, maintain, and promote the use of the waterways in the city in which the district is formed.

(3) To foster use of the canal in an environmentally responsible manner.

(4) To provide for the orderly planning for waterways.

(5) To plan for, develop, and maintain roads, bridges, approaches, locks, gates, and other structures in connection with a waterway within the jurisdiction of the district consistent with the obligations and jurisdiction of other agencies of the federal or state government.

(6) It is the goal of the waterway projects and activities performed under this chapter to improve the commercial and recreational use of waterways in an environmentally sound manner, and to promote the economic development of the city in which the district is located.

As added by P.L.56-1994, SEC.2.

8-10-9-6

Sec. 6. (a) The district shall be governed by a board of directors consisting of seven (7) members, four (4) of whom are appointed by the executive of the city in which the district is formed, two (2) of whom are appointed by the governor, and one (1) of whom is appointed by the legislative body of the city in which the district is formed.

(b) Members of the board serve terms of three (3) years. A member's term may be extended by any partial term to which the member was appointed to fill a vacancy.

(c) Five (5) members of the board of directors must be qualified electors of the city in which the district is formed. Two (2) members need not be residents of the city in which the district is formed but shall be representatives of property owners of land that borders waterways within the district. One (1) of the two (2) members shall be among the members appointed by the mayor, and one (1) shall be among the members appointed by the governor.

(d) The appointing authority shall fill all vacancies of members appointed by that authority.

As added by P.L.56-1994, SEC.2.

8-10-9-7

Sec. 7. (a) The board of directors shall meet in a public place within the city in which the district is formed after giving notice.

(b) The board shall annually elect one (1) of its members as president and another member as vice president. The board shall designate a secretary who need not be a member of the board.

(c) The board shall cause a detailed written record to be kept in the form of minutes of all of the board's meetings, and the board shall meet at least four (4) times annually.

(d) A majority of the board members actually serving constitutes a quorum for any purpose.

As added by P.L.56-1994, SEC.2.

8-10-9-8

Sec. 8. The board of directors of a district has and may exercise the following powers and duties:

(1) To manage and supervise, to the extent permitted by the laws of the state or the United States, the development of waterways and of related roads, highways, bridges, locks, and structures within the jurisdiction of the district.

(2) To assist other agencies of state and local government having jurisdiction over the waterways within the district.

(3) To enter into contracts in furtherance of the district's purposes including, without limitation, the construction and maintenance of waterway related facilities, including wastewater pre-treatment plants, pumps, wells, locks, wharves, piers, bridges, roads, highways, confined disposal facilities, and similar structures.

(4) To employ a professional staff to assist the board in carrying out its duties and to engage consultants, attorneys, accountants, and other professional personnel who are necessary to carry out the duties of the board.

(5) To prepare a budget annually, and to appropriate funds for the discharge of the district's purposes and duties; provided that the district shall neither appropriate nor expend any funds to support the construction, operation, or maintenance of any casino gaming boat, dock, or related facility.

(6) To raise funds by the imposition of user fees for waterways and public facilities in the district's jurisdiction subject to the following:

(A) The fees shall not exceed one hundred thousand dollars ($100,000) per year for the state fiscal years beginning July 1, 1994, and July 1, 1995.

(B) The fees shall not exceed two hundred thousand dollars ($200,000) per year for the state fiscal year beginning July 1, 1996.

(C) The fees shall not exceed three hundred thousand dollars ($300,000) per year for the state fiscal year beginning July 1, 1997.

(D) The fees shall not exceed four hundred thousand dollars ($400,000) per year for the state fiscal year beginning July 1, 1998.

(E) The fees shall not exceed five hundred thousand dollars ($500,000) per year thereafter.

(F) The fees shall be deposited into a nonreverting fund to be expended by the district in the discharge of its functions.

These fees shall be imposed on all owners of property adjacent to waterways and users of waterways and may not exceed seventy-five thousand dollars ($75,000) per year for any single owner or user.

(7) To act as a local sponsoring agency under contract or memorandum of understanding with any private party or any agency of the state government or the government of the United States in furtherance of the purposes, powers, and duties of the district.

(8) To accept grants, transfers, payments, or other conveyances of money or property in the capacity of a trustee or fiduciary in a special nonreverting fund under terms agreeable by the district and by the person, entity, individual, or agency providing the money or property for the purpose of:

(A) managing funds for the cleanup, environmental remediation, and closure of any real property on or adjacent to the waterway within the district; or

(B) establishing waste water pre-treatment plants, pumps, related equipment, and other structures, equipment, and fixtures required to maintain a confined disposal facility or similar structure on or near any waterway within the jurisdiction of the district.

(9) To perform studies and establish plans for the use and development of waterways within the district's

jurisdiction in an environmentally responsible manner.
(10) To acquire and dispose of real or personal property by grant, gift, purchase, lease, devise, or otherwise.
(11) To hold, use, improve, maintain, operate, own, manage, or lease (as lessor or lessee) real or personal property, or any interest in that property.
(12) To act, when requested, as a coordinating agency for programs and activities of other public and private agencies that are related to its purposes.
As added by P.L.56-1994, SEC.2.

Chapter 3. Emergency Management and Disaster Law

10-14-3

10-14-3-0.5

Sec. 0.5. As used in this chapter, "backfill employee" means an employee of a political subdivision who performs the duties of a mobile support unit member during the deployment of the mobile support unit member to assist another state under the Emergency Management Assistance Compact.
As added by P.L.71-2013, SEC.1.

10-14-3-0.7

Sec. 0.7. As used in this chapter, "Emergency Management Assistance Compact" refers to IC 10-14-5.
As added by P.L.71-2013, SEC.2.

10-14-3-1

Sec. 1. (a) As used in this chapter, "disaster" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural phenomenon or human act.
(b) The term includes any of the following:
(1) Fire.
(2) Flood.
(3) Earthquake.
(4) Windstorm.
(5) Snowstorm.
(6) Ice storm.
(7) Tornado.
(8) Wave action.
(9) Oil spill.
(10) Other water contamination requiring emergency action to avert danger or damage.
(11) Air contamination.
(12) Drought.
(13) Explosion.
(14) Technological emergency.
(15) Utility failure.
(16) Critical shortages of essential fuels or energy.
(17) Major transportation accident.
(18) Hazardous material or chemical incident.
(19) Radiological incident.
(20) Nuclear incident.
(21) Biological incident.
(22) Epidemic.
(23) Public health emergency.
(24) Animal disease event requiring emergency action.
(25) Blight.
(26) Infestation.
(27) Riot.
(28) Hostile military or paramilitary action.

(29) Act of terrorism.
(30) Any other public calamity requiring emergency action.
As added by P.L.2-2003, SEC.5. Amended by P.L.22-2005, SEC.7.

10-14-3-2

Sec. 2. As used in this chapter, "emergency management" means the preparation for and the coordination of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters. The functions include the following:

(1) Firefighting services.
(2) Police services.
(3) Medical and health services.
(4) Rescue.
(5) Engineering.
(6) Warning services.
(7) Communications.
(8) Radiological, chemical, and other special weapons defense.
(9) Evacuation of persons from stricken areas.
(10) Emergency welfare services.
(11) Emergency transportation.
(12) Plant protection.
(13) Temporary restoration of public utility services.
(14) Other functions related to civilian protection.
(15) All other activities necessary or incidental to the preparation for and coordination of the functions described in subdivisions (1) through (14).

As added by P.L.2-2003, SEC.5.

10-14-3-3

Sec. 3. As used in this chapter, "emergency management worker" includes any full-time or part-time paid, volunteer, or auxiliary employee of:

(1) the state;
(2) other:
  (A) states;
  (B) territories; or
  (C) possessions;
(3) the District of Columbia;
(4) the federal government;
(5) any neighboring country;
(6) any political subdivision of an entity described in subdivisions (1) through (5); or
(7) any agency or organization;

performing emergency management services at any place in Indiana subject to the order or control of, or under a request of, the state government or any political subdivision of the state. The term includes a volunteer health practitioner registered under IC 10-14-3.5.
As added by P.L.2-2003, SEC.5. Amended by P.L.134-2008, SEC.1.

10-14-3-4

Sec. 4. As used in this chapter, "energy" means coal, petroleum or other liquid fuels, natural or synfuel gas, or electricity.
As added by P.L.2-2003, SEC.5.

10-14-3-5

Sec. 5. As used in this chapter, "energy emergency" means an existing or projected shortfall of at least eight percent (8%) of motor fuel or of other energy sources that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized.

As added by P.L.2-2003, SEC.5.

10-14-3-5.5

Sec. 5.5. As used in this chapter, "local travel advisory" means the level of emergency declared under section 29 of this chapter by the principal executive officer of a political subdivision to alert the traveling public of emergency conditions that may require the imposition of travel restrictions.
As added by P.L.40-2011, SEC.1.

10-14-3-6

Sec. 6. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.
As added by P.L.2-2003, SEC.5.

10-14-3-7

Sec. 7. (a) Because of the existing and increasing possibility of disasters or emergencies of unprecedented size and destructiveness that may result from manmade or natural causes, to ensure that Indiana will be adequately prepared to deal with disasters or emergencies or to prevent or mitigate those disasters where possible, generally to provide for the common defense, to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is found and declared to be necessary:

(1) to provide for emergency management under the department of homeland security;
(2) to create local emergency management departments and to authorize and direct disaster and emergency management functions in the political subdivisions of the state;
(3) to confer upon the governor and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided in this chapter;
(4) to provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the federal government to carry out emergency, disaster, or emergency management functions; and
(5) to authorize the establishment of organizations and the implementation of steps that are necessary and appropriate to carry out this chapter.

(b) It is also the purpose of this chapter and the policy of the state to:

(1) coordinate all emergency management functions of this state to the maximum extent with the comparable functions of:
    (A) the federal government, including the federal government's various departments and agencies;
    (B) other states and localities; and
    (C) private agencies of every type;
so that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur;
(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
(4) clarify and strengthen the roles of the:
    (A) governor;
    (B) state agencies; and
    (C) local governments;
in the prevention of, preparation for, response to, and recovery from disasters;
(5) authorize and provide cooperation between departments of government in:
    (A) disaster prevention;
    (B) preparedness;
    (C) response; and
    (D) recovery;
(6) authorize and provide coordination of activities relating to:
    (A) disaster prevention;
    (B) preparedness;
    (C) response; and
    (D) recovery;
by agencies and officers of Indiana, and similar state-local, interstate, federal-state, and foreign activities in

which the state and its political subdivisions may participate; and

(7) provide a disaster management system embodying all aspects of pre-disaster preparedness, disaster operations, and post-disaster response.

As added by P.L.2-2003, SEC.5. Amended by P.L.1-2006, SEC.175.

10-14-3-8

Sec. 8. (a) This chapter may not be construed to do the following:

(1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.

(2) Interfere with the dissemination of news or comment on public affairs. However, a communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency.

(3) Affect the jurisdiction or responsibilities of police forces, firefighting forces, or units or personnel on active duty of the United States' armed forces. However, state, local, and interjurisdictional disaster emergency plans must rely on the forces available for performance of functions related to disaster emergencies.

(4) Limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the governor under the constitution, statutes, or common law of Indiana independent of or in conjunction with any provisions of this chapter.

(b) This chapter does not limit or in any way affect the responsibilities of the American National Red Cross under 36 U.S.C. 300101 et seq. and 42 U.S.C. 5121 et seq.

As added by P.L.2-2003, SEC.5.

10-14-3-9

Sec. 9. (a) The agency shall prepare and maintain a current state emergency operations plan. The plan may provide for the following:

(1) Prevention and minimization of injury and damage caused by disaster.

(2) Prompt and effective response to disaster.

(3) Emergency relief.

(4) Identification of areas particularly vulnerable to disaster.

(5) Recommendations for:

(A) zoning;

(B) building;

(C) other land use controls;

(D) safety measures for securing mobile homes or other nonpermanent or semipermanent structures; and

(E) other preventive and preparedness measures designed to eliminate or reduce disaster or its impact;

that must be disseminated to both the fire prevention and building safety commission and local authorities.

(6) Assistance to local officials in designing local emergency action plans.

(7) Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster.

(8) Preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs.

(9) Organization of manpower and chains of command.

(10) Coordination of federal, state, and local disaster activities.

(11) Coordination of the state disaster plan with the disaster plans of the federal government.

(12) Other necessary matters.

(b) The agency shall take an integral part in the development and revision of local and interjurisdictional disaster plans prepared under section 17 of this chapter. The agency shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, a political subdivision's disaster agencies, and interjurisdictional planning and disaster agencies. These personnel:

(1) shall consult with subdivisions and government agencies on a regularly scheduled basis;

(2) shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply; and

(3) may suggest revisions.

(c) In preparing and revising the state disaster plan, the agency shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the agency shall encourage local and interjurisdictional agencies to seek advice from the sources specified in this subsection.

(d) The state disaster plan or any part of the plan may be incorporated in rules of the agency or by executive orders.

(e) The agency shall do the following:

(1) Determine requirements of the state and political subdivisions for food, clothing, and other necessities in the event of an emergency.

(2) Procure and pre-position supplies, medicines, materials, and equipment.

(3) Adopt standards and requirements for local and interjurisdictional disaster plans.

(4) Provide for mobile support units.

(5) Assist political subdivisions, political subdivisions' disaster agencies, and interjurisdictional disaster agencies to establish and operate training programs and public information programs.

(6) Make surveys of industries, resources, and facilities in Indiana, both public and private, necessary to carry out this chapter.

(7) Plan and make arrangements for the availability and use of any private facilities, services, and property, and if necessary and if the private facilities, services, or property is used, provide for payment for the use under agreed upon terms and conditions.

(8) Establish a register of persons with types of training and skills important in emergency prevention, preparedness, response, and recovery.

(9) Establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency.

(10) Prepare, for issuance by the governor, executive orders, proclamations, and regulations necessary or appropriate in coping with disaster.

(11) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery.

(12) Do other things necessary, incidental, or appropriate to implement this chapter.

(f) The agency shall ascertain the rapid and efficient communications that exist in times of disaster emergencies. The agency shall consider the desirability of supplementing these communications resources or of integrating these resources into a comprehensive intrastate or state-federal telecommunications or other communications system or network. In studying the character and feasibility of any system, the agency shall evaluate the possibility of multipurpose use of the system for general state and local governmental purposes. The agency shall make appropriate recommendations to the governor.

(g) The agency shall develop a statewide mutual aid program to implement the statewide mutual aid agreement. As added by P.L.2-2003, SEC.5. Amended by P.L.205-2003, SEC.5.

10-14-3-10 Repealed

10-14-3-10 (Repealed by P.L.205-2003, SEC.44.)

10-14-3-10.6

Sec. 10.6. (a) As used in this section, "participating unit" refers to a unit that does not opt out under subsection (c) from participating in the statewide mutual aid program.

(b) As used in this section, "unit" means the following:

(1) A unit (as defined in IC 36-1-2-23).

(2) A fire protection district established under IC 36-8-11.

(3) A provider unit (as defined in IC 36-8-19-3) acting on behalf of a fire protection territory established under IC 36-8-19.

(4) A fire department established by the board of trustees of a state educational institution (as defined in IC 21-7-13-32), including a fire department established by the board of trustees of Purdue University under IC 21-39-7.

(c) A unit may choose not to participate in the statewide mutual aid program if the unit:

(1) adopts an ordinance or a resolution declaring that the unit will not participate in the statewide mutual aid program; and

(2) provides a copy of the ordinance or resolution to:

(A) the local emergency management organization that serves the unit; and

(B) the department.

(d) Each participating unit shall establish an incident management system and a unified command system to be used in a response to a disaster or an emergency.

(e) A participating unit may request the assistance of at least one (1) other participating unit to:

(1) manage disaster response or recovery; or

(2) conduct disaster response or recovery related exercises, testing, or training.

The participating unit that requests assistance shall provide a copy of the request to the emergency operations center within the division of emergency response and recovery not more than forty-eight (48) hours after making the request.

(f) A request for assistance to a participating unit under subsection (e) shall be made by and to the executive of the unit or the executive's authorized representative. A request may be oral or in writing. A written request shall be made on forms developed by the department. An oral request shall be confirmed in writing not later than twenty-four (24) hours after the oral request is made.

(g) A request must include the following information:

(1) A description of the disaster response and recovery functions for which assistance is needed, including the following:

(A) Fire.

(B) Law enforcement.

(C) Emergency medical.

(D) Transportation.

(E) Communications.

(F) Public works and engineering.

(G) Building inspection.

(H) Planning and information assistance.

(I) Mass care.

(J) Resource support.

(K) Health and other medical services.

(L) Search and rescue.

(2) The amount and type of services, equipment, supplies, materials, personnel, and other resources needed and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting participating unit's provision of assistance and a point of contact at that location.

(4) A statement that the request for assistance is being made through the statewide mutual aid program.

(h) A participating unit that is requested to render assistance shall take the necessary action to provide and make available the requested services, equipment, supplies, materials, personnel, and other resources.

(i) A participating unit's obligation to provide assistance is subject to the following restrictions:

(1) A participating unit's request to receive assistance is effective only:

(A) upon declaration of a local disaster emergency by the principal executive officer of the unit under section 29 of this chapter; or

(B) upon the commencement of the exercises, testing, or training.

(2) The assistance shall continue as long as:

(A) the state of emergency remains in effect and the loaned resources are required by the receiving participating unit or the loaned resources remain in the receiving participating unit; or

(B) the exercises, testing, or training is in progress.

(3) The participating unit rendering the assistance may withhold resources or recall loaned resources to the extent necessary to provide for the participating unit's own reasonable protection.

(4) Emergency forces providing assistance shall continue under the command and control of their regular leaders, but operationally those forces shall be under the control of the incident commander or unified commander designated by the requesting participating unit.

As added by P.L.205-2003, SEC.6. Amended by P.L.1-2010, SEC.54; P.L.19-2010, SEC.1; P.L.29-2011, SEC.1; P.L.78-2013, SEC.2.

10-14-3-10.7

Sec. 10.7. (a) As used in this section, "participating unit" has the meaning set forth in section 10.6(a) of this chapter.

(b) Each participating unit shall provide for the payment of compensation and benefits to:

(1) an injured member; and

(2) a representative of a deceased member;

of the participating unit's emergency forces if the member is injured or killed while rendering assistance under section 10.6 of this chapter in the same manner and on the same terms as if the injury or death were sustained while the member was rendering assistance for or within the member's own unit. Expenses incurred under this subsection are not reimbursable under subsection (c).

(c) A participating unit that complies with subsection (h) and renders assistance for disaster response or recovery to another participating unit under section 10.6 of this chapter shall be reimbursed by the participating unit receiving the assistance for the following:

(1) A loss of, damage to, or expense incurred in the operation of any equipment in answering the request for assistance, to the extent the loss, damage, or expense is not covered by a reimbursement from insurance to the participating unit rendering assistance.

(2) An expense incurred in the provision of a service in answering the request for assistance, to the extent the expense is not covered by a reimbursement from insurance to the participating unit rendering assistance.

(3) An expense incurred in answering the request for assistance, to the extent the expense is not covered by a reimbursement from insurance to the participating unit rendering assistance.

(4) An amount equal to the deductible portion of an insurance policy used to reimburse all or part of an expense or other cost described in subdivisions (1) through (3).

(d) Except as provided by an agreement entered into under subsection (e), the following labor and equipment reimbursement rates apply to reimbursement under subsection (c):

(1) The labor reimbursement rates are as follows:

(A) The straight time costs of the labor force of the participating unit rendering assistance shall be reimbursed at the normal pay rates for responding personnel.

(B) The overtime costs of the labor force of the participating unit rendering assistance shall be reimbursed at one hundred fifty percent (150%) of the normal pay rates for the responding personnel if it is the normal practice of the requesting unit to pay these personnel overtime.

(2) The equipment reimbursement rates are the lesser of the following:

(A) The rates for equipment costs reimbursement established by the Federal Emergency Management Agency or its successor agency.

(B) The equipment costs established by the participating unit rendering assistance.

(e) At least two (2) participating units may enter into agreements establishing a different allocation of loss, damage, expense, or costs among themselves than that specified in subsections (c) and (d).

(f) Officers and employees of a participating unit rendering assistance to another participating unit under this section shall be considered agents of the requesting participating unit for the purpose of tort liability and immunity.

(g) This section does not prevent any participating unit from entering into a mutual aid or other agreement with another unit, fire protection district, or provider unit (as defined in IC 36-8-19-3) acting on behalf of a fire protection territory, or affect any other agreement to which a unit, a fire protection district, or a fire protection territory is a party, including an agreement entered into under this chapter or IC 36-1-7.

(h) A participating unit rendering assistance that seeks reimbursement under subsection (c) must submit to the participating unit receiving assistance, not more than thirty (30) days after the date on which the assistance is rendered, an itemized statement of the expenses described in subsection (c) for which the participating unit rendering assistance seeks reimbursement.

As added by P.L.205-2003, SEC.7. Amended by P.L.19-2010, SEC.2; P.L.78-2013, SEC.3.

10-14-3-11

Sec. 11. (a) The governor has general direction and control of the agency and is responsible for carrying out this chapter. In the event of disaster or emergency beyond local control, the governor may assume direct operational

control over all or any part of the emergency management functions within Indiana.

(b) In performing the governor's duties under this chapter, the governor may do the following:

(1) Make, amend, and rescind the necessary orders, rules, and regulations to carry out this chapter with due consideration of the plans of the federal government.

(2) Cooperate with the President of the United States and the heads of the armed forces, the Federal Emergency Management Agency, and the officers and agencies of other states in matters pertaining to emergency management and disaster preparedness, response, and recovery of the state and nation. In cooperating under this subdivision, the governor may take any measures that the governor considers proper to carry into effect any request of the President of the United States and the appropriate federal officers and agencies for any emergency management action, including the direction or control of disaster preparations, including the following:

(A) Mobilizing emergency management forces and other tests and exercises.

(B) Providing warnings and signals for drills, actual emergencies, or disasters.

(C) Shutting off water mains, gas mains, and electric power connections and suspending any other utility service.

(D) Conducting civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after drills, actual emergencies, or other disasters.

(E) Holding public meetings or gatherings.

(F) Evacuating and receiving the civilian population.

(3) Take any action and give any direction to state and local law enforcement officers and agencies as may be reasonable and necessary for securing compliance with this chapter and with any orders, rules, and regulations made under this chapter.

(4) Employ any measure and give any direction to the state department of health or local boards of health as is reasonably necessary for securing compliance with this chapter or with the findings or recommendations of the state department of health or local boards of health because of conditions arising from actual or threatened:

(A) national security emergencies; or

(B) manmade or natural disasters or emergencies.

(5) Use the services and facilities of existing officers, agencies of the state, and of political subdivisions. All officers and agencies of the state and of political subdivisions shall cooperate with and extend services and facilities to the governor as the governor may request.

(6) Establish agencies and offices and appoint executive, technical, clerical, and other personnel necessary to carry out this chapter, including the appointment of full-time state and area directors.

As added by P.L.2-2003, SEC.5.

10-14-3-12

Sec. 12. (a) The governor shall declare a disaster emergency by executive order or proclamation if the governor determines that a disaster has occurred or that the occurrence or the threat of a disaster is imminent. The state of disaster emergency continues until the governor:

(1) determines that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist; and

(2) terminates the state of disaster emergency by executive order or proclamation.

A state of disaster emergency may not continue for longer than thirty (30) days unless the state of disaster emergency is renewed by the governor. The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. If the general assembly terminates a state of disaster emergency under this subsection, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought the disaster about or that make possible termination of the state of disaster emergency. An executive order or proclamation under this subsection shall be disseminated promptly by means calculated to bring the order's or proclamation's contents to the attention of the general public. Unless the circumstances attendant upon the disaster prevent or impede, an executive order or proclamation shall be promptly filed with the secretary of state and with the clerk of the city or town affected or with the clerk of the circuit court.

(b) An executive order or proclamation of a state of disaster emergency:

(1) activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the affected political subdivision or area; and
(2) is authority for:
(A) deployment and use of any forces to which the plan or plans apply; and
(B) use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or under any other law relating to disaster emergencies.

(c) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations. This section does not restrict the governor's authority to delegate or assign command authority by orders issued at the time of the disaster emergency.

(d) In addition to the governor's other powers, the governor may do the following while the state of emergency exists:
(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency.
(2) Use all available resources of the state government and of each political subdivision of the state reasonably necessary to cope with the disaster emergency.
(3) Transfer the direction, personnel, or functions of state departments and agencies or units for performing or facilitating emergency services.
(4) Subject to any applicable requirements for compensation under section 31 of this chapter, commandeer or use any private property if the governor finds this action necessary to cope with the disaster emergency.
(5) Assist in the evacuation of all or part of the population from any stricken or threatened area in Indiana if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery.
(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation.
(7) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in the area.
(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles.
(9) Make provision for the availability and use of temporary emergency housing.
(10) Allow persons who:
(A) are registered as volunteer health practitioners by an approved registration system under IC 10-14-3.5; or
(B) hold a license to practice:
(i) medicine;
(ii) dentistry;
(iii) pharmacy;
(iv) nursing;
(v) engineering;
(vi) veterinary medicine;
(vii) mortuary service; and
(viii) similar other professions as may be specified by the governor;
to practice their respective profession in Indiana during the period of the state of emergency if the state in which a person's license or registration was issued has a mutual aid compact for emergency management with Indiana.
(11) Give specific authority to allocate drugs, foodstuffs, and other essential materials and services.

As added by P.L.2-2003, SEC.5. Amended by P.L.134-2008, SEC.2; P.L.1-2009, SEC.90; P.L.90-2010, SEC.1.

10-14-3-13

Sec. 13. (a) In addition to the governor's existing powers and duties, the governor has the duties and special energy emergency powers set forth in this section, subject to the limitations in this chapter.

(b) The governor may, upon finding that an energy emergency exists, proclaim a state of energy emergency at

which time all the general and specific emergency powers specified in this section and section 14 of this chapter become effective.

(c) A proclamation issued under this section and any order or rule issued as a result of the proclamation continues in effect until sixty (60) days after the date of the proclamation of the energy emergency unless the governor rescinds the proclamation and declares the energy emergency ended before the expiration of the sixty (60) day period.

(d) The governor may not renew or extend a proclamation more than once without approval of the general assembly.

(e) The conditions of an energy emergency cease when the governor declares the end of an energy emergency.

(f) In a declared state of energy emergency, the governor may do the following:

(1) Implement programs, controls, standards, priorities, and quotas for the conservation and consumption of energy, including plans and commission regulations for the curtailment of energy if the governor imposes controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency.

(2) Suspend and modify state pollution control standards and requirements affecting or affected by the use of energy, including standards or requirements relating to air or water quality control.

(3) Establish and implement intrastate regional programs and agreements for the purposes of coordinating the energy program and actions of the state with the federal government and other states, localities, and other persons.

(4) Designate the execution and enforcement of emergency orders to a state agency that regulates the energy form, resource, or suppliers that are the subject of the proclaimed emergency.

(5) Suspend the provisions of any state statute regulating transportation or the orders or rules of any state agency if strict compliance with any of the provisions would prevent, hinder, or delay necessary action in coping with the energy emergency.

(g) Restrictions, curtailments, or adjustments under subsection (f) must:

(1) be ordered and continue only as long as demonstrably necessary for the maintenance of essential services or transportation or for the continued operation of the economy but not longer than the proclamation's duration;

(2) be applied as uniformly as practicable within each class of suppliers and consumers and without discrimination within a class; and

(3) give due consideration to:

(A) the implementation of involuntary measures only after voluntary measures have been determined to be ineffective;

(B) protection of public health and safety;

(C) maintenance of vital activities, including but not limited to food, shelter, fuel, and medical care;

(D) minimization of economic impact on commercial, retail, professional, agricultural, and service establishments;

(E) cooperation with other state, local, and federal governments to avoid duplicating efforts; and

(F) maintenance of public information channels.

(h) This section does not mean that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this section has any continuing legal effect after the cessation of a declared state of energy emergency.

(i) Except as provided in this section, this chapter does not exempt a person from compliance with the provisions of any other law, rule, or directive unless:

(1) specifically ordered by the governor; or

(2) impossibility of compliance is a direct result of the governor's order.

(j) A proclamation issued under this section shall be:

(1) disseminated promptly and in a manner calculated to inform the general public of its contents; and

(2) filed promptly with the secretary of state and the clerk of each circuit court of Indiana.

As added by P.L.2-2003, SEC.5.

10-14-3-14

Sec. 14. (a) In determining whether to declare an energy emergency under section 13 of this chapter, the governor shall consider:

(1) the availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) the availability of short term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of the declaration and the implementation of any curtailment or conservation plans; and

(5) any other relevant factors.

(b) To protect the public welfare during conditions of energy emergencies proclaimed under section 13 of this chapter, the governing body of each city, town, or political subdivision of the state and each state agency (including the utility regulatory commission) shall carry out in the body's or agency's jurisdiction energy supply emergency measures ordered by the governor.

(c) To attain uniformity throughout the country in measures taken to aid in energy crisis management, all:

(1) action taken under this section and section 13 of this chapter; and

(2) orders and rules made under this section and section 13 of this chapter;

must be taken or made consistent with federal orders, rules, actions, recommendations, and requests.

(d) A person shall comply with a specific order issued or action taken by the governor under this section or section 13 of this chapter.

(e) During a state of energy emergency proclaimed under section 13 of this chapter, the governor may:

(1) subpoena:

(A) witnesses;

(B) material;

(C) relevant books;

(D) papers;

(E) accounts;

(F) records; and

(G) memoranda;

(2) administer oaths; and

(3) cause the depositions of persons residing within or outside Indiana to be taken in the manner prescribed for depositions in civil actions;

to obtain information relevant to energy resources that are the subject of the proclaimed emergency.

(f) In obtaining information under subsection (e), the governor shall:

(1) avoid eliciting information already furnished by a person or political subdivision in Indiana to a federal, state, or local regulatory authority that is available for the governor's study; and

(2) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities wherever possible.

(g) Information obtained under this section from a person who designates that information as confidential shall be maintained as confidential by the governor and by any person who obtains information that the person knows to be confidential under this chapter. The governor may not make known in any manner any particulars of information to persons other than those specified in subsection (j).

(h) This section does not prohibit the use of confidential information to prepare statistics or other general data for publication if the information is presented in a manner that prevents identification of the particular persons.

(i) A person who is served with a subpoena to:

(1) give testimony orally or in writing; or

(2) produce books, papers, correspondence, memoranda, agreements, or other documents or records;

under this chapter may apply to an Indiana court for protection against abuse or hardship in the manner provided by law.

(j) For purposes of this section, references to the governor in this section include any other individual designated in writing by the governor. A person designated by the governor shall preserve the confidentiality of information in accordance with subsection (g).

(k) The powers vested in the governor under this section and section 13 of this chapter are in addition to and not instead of emergency powers vested in the governor under this chapter or any other state law.

(l) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the

state from the general fund in the amount necessary if:

(1) an energy emergency is declared by the governor; and

(2) the energy emergency justifies the expenditure;

in accordance with section 28 of this chapter for other emergency or disaster expenditures.

As added by P.L.2-2003, SEC.5.

10-14-3-15

Sec. 15. (a) Any function under this chapter and any other activity relating to emergency management is a governmental function. The state, any political subdivision, any other agencies of the state or political subdivision of the state, or, except in cases of willful misconduct, gross negligence, or bad faith, any emergency management worker complying with or reasonably attempting to comply with this chapter or any order or rule adopted under this chapter, or under any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, is not liable for the death of or injury to persons or for damage to property as a result of any such activity. This section does not affect the right of any person to receive:

(1) benefits to which the person would otherwise be entitled under:

(A) this chapter;

(B) the worker's compensation law (IC 22-3-2 through IC 22-3-6); or

(C) any pension law; or

(2) any benefits or compensation under any federal law.

(b) Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized emergency management worker who, in the course of performing duties as an emergency management worker, practices a professional, mechanical, or other skill during a disaster emergency.

(c) Except as provided in subsection (d), a volunteer working as an authorized emergency management worker may be covered by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7). If compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-7 shall be used to determine the issue.

(d) An individual described in section 19(c)(2) of this chapter is considered to be a temporary employee of the state for purposes of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

As added by P.L.2-2003, SEC.5. Amended by P.L.71-2013, SEC.3.

10-14-3-16

Sec. 16. (a) The director of a local organization for emergency management may develop or cause to be developed mutual aid arrangements with other public and private agencies within Indiana for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. An arrangement must be consistent with the state emergency management program and state emergency operations plan. During an emergency, a local organization for emergency management and the agency shall render assistance in accordance with the provisions of the mutual aid arrangement.

(b) The director of a local organization for emergency management and disaster:

(1) may assist in the negotiation of reciprocal mutual aid agreements between the governor and the adjoining state or the state's political subdivisions; and

(2) shall carry out arrangements or any agreement relating to the local and political subdivision.

(c) This subsection applies when the governor finds that two (2) or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services. The governor may, with the concurrence of the affected counties, delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area, and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency operations plan, mutual aid, or an area organization for emergency management planning and services. A finding of the governor under this subsection must be based on one (1) or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, including the following factors:

(1) Small or sparse population.

(2) Limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome.

(3) Unusual vulnerability to disaster as evidenced by a history of disaster, topographical features, drainage characteristics, disaster potential, and presence of disaster prone facilities or operations.
(4) The interrelated character of the counties in a multicounty area.
(5) Other relevant conditions or circumstances.
(d) If the governor finds that:
(1) a vulnerable area lies partly in Indiana and includes territory in another state or states; and
(2) it would be desirable to establish an interstate relationship, mutual aid, or an area organization for disaster;
the governor shall take steps to establish an interstate relationship. If action under this subsection is taken with jurisdictions that have enacted the emergency management assistance compact, any resulting agreement or agreements may be considered supplemental agreements under article 7 of the compact.
(e) If the other jurisdiction or jurisdictions with which the governor proposes to cooperate under subsection (d) have not enacted the emergency management assistance compact, the governor may negotiate special agreements with the jurisdiction or jurisdictions. An agreement, if sufficient authority for making the agreement does not otherwise exist, becomes effective only:
(1) after the agreement's text has been communicated to the general assembly; and
(2) if a house of the general assembly does not disapprove of the agreement by the later of:
(A) the date of adjournment of the next ensuing session that is competent to consider the agreement; or
(B) not more than thirty (30) days after the date of the submission of the agreement.
As added by P.L.2-2003, SEC.5. Amended by P.L.115-2003, SEC.11.

10-14-3-17

Sec. 17. (a) A political subdivision is:
(1) within the jurisdiction of; and
(2) served by;
a department of emergency management or by an interjurisdictional agency responsible for disaster preparedness and coordination of response.
(b) A county shall:
(1) maintain a county emergency management advisory council and a county emergency management organization; or
(2) participate in an interjurisdictional disaster agency that, except as otherwise provided under this chapter, may have jurisdiction over and serve the entire county.
(c) The county emergency management advisory council consists of the following individuals or their designees:
(1) The president of the county executive or, if the county executive does not have a president, a member of the county executive appointed from the membership of the county executive.
(2) The president of the county fiscal body.
(3) The mayor of each city located in the county.
(4) An individual representing the legislative bodies of all towns located in the county.
(5) Representatives of private and public agencies or organizations that can assist emergency management considered appropriate by the county emergency management advisory council.
(6) One (1) commander of a local civil air patrol unit in the county or the commander's designee.
(d) The county emergency management advisory council shall do the following:
(1) Exercise general supervision and control over the emergency management and disaster program of the county.
(2) Select or cause to be selected, with the approval of the county executive, a county emergency management and disaster director who:
(A) has direct responsibility for the organization, administration, and operation of the emergency management program in the county; and
(B) is responsible to the chairman of the county emergency management advisory council.
(e) Notwithstanding any provision of this chapter or other law to the contrary, the governor may require a political subdivision to establish and maintain a disaster agency jointly with one (1) or more contiguous political subdivisions with the concurrence of the affected political subdivisions if the governor finds that the establishment and maintenance of an agency or participation in one (1) is necessary by circumstances or conditions that make it unusually difficult to provide:

(1) disaster prevention;
(2) preparedness;
(3) response; or
(4) recovery services;
under this chapter.

(f) A political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have an emergency management director designated to facilitate the cooperation and protection of that political subdivision in the work of:
(1) disaster prevention;
(2) preparedness;
(3) response; and
(4) recovery.

(g) The county emergency management and disaster director and personnel of the department may be provided with appropriate:
(1) office space;
(2) furniture;
(3) vehicles;
(4) communications;
(5) equipment;
(6) supplies;
(7) stationery; and
(8) printing;
in the same manner as provided for personnel of other county agencies.

(h) Each local or interjurisdictional agency shall:
(1) prepare; and
(2) keep current;
a local or interjurisdictional disaster emergency plan for its area.

(i) The local or interjurisdictional disaster agency shall prepare and distribute to all appropriate officials a clear and complete written statement of:
(1) the emergency responsibilities of all local agencies and officials; and
(2) the disaster chain of command.

(j) Each political subdivision may:
(1) appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management and disaster purposes, provide for the health and safety of persons and property, including emergency assistance to the victims of a disaster resulting from enemy attack, provide for a comprehensive insurance program for its emergency management volunteers, and direct and coordinate the development of an emergency management program and emergency operations plan in accordance with the policies and plans set by the federal emergency management agency and the department of homeland security established by IC 10-19-2-1;
(2) appoint, employ, remove, or provide, with or without compensation:
(A) rescue teams;
(B) auxiliary fire and police personnel; and
(C) other emergency management and disaster workers;
(3) establish:
(A) a primary; and
(B) one (1) or more secondary;
control centers to serve as command posts during an emergency;
(4) subject to the order of the governor or the chief executive of the political subdivision, assign and make available for duty the employees, property, or equipment of the political subdivision relating to:
(A) firefighting;
(B) engineering;
(C) rescue;
(D) health, medical, and related services;

(E) police;
(F) transportation;
(G) construction; and
(H) similar items or services;
for emergency management and disaster purposes within or outside the physical limits of the political subdivision; and
(5) in the event of a national security emergency or disaster emergency as provided in section 12 of this chapter, waive procedures and formalities otherwise required by law pertaining to:
(A) the performance of public work;
(B) the entering into of contracts;
(C) the incurring of obligations;
(D) the employment of permanent and temporary workers;
(E) the use of volunteer workers;
(F) the rental of equipment;
(G) the purchase and distribution of supplies, materials, and facilities; and
(H) the appropriation and expenditure of public funds.
As added by P.L.2-2003, SEC.5. Amended by P.L.115-2003, SEC.12; P.L.1-2006, SEC.176; P.L.1-2009, SEC.91.

10-14-3-18

Sec. 18. (a) If the employees of a political subdivision render aid outside the political subdivision under section 17 of this chapter, the employees have the same:
(1) powers;
(2) duties;
(3) rights;
(4) privileges; and
(5) immunities;
as if they were performing their duties in the political subdivisions in which they are normally employed.
(b) The political subdivision in which any equipment is used under this section:
(1) is liable for loss or damage; and
(2) shall pay any expense incurred in the operation and maintenance of the equipment.
A claim for the loss, damage, or expense is not allowed unless an itemized notice of the claim made under oath is served not more than sixty (60) days after the date the claim is sustained or incurred upon the chief fiscal officer of the political subdivision where the equipment was used.
(c) The:
(1) rights;
(2) privileges; and
(3) obligations;
described in this section also apply if aid is rendered outside Indiana and if payment or reimbursement in this case shall or may be made by the state or political subdivision receiving the aid under a reciprocal mutual aid agreement or compact with the other state or by the federal government.
As added by P.L.2-2003, SEC.5.

10-14-3-19

Sec. 19. (a) The governor, or the executive director at the request of the governor, may establish the number of mobile support units necessary to respond to a disaster, public health emergency, public safety emergency, or other event that requires emergency action. A mobile support unit may consist of one (1) or more individuals. The executive director shall appoint a commander for each unit who has primary responsibility for the:
(1) organization;
(2) administration; and
(3) operation;
of the unit. Mobile support units shall be called to duty for training, an exercise, or a response upon orders of the governor or the executive director and shall perform the units' functions in any part of Indiana or in other states, upon the conditions specified in this section. The term of this duty shall be for a limited period of not more than sixty (60) days. However, the executive director may renew the duty orders for successive periods of not more than

sixty (60) days if necessary for the mobile support unit to participate in or respond to the event. Members serving on the mobile support units are immune from discipline or termination by the members' employers for serving in the units.

(b) An individual selected to serve as a member of a mobile support unit may be unemployed, retired, self-employed, or employed:

(1) in any capacity, including:

(A) emergency management;

(B) fire services;

(C) emergency medical services;

(D) law enforcement;

(E) public health;

(F) medicine;

(G) public works; or

(H) mental health; and

(2) by any employer, including:

(A) the federal government;

(B) the state;

(C) a political subdivision; or

(D) a business or organization.

(c) While on duty for training, an exercise, or a response, an individual serving as a member of a mobile support unit, whether within or outside Indiana:

(1) if the individual is an employee of the state or a political subdivision of the state, whether serving within or outside the political subdivision, has the:

(A) powers;

(B) duties;

(C) rights;

(D) privileges; and

(E) immunities;

and shall receive the compensation and benefits incidental to the individual's employment; and

(2) if the individual is not an employee of the state or a political subdivision of the state, is:

(A) entitled to the same rights and immunities that are provided for an employee of the state; and

(B) notwithstanding section 15(c) of this chapter, considered to be a temporary employee of the state for purposes of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).

An individual described in this subsection is considered an emergency management worker for purposes of section 15 of this chapter.

(d) If a mobile support unit is deployed outside Indiana under the emergency management assistance compact, an individual serving as a member of the mobile support unit who is not an employee of the state is considered an employee of the state for purposes of the compact.

(e) Personnel of mobile support units, while on duty, are subject to the operational control of the authority in charge of emergency management activities in the area in which the personnel are serving.

(f) The state may reimburse a political subdivision for:

(1) the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of an employee of the political subdivision while the employee is serving as a member of a mobile support unit;

(2) all payments for death, disability, or injury of an employee incurred in the course of duty while the employee was serving as a member of a mobile support unit;

(3) all losses of or damage to supplies and equipment of the political subdivision or the employee incurred while the employee was serving as a member of a mobile support unit; and

(4) the cost of a backfill employee necessary for the political subdivision to fill the position and perform the duties of an employee deployed on a mobile support unit to assist another state under the Emergency Management Assistance Compact, but only if and to the extent the cost of the backfill employee represents an extra cost to the political subdivision.

(g) For an individual of a mobile support unit who is not an employee of the state or a political subdivision, the

state may:

(1) compensate the individual:

(A) at a rate of pay approved by the executive director;

(B) by reimbursing the individual for the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the individual of the mobile support unit incurred while the individual is on duty as a member of a mobile support unit; and

(C) for all losses of or damage to supplies and equipment of the individual incurred while the individual is on duty as a member of a mobile support unit; or

(2) reimburse the individual's employer for:

(A) the compensation paid and the actual and necessary:

(i) travel;

(ii) subsistence; and

(iii) maintenance;

expenses of the employee while the employee is on duty as a member of a mobile support unit; and

(B) all losses of or damage to supplies and equipment of the employer or the employee incurred in the course of duty while the employee was on duty as a member of a mobile support unit.

(h) An officer or employee of the state by virtue of employment is subject to assignment:

(1) on a permanent basis to a mobile support unit in accordance with the state:

(A) emergency management program; and

(B) emergency operations plan; or

(2) on a temporary basis to an emergency management activity to meet a particular need in the event of an emergency.

Refusal to accept and perform the duties of an assignment constitutes grounds for dismissal from state employment.
As added by P.L.2-2003, SEC.5. Amended by P.L.84-2006, SEC.1; P.L.1-2007, SEC.98; P.L.71-2013, SEC.4.

10-14-3-20

Sec. 20. The governor may:

(1) formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement of evacuation over public highways and streets of:

(A) people;

(B) troops; or

(C) vehicles and materials;

for national defense or for use in any defense industry; and

(2) coordinate the activities of the departments or agencies of the state and political subdivisions of the state concerned directly or indirectly with public highways and streets in a manner that will best effectuate the plans.

As added by P.L.2-2003, SEC.5.

10-14-3-21

Sec. 21. (a) If the governor considers it to be in the public interest, on terms and conditions as the governor considers necessary to promote the public welfare and protect the interests of the state, the governor may:

(1) authorize a department or an agency of the state to lease or lend real or personal property of the state to the President of the United States, the heads of the armed forces, or the Federal Emergency Management Agency; and

(2) enter into a contract on behalf of the state for the:

(A) lease or loan to a political subdivision of the state of real or personal property of the state; or

(B) temporary transfer or employment of personnel of the state to or by a political subdivision of the state.

(b) The president of the county fiscal body and the president of the county executive, if the county does not contain a consolidated city, or the county executive, if the county contains a consolidated city, of each county of the state and the executive of each city and town in the state may, in accordance with the emergency management program and emergency operations plan of the county in which the city or town is located, do the following:

(1) Enter into a contract or lease with the state, accept any loan, or employ personnel. A political subdivision may equip, maintain, use, and operate any property and employ necessary personnel in accordance with the purposes for which the contract is executed.
(2) Do all things and perform acts that the governor considers necessary to effectuate the purpose of the contract.
As added by P.L.2-2003, SEC.5.

10-14-3-22

Sec. 22. (a) The political subdivisions and agencies designated or appointed by the governor may make, amend, and rescind orders, rules, and regulations as necessary for emergency management purposes and to supplement the carrying out of this chapter that are not inconsistent with:
(1) orders, rules, or regulations adopted by the governor or by a state agency exercising a power delegated to it by the governor; and
(2) the:
(A) emergency management program; and
(B) emergency operations plan;
of the county in which the political subdivision is located.
(b) Orders, rules, and regulations have the full force and effect of law when:
(1) adopted by the governor or any state agency and a copy is filed in the office of the secretary of state and mailed to all members of the county emergency management advisory council at their last known addresses; or
(2) filed in the office of the clerk of the adopting or promulgating political subdivision or agency of the state if adopted by a political subdivision or agency authorized by this chapter to make orders, rules, and regulations.
As added by P.L.2-2003, SEC.5.

10-14-3-23

Sec. 23. This chapter may not be construed to compel a person, either on behalf of:
(1) the person;
(2) the person's child less than eighteen (18) years of age; or
(3) a protected person for whom the person acts as a guardian;
to submit to any physical examination, medical treatment, or immunization if the person, parent, or guardian relies in good faith on spiritual means or prayer to prevent or cure disease or suffering and objects to the treatment in writing.
As added by P.L.2-2003, SEC.5.

10-14-3-24

Sec. 24. The law enforcement authorities of the state and of the political subdivisions shall enforce the:
(1) orders;
(2) rules; and
(3) regulations;
issued under this chapter.
As added by P.L.2-2003, SEC.5.

10-14-3-25

Sec. 25. (a) If the federal government or an agency or officer of the federal government offers the state or through the state a political subdivision, services, equipment, supplies, materials, or funds under a gift, grant, or loan for purposes of emergency management:
(1) the state, acting through the governor; or
(2) the political subdivision, acting with the consent of the governor and through its executive;
may accept the offer.
(b) Upon the acceptance in subsection (a), the governor or the executive of the political subdivision may authorize an officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds:
(1) on behalf of the state or the political subdivision; and
(2) subject to the terms of the offer and the rules of the agency making the offer.

(c) If a person, firm, limited liability company, or corporation offers to the state or a political subdivision services, equipment, supplies, materials, or funds under gift, grant, or loan for purposes of emergency management:

(1) the state, acting through the governor; or

(2) the political subdivision, acting through its executive;

may accept the offer.

(d) Upon the acceptance in subsection (c), the governor or the executive of the political subdivision may authorize an officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds:

(1) on behalf of the state or the political subdivision; and

(2) subject to the terms of the offer.

(e) A person, firm, limited liability company, or corporation owning or controlling real estate or other premises that voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of the real estate or premises to shelter persons during an actual or impending national security, natural, or manmade emergency or disaster or a drill for any of those situations, together with successors in interest, is not civilly liable by reason of:

(1) the condition of the real estate or premises; or

(2) the conduct of persons engaged in directing or seeking shelter;

for negligently causing the death of or injury to any person on or about the real estate or premises or for loss of or damage to the property of any person during the emergency or disaster or during a drill.

As added by P.L.2-2003, SEC.5.

10-14-3-26

Sec. 26. (a) An organization for emergency management established under this chapter may not:

(1) participate in any form of political activity; or

(2) be employed directly or indirectly for political purposes.

(b) Political qualifications may not be:

(1) a consideration for appointment to the agency; or

(2) a cause for dismissal;

except as provided in section 27 of this chapter. Full-time employees of the agency may not participate in political activities.

As added by P.L.2-2003, SEC.5.

10-14-3-27

Sec. 27. (a) A person who:

(1) advocates a change by force or violence in the constitutional form of the government of the United States or the overthrow of any government in the United States by force or violence; or

(2) has been convicted of or is under indictment or information charging a subversive act against the United States;

may not be employed or associated in any capacity in any emergency management organization established under this chapter.

(b) An individual who is appointed to serve in an organization for emergency management shall, before entering upon the individual's duties, take a written oath before a person authorized to administer oaths in Indiana. The oath must be substantially as follows:

"I, _____, solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Indiana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. I further swear (or affirm) that I do not advocate, nor am I a member of a political party or organization that advocates, the overthrow of the government of the United States or of Indiana by force or violence; and that during the time I am a member of the (name of emergency management organization), I will neither advocate nor become a member of a political party or organization that advocates the overthrow of the government of the United States or of Indiana by force or violence.".

(c) For purposes of this section, the director and the county emergency management directors:

(1) may administer the oath provided in subsection (b) to emergency management and disaster personnel; and

(2) may delegate that authority to designated deputies and assistants approved by the director.
As added by P.L.2-2003, SEC.5.

10-14-3-28

Sec. 28. (a) The general assembly may appropriate the sums necessary to administer this chapter.

(b) The emergency management contingency fund is established. The fund consists of money appropriated by the general assembly. Money in the fund must be held in reserve and allocated for emergency management purposes as follows:

(1) For an allocation of not more than one hundred thousand dollars ($100,000), upon the approval of the director and the budget director.

(2) For an allocation of more than one hundred thousand dollars ($100,000), upon the recommendation of the director and the approval of the governor.

(c) For an allocation described in subsection (b)(2), the agency shall submit a written report to the following individuals identifying the use of the funds not more than thirty (30) days after the allocation is approved:

(1) Each member of the budget committee.

(2) The speaker of the house of representatives.

(3) The president pro tempore of the senate.

(4) The chairperson of the house committee on ways and means.

(5) The ranking minority member of the house committee on ways and means.

(6) The chairperson of the senate committee on appropriations.

(7) The ranking minority member of the senate committee on appropriations.

As added by P.L.2-2003, SEC.5. Amended by P.L.110-2009, SEC.2.

10-14-3-29

Sec. 29. (a) A local disaster emergency:

(1) may be declared only by the principal executive officer of a political subdivision; and

(2) may not be continued or renewed for more than seven (7) days except by or with the consent of the governing board of the political subdivision.

Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly in the office of the clerk of the political subdivision.

(b) The effect of a declaration of a local disaster emergency is to:

(1) activate the response and recovery aspects of all applicable local or interjurisdictional disaster emergency plans; and

(2) authorize the furnishing of aid and assistance under the plans.

(c) An interjurisdictional agency or official may not declare a local disaster emergency unless expressly authorized by the agreement under which the agency functions. However, an interjurisdictional disaster agency shall provide aid and services according to the agreement.

(d) If a local disaster emergency is declared under this section, the political subdivision may not prohibit individuals engaged in employment necessary to:

(1) maintain a safe rail system;

(2) restore utility service; or

(3) provide any other emergency public service;

from traveling on the highways within the political subdivision during the local disaster emergency.
As added by P.L.2-2003, SEC.5.

10-14-3-29.5

Sec. 29.5. (a) If the principal executive officer of a political subdivision issues a local travel advisory as part of an emergency declaration under section 29 of this chapter, the principal executive officer shall designate the travel advisory as falling into one (1) of the following categories:

(1) "Advisory", the lowest level of local travel advisory, means that routine travel or activities may be restricted in areas because of a hazardous situation, and individuals should use caution or avoid those areas.

(2) "Watch" means that conditions are threatening to the safety of the public. During a "watch" local travel advisory, only essential travel, such as to and from work or in emergency situations, is recommended, and emergency action plans should be implemented by businesses, schools, government agencies, and other

organizations.

(3) "Warning", the highest level of local travel advisory, means that travel may be restricted to emergency management workers only. During a "warning" local travel advisory, individuals are directed to:

(A) refrain from all travel;

(B) comply with necessary emergency measures;

(C) cooperate with public officials and disaster services forces in executing emergency operations plans; and

(D) obey and comply with the lawful directions of properly identified officers.

Further and more specific restrictions, including parking restrictions, may be included in a "warning" local travel advisory.

(b) If the emergency management agency director or the principal executive officer of a political subdivision determines that conditions within the political subdivision have created the need for travel advisory restrictions without a local disaster emergency declaration under section 29 of this chapter, the emergency management agency director or the principal executive officer may issue an "advisory" or a "watch" level travel advisory.

(c) A "warning" level travel advisory may be issued only after a local disaster emergency is declared under section 29 of this chapter.

As added by P.L.40-2011, SEC.2.

10-14-3-30

Sec. 30. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At the governor's direction, and under any other authority state agencies have, state agencies, including those charged with responsibilities in connection with:

(1) flood plain management;

(2) stream encroachment and flow regulation;

(3) fire prevention and control;

(4) air quality;

(5) public works; and

(6) use and land use planning and construction standards;

shall make studies of disaster prevention related matters. The governor shall make recommendations to the general assembly, local governments, and other appropriate public and private entities to facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) In conjunction with the agency, an appropriate state agency shall keep land uses and construction of structures and other facilities under continuing study and identify areas that are particularly susceptible to:

(1) severe land shifting;

(2) subsidence;

(3) flood; or

(4) other catastrophic occurrence.

The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the agency believes on the basis of the studies or other competent evidence:

(1) that an area is susceptible to a disaster of catastrophic proportions without adequate warning;

(2) that existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster; and

(3) that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section;

the agency shall specify the essential changes to the governor. The governor shall recommend changes to the agencies or local governments with jurisdiction over the area and subject matter that the governor finds to be essential upon review of the specified changes and a public hearing. If no action or insufficient action under the governor's recommendations is taken within the time specified by the governor, the governor shall inform the general assembly and request legislative action appropriate to mitigate the effect of disaster.

(d) The governor, at the same time that the governor makes recommendations under subsection (c), may:

(1) suspend the standard or control that the governor finds to be inadequate to protect the public safety; and

(2) by rule place a new standard or control in effect.
The new standard or control remains in effect until rejected by concurrent resolution of both houses of the general assembly or amended by the governor. When it is in effect, the standard or control contained in the governor's regulation is administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. Any action taken by the governor under this section is subject to judicial review, but no court has jurisdiction to stay or restrain that action before a hearing on the merits.
As added by P.L.2-2003, SEC.5.

10-14-3-31

Sec. 31. (a) A person in Indiana shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to successfully meet disaster emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. Compensation for services or for the taking or use of property may be made only to the extent:

(1) that obligations recognized in this chapter are exceeded in a particular case; and

(2) that the claimant has not volunteered the claimant's services or property without compensation.

(b) Personal services may not be compensated by the state or any subdivision or agency of the state except under statute, local law, or ordinance.

(c) Compensation for property may be paid only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of Indiana.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter must make a claim for it. The claim must be filed and shall be adjudicated as provided in IC 32-24.

(e) This section does not apply to or authorize compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.
As added by P.L.2-2003, SEC.5.

10-14-3-32

Sec. 32. (a) The general assembly intends and declares to be the policy of the state that funds to meet disaster emergencies always be available.

(b) The general assembly intends that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, the governor may make funds available from money in the budget agency from emergency or contingency appropriations available for emergency expenditures as provided in IC 4-12-1-15.

(c) Within the limits of the funds appropriated under this section, the governor may contribute to a political subdivision not more than twenty-five percent (25%) of the cost of emergency management agency personnel and administrative expenses that meet standards established by the governor.
As added by P.L.2-2003, SEC.5.

10-14-3-33

Sec. 33. The department may reimburse the civil air patrol for fuel, lubricants, and maintenance for any missions not authorized by the United States Air Force using the same formula for reimbursement used by the:

(1) United States Department of Defense; and

(2) American Red Cross.

As added by P.L.2-2003, SEC.5.

10-14-3-33.5

Sec. 33.5. (a) Except as provided in subsection (b), the state, a political subdivision, or any other person may not prohibit or restrict the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during:

(1) a disaster emergency;

(2) an energy emergency; or

(3) a local disaster emergency;

declared under this chapter.

(b) Subsection (a) does not authorize the possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during an emergency described in subsection (a):

(1) in or on school property, in or on property that is being used by a school for a school function, or on a school bus in violation of IC 20-33-8-16 or IC 35-47-9-2;

(2) on the property of:

(A) a child caring institution;

(B) an emergency shelter care child caring institution;

(C) a private secure facility;

(D) a group home; or

(E) an emergency shelter care group home;

in violation of 465 IAC 2-9-80, 465 IAC 2-10-79, 465 IAC 2-11-80, 465 IAC 2-12-78, or 465 IAC 2-13-77;

(3) on the property of a penal facility (as defined in IC 35-31.5-2-232);

(4) in violation of federal law;

(5) in or on property belonging to an approved postsecondary educational institution (as defined in IC 21-7-13-6(b));

(6) on the property of a domestic violence shelter; or

(7) on property owned, operated, controlled, or used by an entity that:

(A) is required to:

(i) conduct a vulnerability assessment; and

(ii) develop and implement a site security plan;

under the United States Department of Homeland Security's Chemical Facility Anti-Terrorism Standards issued April 9, 2007; or

(B) is required to have a security plan under the Maritime Transportation Security Act of 2002, Public Law 107-295.

As added by P.L.90-2010, SEC.2. Amended by P.L.17-2011, SEC.1; P.L.114-2012, SEC.22.

10-14-3-34

Sec. 34. A person who knowingly, intentionally, or recklessly violates this chapter commits a Class B misdemeanor.

As added by P.L.2-2003, SEC.5. Amended by P.L.115-2003, SEC.13.

Chapter 4. State Disaster Relief Fund

10-14-4

10-14-4-0.3

Sec. 0.3. As used in this chapter, "backfill employee" has the meaning set forth in IC 10-14-3-0.5.

As added by P.L.71-2013, SEC.5.

10-14-4-1

Sec. 1. As used in this chapter, "disaster" has the meaning set forth in IC 10-14-3-1.

As added by P.L.2-2003, SEC.5.

10-14-4-2

Sec. 2. As used in this chapter, "eligible entity" means a county, a city, a town, a township, or an individual who has incurred loss or cost because of a disaster.

As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.1; P.L.71-2013, SEC.6.

10-14-4-3

Sec. 3. As used in this chapter, "fund" refers to the state disaster relief fund established by this chapter.

As added by P.L.2-2003, SEC.5.

10-14-4-4

Sec. 4. As used in this chapter, "public facility" means any:

(1) building or structure;
(2) bridge, road, highway, or public way;
(3) park or recreational facility;
(4) sanitary sewer system or wastewater treatment facility;
(5) drainage or flood control facility;
(6) water treatment, water storage, or water distribution facility; or
(7) other improvement or infrastructure;

owned by, maintained by, or operated by or on behalf of an eligible entity.
As added by P.L.2-2003, SEC.5.

10-14-4-5

Sec. 5. (a) The state disaster relief fund is established to provide financial assistance to:
(1) assist eligible entities in paying for:
(A) the costs of repairing, replacing, or restoring public facilities or individual residential real or personal property damaged or destroyed by a disaster; or
(B) response costs incurred by an eligible entity during a disaster; and
(2) allow the agency to pay for response costs incurred by the state or a local unit of government at the direction of the agency.

The agency may provide financial assistance in response to a disaster only from the balance in the fund that is unobligated on the date the disaster occurs.
(b) The fund consists of the following:
(1) Money appropriated by the general assembly.
(2) Money deposited under IC 22-11-14-12(c)(2).
(c) The agency shall administer the fund. Expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.
(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.
As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.2; P.L.57-2008, SEC.2.

10-14-4-6

Sec. 6. Subject to the restrictions under this chapter, the agency may use money in the fund to provide financial assistance as follows:
(1) To an eligible entity that:
(A) is not an individual;
(B) contains territory for which a disaster emergency has been declared by the governor;
(C) has suffered damage to the entity's public facilities because of the disaster for which the disaster emergency was declared;
(D) has applied to the department for financial assistance in the form of a grant; and
(E) complies with all other requirements established by the agency.
(2) To an eligible entity that:
(A) is not an individual;
(B) contributes personnel to a mobile support unit deployed to assist another political subdivision in responding to a disaster emergency that has been declared by the governor;
(C) incurs the cost of one (1) or more backfill employees that are necessary to fill the position and perform the duties of an employee deployed on a mobile support unit;
(D) has applied to the department for financial assistance in the form of a grant; and
(E) complies with all other requirements established by the agency.
(3) To an eligible entity:
(A) who is an individual;
(B) whose primary residence is located in territory for which:
(i) the United States Small Business Administration declares a disaster; and
(ii) there has been no disaster declaration issued by the President of the United States;
(C) who has suffered damage to the entity's primary residence or individual property because of a disaster described in clause (B); and

(D) who complies with all other requirements established by the agency.
As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.3; P.L.57-2008, SEC.3; P.L.110-2009, SEC.3; P.L.71-2013, SEC.7.

10-14-4-7

Sec. 7. This section does not apply to an eligible entity that is an individual. Except as provided in section 8 of this chapter, the agency may not make a grant to an eligible entity under this section unless the damage to the entity's public facilities caused by the disaster exceeds an amount equal to one dollar ($1) multiplied by the population of the entity. A grant to an eligible entity under this subsection may not exceed an amount equal to:

(1) fifty percent (50%); multiplied by

(2) the result of:

(A) the total cost of the damage to the entity's public facilities caused by the disaster; minus

(B) an amount equal to one dollar ($1) multiplied by the population of the entity.

As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.4.

10-14-4-8

Sec. 8. This section does not apply to an eligible entity that is an individual. If the governor declares more than one (1) disaster emergency in the same year for territory in an eligible entity, the agency may, in addition to a grant under section 7 of this chapter, make a grant to the entity under this section if the total cumulative cost of the damage to the entity's public facilities caused by the disasters exceeds two dollars ($2) multiplied by the population of the entity. A grant to an eligible entity under this section may not exceed:

(1) the product of:

(A) fifty percent (50%); multiplied by

(B) the total cumulative cost of the damage to the entity's public facilities caused by all disasters in the year; minus

(2) any grants previously made under section 7 of this chapter to the entity during the year.

As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.5.

10-14-4-8.5

Sec. 8.5. The agency may make a grant to an eligible entity under section 6(2) of this chapter for the cost of a backfill employee, but only if and to the extent the cost of the backfill employee represents extra cost to the political subdivision.
As added by P.L.71-2013, SEC.8.

10-14-4-9

Sec. 9. This section does not apply to an eligible entity that is an individual. To qualify for a grant under this chapter, the executive of an eligible entity must apply to the agency on forms provided by the agency. The application must include the following:

(1) A description and estimated cost of the damage caused by the disaster to the entity's public facilities.

(2) The manner in which the entity intends to use the grant money.

(3) Any other information required by the agency.

As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.6.

10-14-4-10

Sec. 10. This section does not apply to an eligible entity that is an individual. The fiscal officer of an entity receiving a grant under this chapter shall:

(1) establish a separate account within the entity's general fund; and

(2) deposit any grant proceeds received under this chapter in the account.

The department of local government finance may not reduce an entity's maximum or actual property tax levy under IC 6-1.1-18.5 on account of grant money deposited in the account.
As added by P.L.2-2003, SEC.5. Amended by P.L.107-2007, SEC.7.

10-14-4-11

Sec. 11. (a) The director shall adopt rules under IC 4-22-2 to carry out this chapter.

(b) The director may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to carry out the

provisions of this chapter.
As added by P.L.2-2003, SEC.5. Amended by P.L.22-2005, SEC.8; P.L.71-2013, SEC.9.

10-14-4-12

Sec. 12. A person who knowingly, intentionally, or recklessly violates this chapter commits a Class B misdemeanor.
As added by P.L.2-2003, SEC.5. Amended by P.L.115-2003, SEC.14.

10-14-4-13

Sec. 13. (a) This section applies only to an eligible entity that is an individual.

(b) To qualify for financial assistance under this chapter, including a grant, an eligible entity must apply to the agency on forms provided by the agency. The application must include the following:

(1) A description and estimated cost of the damage caused by the disaster to the individual's property.

(2) The manner in which the individual intends to use the financial assistance.

(3) Any other information required by the agency.

As added by P.L.107-2007, SEC.8. Amended by P.L.57-2008, SEC.4.

13-13-5-1

Sec. 1. Except as provided in IC 14-37, the department is designated as the following:

(1) The water pollution agency for Indiana for all purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) in effect January 1, 1988, and the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j) in effect January 1, 1988.

(2) The solid waste agency for Indiana for all purposes of the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) in effect January 1, 1988.

(3) The air pollution control agency for Indiana for all purposes of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(4) The state agency with responsibility concerning the Midwest Interstate Compact on Low-Level Radioactive Waste under IC 13-29-1.

(5) The state agency with responsibility concerning the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 through 9675) as in effect on January 1, 1993, and concerning 40 CFR 300.505, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan.

(6) The state agency with responsibility concerning the federal Defense Environmental Restoration Program (10 U.S.C. 2701 through 2708) as in effect on January 1, 1993.

As added by P.L.1-1996, SEC.3.

13-13-7-9

Sec. 9. The council shall do the following:

(1) Conduct the following studies:

(A) Study issues designated by the legislative council.

(B) In 2011, study each program administered by the department for which the program's annual cost of administration exceeds the annual revenue generated by the program and evaluate whether to recommend measures to reduce or eliminate the excess cost.

(C) Study the following in 2012:

(i) The effectiveness of the electronic waste provisions of IC 13-20.5.

(ii) Appropriate guidelines for the Indiana recycling market development board for determining under IC 13-20.5-2-2 whether a manufacturer has made good faith progress to achieve substantial compliance with IC 13-20.5.

(2) Advise the commissioner on policy issues decided on by the council.

(3) Review the mission and goals of the department and evaluate the implementation of the mission.

(4) Serve as a council of the general assembly to evaluate:

(A) resources and structural capabilities of the department to meet the department's priorities; and

(B) program requirements and resource requirements for the department.

(5) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.

(6) Review and discuss various topics related to the Great Lakes and the Great Lakes watershed, including:
(A) the availability of federal funds for projects related to water quality, supply, and protection;
(B) the extent of water consumption and use from the Great Lakes, including the Great Lakes watershed;
(C) levels of water pollution and the sources affecting water quality of the Great Lakes, including the Great Lakes watershed;
(D) the impact of water quality and supply issues on recreational activities and natural habitats;
(E) the impact of invasive species on the Great Lakes and the Great Lakes watershed ecosystem;
(F) current laws and regulations affecting the Great Lakes, including the Great Lakes—St. Lawrence River Basin Water Resources Compact (IC 14-25-15);
(G) current laws, regulations, and infrastructure conditions affecting shipping in the Great Lakes; and
(H) other matters relevant to the condition of the Great Lakes and the Great Lakes Watershed.
(7) Submit a final report to the legislative council, in an electronic format under IC 5-14-6, that contains at least the following:
(A) An outline of activities of the council.
(B) Recommendations for department action.
(C) Recommendations for legislative action.
As added by P.L.12-2005, SEC.3. Amended by P.L.178-2009, SEC.26; P.L.159-2011, SEC.13; P.L.62-2011, SEC.1; P.L.6-2012, SEC.102.

13-14-1-10

Sec. 10. The department shall encourage and assist units of local government in developing programs and facilities for the following:
(1) Air, water, radiation, odor, and noise pollution control.
(2) Wastewater treatment.
(3) Water resource development.
(4) Solid waste management.
As added by P.L.1-1996, SEC.4.

13-14-1-12

Sec. 12. The commissioner shall enforce rules consistent with the purposes of:
(1) air pollution control laws;
(2) water pollution control laws;
(3) IC 13-18-9;
(4) IC 13-18-10;
(5) IC 13-19-3; and
(6) IC 36-9-30.
As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.78.

13-14-1-13

Sec. 13. The commissioner shall establish and administer monitoring and reporting requirements as necessary to carry out the duties and to exercise the powers provided in the following:
(1) Air pollution control laws.
(2) Water pollution control laws.
(3) Environmental management laws.
As added by P.L.1-1996, SEC.4.

13-14-2-2

Sec. 2. The department may have a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any of the following:
(1) Air pollution control laws.
(2) Water pollution control laws.
(3) Environmental management laws.
(4) IC 13-18-9.
(5) IC 13-18-10.

(6) IC 13-19-3.
(7) Any rule adopted by the board.
As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.79.

13-14-3-1

Sec. 1. The department shall encourage and advise local governmental units referred to in IC 13-11-2-158 in developing facilities or establishing standards for the following:
(1) Air, water, odor, and noise pollution control.
(2) Water or wastewater treatment.
(3) Water resource development.
(4) Solid waste disposal.
As added by P.L.1-1996, SEC.4.

13-14-3-3

Sec. 3. (a) If the commissioner finds that the local governmental units have not developed plans that provide for adequate:
(1) water supply;
(2) air, water, or wastewater treatment; or
(3) solid waste disposal facilities;
the department may hold a public hearing.
(b) If the facts support the conclusion, the department may order the affected local governmental units to proceed to form regional water, sewage, air, or solid waste districts that are necessary under IC 13-26.
As added by P.L.1-1996, SEC.4.

13-14-8-7

Sec. 7. (a) Without limiting the generality of the regulatory authority of the board under this title, the board may adopt rules under IC 4-22-2 and IC 13-14-9 prescribing the following:
(1) Standards or requirements for discharge or emission specifying the maximum permissible short term and long term concentrations of various contaminants of the air, water, or land.
(2) Procedures for the administration of a system of permits for:
(A) the discharge of any contaminants;
(B) the construction, installation, or modification of any:
(i) facility;
(ii) equipment; or
(iii) device;
that may be designed to control or prevent pollution; or
(C) the operation of any:
(i) facility;
(ii) equipment; or
(iii) device;
to control or to prevent pollution.
(3) Standards and conditions for the use of any fuel or vehicle determined to constitute an air pollution hazard.
(4) Standards for the filling or sealing of abandoned:
(A) water wells;
(B) water holes; and
(C) drainage holes;
to protect ground water against contamination.
(5) Alert criteria and abatement standards for pollution episodes or emergencies constituting an acute danger to health or to the environment, including priority lists for terminating activities that contribute to the hazard, whether or not the activities would meet all discharge requirements of the board under normal conditions.
(6) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to pollution.
(7) Requirements and standards for equipment and procedures for:
(A) monitoring contaminant discharges at their sources;

(B) the collection of samples; and
(C) the collection, reporting, and retention, in accordance with record retention schedules adopted under IC 5-15-5.1, of data resulting from that monitoring.
(8) Standards or requirements to control:
(A) the discharge; or
(B) the pretreatment;
of contaminants introduced or discharged into publicly owned treatment works.

(b) If the board is required to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act or an amendment to or addition of a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act, the board shall adopt the new rules or amend the existing rules not more than nine (9) months after the date the federal law becomes effective. This subsection does not limit the board's authority to amend at any time the rules adopted under this subsection.

As added by P.L.1-1996, SEC.4. Amended by P.L.123-1996, SEC.10; P.L.133-2012, SEC.88.

13-14-8-11.6

Sec. 11.6. (a) A discharger is not required to obtain a state permit for the modification or construction of a water pollution treatment or control facility if the discharger has an effective:
(1) National Pollutant Discharge Elimination System (NPDES) industrial permit for direct discharges to surface water; or
(2) industrial waste pretreatment permit not issued by the department for discharges to a publicly owned treatment works.

(b) If a modification is for the treatment or control of any new influent pollutant or increased levels of any existing pollutant, within thirty (30) days after commencement of operation, the discharger shall file with the department a notice of installation for the additional pollutant control equipment and a design summary of any modifications.

(c) The water pollution control board shall adopt a general permit rule for the approval of sanitary collection system plans, lift station plans, and force main plans.

As added by P.L.72-1999, SEC.2.

13-14-10-1

Sec. 1. (a) Whenever the commissioner concludes, in consultation with the commissioner of the state department of health, that contamination of air, water, or land in any area has reached the point where the contamination constitutes a clear and present danger to the health and safety of persons in any area, the commissioner's determination shall be immediately communicated to the governor. The commissioner, in concert with the commissioner of the state department of health, shall request the governor to declare that an emergency exists.

(b) The governor may:
(1) proclaim the existence of an emergency; and
(2) order all persons causing or contributing to the causing of the contamination to reduce or discontinue immediately the emission or discharge of contaminants.

(c) Notice of an emergency order must be in writing wherever practicable. However, if the governor considers that written notice is not practicable, the governor may give notice in the manner determined by the governor.

(d) A person against whom an emergency order of the governor has been issued shall, upon receiving notice of the order, immediately comply with the provisions of the order.

(e) The governor may enforce an order by any appropriate action.

(f) The procedures for emergency orders provided for in this section are governed by IC 4-21.5-4.

As added by P.L.1-1996, SEC.4.

13-15-1-2

Sec. 2. The board shall establish requirements for the issuance of permits to control water pollution and atomic radiation, including the following:
(1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.
(2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned

treatment works.

(3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

As added by P.L.1-1996, SEC.5. Amended by P.L.123-1996, SEC.11; P.L.133-2012, SEC.96.

13-15-11-1

Sec. 1. The environmental management permit operation fund is established for the purpose of providing money for permitting and directly associated activities of the following programs of the department and the board:

(1) National Pollutant Discharge Elimination System program.

(2) Solid waste program.

(3) Hazardous waste program.

(4) Safe drinking water program.

As added by P.L.1-1996, SEC.5. Amended by P.L.224-2003, SEC.132; P.L.133-2012, SEC.113.

Chapter 2. Water Pollution Agency Under Federal Law

13-18-2

13-18-2-1

Sec. 1. (a) In carrying out the purposes of IC 13-13-5-1(1), the department may, in addition to any other action that is necessary or appropriate to carry out the purpose of IC 13-13-5-1(1), do the following:

(1) Cooperate with the United States Surgeon General and other agencies of the federal government, other states, interstate agencies, and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary condition of waters.

(2) On behalf of Indiana, apply for and receive money made available to the department under the Federal Water Pollution Control Act by any agency of the federal government. However, all money received from any federal agency:

(A) shall be paid into the state treasury; and

(B) shall be expended, under the direction of the department, solely for the purpose for which the grant has been made.

(3) Approve projects for which application for loans or grants under the Federal Water Pollution Control Act is made by:

(A) any political subdivision or other public body created by or under Indiana law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(B) a state agency; or

(C) an interstate agency.

(4) Participate through the department's authorized representatives in proceedings under the Federal Water Pollution Control Act.

(5) Give consent on behalf of Indiana to requests by the Administrator of the Federal Security Agency to the Attorney General of the United States for the bringing of suit for abatement of pollution.

(6) Consent to the joinder as a defendant in a suit for the abatement of pollution of a person who is alleged to be discharging matter contributing to the pollution.

(7) Except for a Class II well (as defined in IC 14-8-2-41) regulated under IC 14:

(A) develop a regulatory program for implementation of; and

(B) seek authority to implement;

the Underground Injection Control program under the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j).

(8) Subject to subsection (b), enter into an agreement with the United States Army Corps of Engineers and the United States Environmental Protection Agency to administer a permitting program under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(b) Administration of a permitting program by the department under an agreement entered into under subsection

(a)(8) does not affect the authority of the department of natural resources to regulate activities within the waterways of Indiana under IC 14-26, IC 14-28, or IC 14-29.
As added by P.L.1-1996, SEC.8. Amended by P.L.159-2011, SEC.22.

13-18-2-2

Sec. 2. This chapter, IC 13-13-5-1(1), and IC 13-13-5-2:

(1) do not amend, alter, or repeal any provision of the water pollution control laws; and

(2) are supplemental to the other provisions of the water pollution control laws.

As added by P.L.1-1996, SEC.8.

13-18-2-3

Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with federal regulations implementing Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether a water body is impaired, the department shall consider all existing and readily available water quality data and related information. The department, before submitting the list to the United States Environmental Protection Agency, shall:

(1) publish the list in the Indiana Register;

(2) make the list available for public comment for at least ninety (90) days; and

(3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

(b) The board shall adopt a rule that:

(1) establishes the methodology to be used in identifying waters as impaired; and

(2) specifies the methodology and criteria for including and removing waters from the list of impaired waters.

(c) In the establishment of the total maximum daily load for a surface water under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)), the department shall, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), make every reasonable effort to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load.

(d) The department shall comply with subsection (e) if either of the following applies:

(1) The department:

(A) is unable in identifying the surface water as described in subsection (c) to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the surface water as described in subsection (c), that one (1) or more pollutants should be under consideration for establishment of the total maximum daily load.

(2) The department:

(A) in identifying the surface water as described in subsection (c), identifies the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the pollutant or pollutants as described in clause (A), that one (1) or more other pollutants should be under consideration for establishment of the total maximum daily load.

(e) The department complies with subsection (d) if the department does the following before making a pollutant or pollutants the subject of consideration for the establishment of the total maximum daily load:

(1) Determines and demonstrates that either or both of the following apply:

(A) The surface water does not attain water quality standards (as established in 327 IAC 2-1 and 327 IAC 2-1.5) due to an individual pollutant, multiple pollutants, pollution, or an unknown cause of impairment.

(B) The surface water:

(i) receives a thermal discharge from one (1) or more point sources; and

(ii) does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

(2) Publishes in the Indiana Register the determination referred to in subdivision (1).

(3) Makes the determination referred to in subdivision (1) available for public comment for at least ninety (90) days.

(4) Presents the determination referred to in subdivision (1) to the commissioner for final approval after the comment period under subdivision (3).

As added by P.L.140-2000, SEC.16. Amended by P.L.78-2009, SEC.14.

Chapter 3. Powers and Duties Concerning Water Pollution Control

13-18-3

13-18-3-1

Sec. 1. The board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation; or

(2) by which:

(A) any fish life or any beneficial animal or vegetable life may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

As added by P.L.1-1996, SEC.8. Amended by P.L.133-2012, SEC.125.

13-18-3-2

Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

(c) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

(d) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

(e) "Watershed" has the meaning set forth in IC 14-8-2-310.

(f) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(g) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (f) and (g), including the board's conclusions concerning that information.

(i) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

(j) Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

(k) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 IAC 2-1.5-4(b) are met.

(l) The procedures provided by rule under subsection (k) must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water:

(A) Implementation of a water quality project in the watershed of the outstanding state resource water that will result in an overall improvement of the water quality of the outstanding state resource water.

(B) Payment of a fee, not to exceed five hundred thousand dollars ($500,000), based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter for use as permitted under that section.

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water.

(m) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(n) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

(o) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

(p) This subsection applies to all surface waters of the state. The department shall complete an antidegradation review of all NPDES general permits. The department may modify the general permits for purposes of antidegradation compliance. After an antidegradation review of a permit is conducted under this subsection, activities covered by an NPDES general permit are not required to undergo an additional antidegradation review. An NPDES general permit may not be used to authorize a discharge into an outstanding national resource water or an outstanding state resource water, except that a short term, temporary storm water discharge to an outstanding national resource water or to an outstanding state resource water may be permitted under an NPDES general permit if the commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge.

(q) Subsection (r) applies to an application for:

(1) an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4); or

(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in subsection (l)(1).

(r) For purposes of an antidegradation review with respect to an application referred to in subsection (q), the applicant shall demonstrate at the time the application is submitted to the department, and the commissioner shall

review:

(1) an analysis of alternatives to the proposed discharge; and

(2) subject to subsection (s), social or economic factors indicating the importance of the proposed discharge if alternatives to the proposed discharge are not practicable.

(s) Subject to subsection (t), the commissioner shall consider the following factors in determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures:

(1) Creation, expansion, or maintenance of employment.

(2) The unemployment rate.

(3) The median household income.

(4) The number of households below the poverty level.

(5) Community housing needs.

(6) Change in population.

(7) The impact on the community tax base.

(8) Provision of fire departments, schools, infrastructure, and other necessary public services.

(9) Correction of a public health, safety, or environmental problem.

(10) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.

(11) The impact on the quality of life for residents in the area.

(12) The impact on the fishing, recreation, and tourism industries.

(13) The impact on threatened and endangered species.

(14) The impact on economic competitiveness.

(15) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (14) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.

(16) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that:

(A) recognizes social or economic importance; and

(B) is given to the applicant by:

(i) a legislative body; or

(ii) other government officials.

(17) Any other action or recommendation relevant to the antidegradation demonstration made by a:

(A) state;

(B) county;

(C) township; or

(D) municipality;

potentially affected by the proposed discharge.

(18) Any other action or recommendation relevant to the antidegradation demonstration received during the public participation process.

(19) Any other factors that the commissioner:

(A) finds relevant; or

(B) is required to consider under the Clean Water Act.

(t) In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures, the commissioner:

(1) must give substantial weight to any applicable determinations by governmental entities; and

(2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (s).

(u) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law.

(v) Beginning June 1, 2009, all waters of the state are classified in the following categories:

(1) Outstanding national resource waters.

(2) Outstanding state resource waters.

(3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.

(4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.
(5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.
(6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.
As added by P.L.1-1996, SEC.8. Amended by P.L.140-2000, SEC.17; P.L.1-2001, SEC.16; P.L.78-2009, SEC.15; P.L.81-2011, SEC.1.

13-18-3-2.1

Sec. 2.1. (a) If a discharge results from an activity for which:
(1) an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4); or
(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in IC 13-18-3-2(l)(1);
is sought, the deadline for the department to complete the antidegradation review under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.
(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to complete the antidegradation review.
As added by P.L.78-2009, SEC.16.

13-18-3-2.3

Sec. 2.3. (a) This subsection applies if a use attainability analysis is performed and approved to change the designated use of a water body receiving wet weather discharges from combined sewer overflows from the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather subcategory established in section 2.5 of this chapter to that subcategory. Upon implementation of the approved long term control plan, the plan fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan.
(b) A long term control plan must meet the requirements of:
(1) Section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)); and
(2) 59 FR 18688.
(c) An approved long term control plan shall be incorporated into:
(1) the NPDES permit holder's NPDES permit; or
(2) an order of the commissioner under IC 13-14-2-6.
(d) If a use attainability analysis is performed, the department shall:
(1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and
(2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.
As added by P.L.140-2000, SEC.18. Amended by P.L.54-2005, SEC.2.

13-18-3-2.4

Sec. 2.4. An NPDES permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards. The NPDES permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The NPDES permit holder shall:
(1) document to the department that the long term control plan has been reviewed;
(2) update the long term control plan as necessary;
(3) submit any amendments to the long term control plan to the department for approval; and
(4) implement control alternatives determined to be cost effective and affordable.
Cost effectiveness may be determined, at the option of the NPDES permit holder, by using a knee of the curve analysis in accordance with section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q)) and 59 FR 18688.
As added by P.L.140-2000, SEC.19. Amended by P.L.1-2001, SEC.17; P.L.54-2005, SEC.3.

13-18-3-2.5

Sec. 2.5. (a) A CSO wet weather limited use subcategory is established for waters affected by receiving combined sewer overflows, as specified in an approved long term control plan. The CSO wet weather limited use

subcategory applies to a specific water body after implementation of an approved long term control plan for the combined sewer system whose overflow discharges affect those waters is implemented and the conditions of subsection (b) are satisfied. The following requirements apply to the CSO wet weather limited use subcategory:

(1) The water quality based requirements associated with the CSO wet weather limited use subcategory that apply to waters affected by wet weather combined sewer overflows are determined by an approved long term control plan for the combined sewer system. The water quality based requirements remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained, but for not more than four (4) days after the date the overflow discharge ends.

(2) At all times other than those described in subdivision (1), the water quality criteria associated with the appropriate recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory apply unless there is a change in the use designation as a result of a use attainability analysis.

(b) The CSO wet weather limited use subcategory applies if:

(1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;

(2) the approved long term control plan:

(A) is incorporated into:

(i) the NPDES permit holder's NPDES permit; or

(ii) an order of the commissioner under IC 13-14-2-6;

(B) satisfies the requirements of section 2.3 of this chapter; and

(C) specifies the water quality based requirements that apply to combined sewer overflows during and immediately following wet weather events, as provided in subsection (a)(1);

(3) the NPDES permit holder has implemented the approved long term control plan; and

(4) subject to subsection (c), 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

(c) For purposes of subsection (b)(4), 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(d) The department shall implement the CSO wet weather limited use subcategory and associated water quality based requirements under this section when the subcategory and requirements are approved by the United States Environmental Protection Agency. The department shall seek approval of the United States Environmental Protection Agency in a timely manner.

(e) The NPDES permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically as provided in the long term control plan. The NPDES permit holder shall provide all such information to the department.

(f) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the NPDES permit holder shall review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The NPDES permit holder shall provide the results of the review to the department.

(g) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section before October 1, 2006.

As added by P.L.140-2000, SEC.20. Amended by P.L.54-2005, SEC.4.

13-18-3-2.6

Sec. 2.6. (a) Where appropriate, permits shall contain schedules of compliance requiring the permittee to take specific steps to achieve expeditious compliance with applicable standards, limitations, and other requirements.

(b) The schedule of compliance shall require compliance as soon as reasonably possible, but may remain in effect as long as the National Pollutant Discharge Elimination System (NPDES) permit requirements are in effect.

(c) The department shall, at the request of the NPDES permit holder, incorporate in the permit a schedule of compliance for meeting the water quality based requirements associated with combined sewer overflows during the period of development, approval, and implementation of the long term control plan. The schedules of compliance:

(1) may exceed time frames authorized under 327 IAC; and

(2) may not exceed the period specified for implementation in an approved long term control plan.

(d) If the term of a schedule of compliance exceeds the term of an NPDES permit, the department shall continue

to implement the schedule of compliance continuously before and during each successive permit term, to the maximum duration as provided in subsection (c). The permit shall specify that the schedule of compliance lasts beyond the term of the permit.

(e) Upon request of the permittee, the department shall modify NPDES permits containing water quality based requirements associated with combined sewer overflows to provide schedules of compliance as provided in subsection (c).

(f) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section before October 1, 2006.

As added by P.L.54-2005, SEC.5.

13-18-3-3 Repealed

13-18-3-3 (Repealed by P.L.133-2012, SEC.126.)

13-18-3-4

Sec. 4. (a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

As added by P.L.1-1996, SEC.8.

13-18-3-5

Sec. 5. The board shall carry out other duties imposed by law.

As added by P.L.1-1996, SEC.8.

13-18-3-6

Sec. 6. The water pollution control laws may be enforced under IC 13-30-3 or IC 13-14-2-6.

As added by P.L.1-1996, SEC.8.

13-18-3-7

Sec. 7. The commissioner may order any person to acquire, construct, repair, alter, or extend the plants that are necessary for the disposal or treatment of organic or inorganic matter that is:

(1) causing;

(2) contributing to; or

(3) about to cause or contribute to;

a polluted condition of the waters of Indiana.

As added by P.L.1-1996, SEC.8.

13-18-3-8

Sec. 8. The commissioner may require the sealing of mines, oil and gas wells, brine wells, or any other subterranean strata that are:

(1) causing;

(2) contributing to; or

(3) about to cause or contribute to;

a polluted condition of the waters of Indiana.

As added by P.L.1-1996, SEC.8.

13-18-3-9

Sec. 9. The department may, through any authorized agent, enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any water of Indiana.

As added by P.L.1-1996, SEC.8.

13-18-3-10

Sec. 10. The department may call upon:

(1) any state officer, board, department, school, university, or other state institution; and

(2) the officers or employees of an individual entity described in subdivision (1);

for any assistance necessary to carry out the water pollution control laws.

As added by P.L.1-1996, SEC.8.

13-18-3-11

Sec. 11. Since the water pollution control laws are necessary for the public health, safety, and welfare, the water pollution control laws shall be liberally construed to effectuate the purposes of the water pollution control laws.
As added by P.L.1-1996, SEC.8.

13-18-3-12

Sec. 12. The board shall adopt rules providing that whenever a person submits plans to a unit concerning the design or construction of:

(1) a sanitary sewer or public water main, if:
  (A) a professional engineer who is registered under IC 25-31 prepared the plans;
  (B) the unit provided for review of the plans by a qualified engineer and subsequently approved the plans; and
  (C) all other requirements specified in rules adopted by the water pollution control board are met; or

(2) a sanitary sewer extension for and within a subdivision, if:
  (A) a qualified professional surveyor who is registered under IC 25-21.5 prepared the plans;
  (B) the subdivision is being laid out or having been laid out by the professional surveyor subject to IC 25-21.5-7;
  (C) the unit provided for review of the plans by a qualified engineer and subsequently approved the plans; and
  (D) all other requirements specified in rules adopted by the board are met;

the plans are not required to be submitted to any state agency for a permit, permission, or review, unless required by federal law.
As added by P.L.104-1998, SEC.1. Amended by P.L.241-1999, SEC.1; P.L.133-2012, SEC.127; P.L.57-2013, SEC.10.

13-18-3-13

Sec. 13. If a violation of 327 IAC 15-5 occurs, the department shall determine which person is responsible for committing the violation. In making this determination, the department shall, if appropriate, consider:

(1) public records of ownership;
(2) building permits issued by local units of government; or
(3) other relevant information.

The department's determination to proceed against a person responsible for committing a violation must be based on the specific facts and circumstances related to a particular violation.
As added by P.L.161-1999, SEC.1.

13-18-3-14

Sec. 14. (a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.

(b) The outstanding state resource water improvement fund shall be administered as follows:
  (1) The fund may be used by the department of environmental management to fund projects that will lead to overall improvement to the water quality of the affected outstanding state resource water.
  (2) The treasurer of state may invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.
  (3) Any interest received accrues to the fund.
  (4) The expenses of administering the fund shall be paid from the fund.

(c) The commissioner shall annually report to the environmental quality service council:
  (1) plans for the use and implementation of the outstanding state resource water improvement fund; and
  (2) the balance in the fund.

As added by P.L.140-2000, SEC.21. Amended by P.L.78-2009, SEC.17.

13-18-3-15

Sec. 15. (a) Subject to subsection (c), the board shall amend 327 IAC 5 and 327 IAC 15 to eliminate:

(1) the requirement that NPDES general permit terms and conditions be contained in a rule; and

(2) the terms and conditions of each NPDES general permit that is:

(A) contained in that article; and

(B) in effect on the effective date of this section.

(b) The department may develop and issue NPDES general permits in accordance with 40 CFR 122.28.

(c) After 327 IAC 5 and 327 IAC 15 are amended under subsection (a), the terms and conditions of an NPDES general permit under that article as they existed before the amendment remain in effect and are binding on any person regulated under the NPDES general permit until the person submits a notice of intent to be covered by an NPDES general permit developed and issued under subsection (b).

(d) Any person regulated under an NPDES general permit on the effective date of the amendment required by subsection (a) must:

(1) submit a notice of intent described in subsection (c) not later than ninety (90) days after the department makes the form of the notice of intent available to the person; or

(2) apply for an NPDES individual permit under 327 IAC 5 to maintain permit coverage required under the Clean Water Act.

(e) This section does not affect the authority of the board to adopt rules that authorize NPDES general permits.

As added by P.L.81-2011, SEC.2.

Chapter 4. Restrictions on Pollution of Water

13-18-4

13-18-4-1

Sec. 1. The board may adopt rules under IC 4-22-2 to determine what qualities and properties of water indicate a polluted condition of the water in any of the streams or waters of Indiana:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation for which or in which any waters may be lawfully used or employed;

(2) by which any agricultural, floricultural, or horticultural pursuit may be or is injuriously affected;

(3) by which the lawful conduct of any livestock industry or the use of any waters for domestic animals may be prevented, injuriously affected, or impaired;

(4) by which any lawful use of any waters by the state or by any person may be lessened or impaired or materially interfered with; or

(5) by which:

(A) any fish life or any beneficial animal or vegetable life in the waters may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life in the water is prevented or injuriously affected.

As added by P.L.1-1996, SEC.8.

13-18-4-2

Sec. 2. A rule or determination made by the board or the commissioner under sections 1 through 4 of this chapter shall be filed of record in the office of the department.

As added by P.L.1-1996, SEC.8.

13-18-4-3

Sec. 3. The board may adopt rules restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the streams or waters of Indiana.

As added by P.L.1-1996, SEC.8.

13-18-4-4

Sec. 4. The commissioner may take appropriate steps to prevent any pollution that is determined to be

unreasonable and against public interests in view of the condition in any stream or other waters of Indiana.
As added by P.L.1-1996, SEC.8.

13-18-4-5

Sec. 5. (a) Except as provided in subsection (b), a person may not:

(1) throw, run, drain, or otherwise dispose; or

(2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed;

into any of the streams or waters of Indiana any organic or inorganic matter that causes or contributes to a polluted condition of any of the streams or waters of Indiana, as determined by a rule of the board adopted under sections 1 and 3 of this chapter.

(b) Subsection (a) does not apply to organic or inorganic matter that consists of fertilizer material contained in:

(1) runoff from a storm event; or

(2) irrigation return flow;

entering the waters of Indiana as a result of land application of fertilizer material in compliance with rules adopted by the state chemist under IC 15-16-2-44.

(c) The department shall request documentation of compliance with subsection (b) before a notice of violation can be issued.

(d) A person has thirty (30) days to submit documentation after receiving a request under subsection (c).

(e) The department may issue a notice of violation for failure to comply with subsection (d). No notice of violation can be issued if the department determines that a person complied with subsection (b).

(f) Before the rules for land application of fertilizer materials adopted under IC 15-16-2-44 by the state chemist take effect, a person may meet the requirements under subsection (b) if the person maintains documentation of compliance with:

(1) the conditions for land application of manure requirements under IC 13-18-10; or

(2) the National Resources Conservation Services land application standards.

(g) Subsection (b) does not affect liability for killing wild animals under IC 14-22-10-6.
As added by P.L.1-1996, SEC.8. Amended by P.L.189-2011, SEC.11.

13-18-4-6

Sec. 6. (a) Whenever the commissioner determines that a person:

(1) is violating; or

(2) is about to violate;

section 5 of this chapter, the department shall serve notice of the commissioner's determination on the person in accordance with IC 13-14-2-1.

(b) The commissioner shall include in the notice an order against the person to:

(1) cease the violation; and

(2) abate the condition of pollution;

fixing in the order a reasonable time within which the correction and abatement must take place.

(c) Proceedings concerning an order issued under this section are governed by IC 4-21.5.
As added by P.L.1-1996, SEC.8. Amended by P.L.263-2013, SEC.3.

13-18-4-7

Sec. 7. (a) Notwithstanding any rules of the board, the commissioner shall allow for a mixing zone in permits that involve a discharge into Lake Michigan if the applicant can demonstrate to the commissioner that the mixing zone will not cause harm to human health or aquatic life.

(b) For mixing zones allowed under subsection (a), surface water quality standards for bioaccumulative chemicals of concern shall be applied to the undiluted discharge, rather than at a point outside the mixing zone.
As added by P.L.1-1996, SEC.8.

13-18-4-8

Sec. 8. In issuing permits authorizing discharge induced mixing, the commissioner shall allow for mixing initiated by the use of:

(1) submerged, high rate diffuser outfall structures; or

(2) the functional equivalent of submerged, high rate diffuser outfall structures;

that provide turbulent initial mixing and minimize organism exposure times.
As added by P.L.1-1996, SEC.8.

Chapter 5. Release of Hazardous Materials

13-18-5

13-18-5-1

Sec. 1. The board shall adopt rules under IC 4-22-2 to require the following:

(1) The construction or installation of secondary containment structures at facilities in which hazardous materials are stored or transferred for the purpose of preventing released hazardous materials from entering surface water or groundwater.

(2) The development by the owner or operator of each facility at which hazardous materials are stored or handled of a plan for responding to the release of a hazardous material at that facility.

(3) The rules must be consistent with applicable safety and fire code laws.

As added by P.L.1-1996, SEC.8.

13-18-5-2

Sec. 2. The rules adopted under section 1 of this chapter must provide exemptions for the following:

(1) A facility that is subject to similar requirements under other administrative rules or under state law, federal law, or federal regulations.

(2) Hazardous materials that are stored or transferred as products packaged for distribution to and use by the public.

(3) An above ground storage tank that:

(A) is used to store oils or petroleum products; and

(B) has a capacity of not more than six hundred sixty (660) gallons.

(4) Tanks subject to regulations adopted by the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6991 through 6991i, as amended.

(5) Tanks subject to IC 13-23.

As added by P.L.1-1996, SEC.8.

Chapter 7. Plans for Abatement or Correction

13-18-7

13-18-7-1

Sec. 1. The commissioner must approve all plans and specifications for abatement or correction of any polluted condition.
As added by P.L.1-1996, SEC.8.

13-18-7-2

Sec. 2. The department shall advise and consult, on request, with any person planning any correction or prevention of any pollution condition of any water of Indiana.
As added by P.L.1-1996, SEC.8.

Chapter 8. Compliance With Orders

13-18-8

13-18-8-1

Sec. 1. A person upon whom a final order is served under the water pollution control laws shall take the steps that are necessary to comply with the final order.
As added by P.L.1-1996, SEC.8.

13-18-8-2

Sec. 2. (a) If the offender is a municipal corporation, the cost of:

(1) acquisition, construction, repair, alteration, or extension of the necessary plants, machinery, or works; or
(2) taking other steps that are necessary to comply with the order;
shall be paid out of money on hand available for these purposes or out of the general money of the municipal corporation not otherwise appropriated.

(b) If there is not sufficient money on hand or unappropriated, the necessary money shall be raised by the issuance of bonds. The bond issue is subject only to the approval of the department of local government finance (before July 1, 2008).

As added by P.L.1-1996, SEC.8. Amended by P.L.90-2002, SEC.367; P.L.224-2007, SEC.103; P.L.146-2008, SEC.421.

13-18-8-3

Sec. 3. If the estimated cost of the steps necessary for a municipal corporation to comply with a final order is great enough that the bond issue necessary to finance the project would not raise the total outstanding bonded indebtedness of the municipal corporation in excess of the constitutional limit, the necessary bonds:
(1) may be issued as a direct obligation of the municipal corporation; and
(2) may be retired by a general tax levy against all the property within the limit of the municipal corporation listed and assessed for taxation.

As added by P.L.1-1996, SEC.8.

13-18-8-4

Sec. 4. (a) Subject to subsection (b), if:
(1) the amount of the bonds necessary to be issued would raise the total outstanding bonded indebtedness of the municipal corporation above the constitutional limitation; or
(2) the municipal corporation determines against the issuance of direct obligation bonds;
the municipal corporation shall issue revenue bonds and provide for the retirement of the bonds in the same manner and subject to the same conditions provided for the issuance and retirement of bonds in IC 36-9-23 to the extent that the provisions of that statute are applicable and not in conflict with any of the express provisions of the water pollution control laws.

(b) IC 36-9-23-12 does not apply to bond issues proposed by a municipal corporation to comply with a final order issued under the authority of the water pollution control laws or IC 13-1-3 (before its repeal) and objections or submission to the qualified voters of the municipal corporation:
(1) may not be authorized; and
(2) if objections are made, do not operate to justify or excuse failure to comply with the final order.

As added by P.L.1-1996, SEC.8.

13-18-8-5

Sec. 5. The money made available by the issuance of either direct obligation bonds or revenue bonds as provided by the water pollution control laws or IC 13-1-3 (before its repeal):
(1) constitutes a sanitary fund; and
(2) shall be used for no other purpose than for carrying out an order issued under the water pollution control laws or IC 13-1-3 (before its repeal).

As added by P.L.1-1996, SEC.8.

13-18-8-6

Sec. 6. (a) Subject to subsection (b):
(1) the construction, acquisition, improvement, equipment, custody, operation, repair, and maintenance of a plant, machinery, or works by a municipal corporation in compliance with a final order of the commissioner, other than the financing; and
(2) the rights, powers, and duties of the municipal corporation and the respective officers and departments of the municipal corporation, whether the plant, machinery, or works is financed by the issuance of revenue or direct obligation bonds;
is governed by IC 36-9-23 to the extent that the provisions of IC 36-9-23 are applicable and do not conflict with any of the express provisions of the water pollution control laws.

(b) IC 36-9-23-12 does not apply to the construction, acquisition, equipping, improvement, repair, or

maintenance of a plant, machinery, or works by any municipal corporation in compliance with a final order issued under the water pollution control laws or IC 13-1-3 before its repeal, and the objections or submission to the qualified voters of the municipal corporation:

(1) may not be authorized; and

(2) if objections are made, do not operate to justify or excuse failure to comply with the final order.

(c) IC 36-9-23 may not be construed to allow the municipal corporation or any of the officers of the municipal corporation discretion in the manner of complying with the order since complying with the order is mandatory.

As added by P.L.1-1996, SEC.8.

13-18-8-7

Sec. 7. Failure of:

(1) a municipal corporation; or

(2) the board of directors or other governing body of a private corporation, association, or other legal entity;

to provide for the financing and construction of the works that are necessary to carry out a final order issued under the water pollution control laws or IC 13-1-3 (before its repeal) by appropriate ordinance or resolution constitutes failure to begin appropriate action or proceedings to comply with the order.

As added by P.L.1-1996, SEC.8.

13-18-8-8

Sec. 8. (a) The commissioner may extend the time fixed in a final order issued under the water pollution control laws or IC 13-1-3 (before its repeal) within which any offender is ordered to correct or abate a condition of pollution of any water upon written petition filed with the department not less than thirty (30) days before the time fixed in the order if it appears that:

(1) a good faith effort to comply with the order is being made; and

(2) it will be impossible for the offender to complete the project of work undertaken within the time fixed.

(b) A person who fails or refuses to correct or abate the polluted condition in compliance with the order:

(1) within the time fixed; or

(2) within the time additionally granted under this section;

is subject to the penalties imposed by IC 13-30-4, IC 13-30-5, and IC 13-30-8, and may be subject to criminal prosecution under IC 13-30-10.

As added by P.L.1-1996, SEC.8. Amended by P.L.137-2007, SEC.10.

13-18-8-9

Sec. 9. A person who fails to discharge a duty imposed upon the person by the water pollution control laws commits a Class B misdemeanor.

As added by P.L.1-1996, SEC.8.

Chapter 9. Prohibitions on Certain Detergents

13-18-9

13-18-9-1

Sec. 1. This chapter does not apply to any of the following:

(1) Detergents for cleaning in place food processing and dairy equipment.

(2) Phosphoric acid products, including sanitizers, brighteners, acid cleaners, and metal conditioners.

(3) Detergents for use in commercial machine dishwashers.

(4) Institutional laundry detergents, including detergents for use in hospitals and health care facilities.

(5) Detergents for use in dairy, beverage, food processing, and other industrial cleaning equipment.

(6) A detergent or cleaning compound contained in fuel or lubricating oil.

(7) Any other use of detergents in which the phosphorus contents are not permitted to:

(A) enter a public or private sewer; or

(B) be disposed of in the natural environment.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-2008, SEC.1.

13-18-9-2

Sec. 2. A person may not use, sell, or otherwise dispose of any hard or nondegradable detergent containing alkyl benzine sulfonate (ABS) in any manner or any location in Indiana or into the boundary waters of Indiana from a source within Indiana.
As added by P.L.1-1996, SEC.8.

13-18-9-3

Sec. 3. (a) A person may not use, sell, or otherwise dispose of any detergent containing phosphorus, except:
(1) for those amounts not exceeding one-half percent (0.5%) by weight incidental to manufacturing; and
(2) in accordance with rules adopted under IC 4-22-2 by the water pollution control board;
in Indiana or into the boundary waters of Indiana from a source within Indiana.
(b) The concentration of phosphorus shall be determined by the applicable method prescribed by the American Society for Testing and Materials.
As added by P.L.1-1996, SEC.8.

13-18-9-4

Sec. 4. (a) The department shall enforce this chapter under IC 13-30-3 or IC 13-14-2-6.
(b) The board shall adopt rules under IC 4-22-2 for the disposition of any detergent carried over on September 1, 1974. However, the commissioner may approve the use of phosphates by a manufacturer or processor for cleaning plant or equipment upon application to the commissioner by the manufacturer or processor. The commissioner shall require phosphate removal from the water so used by criteria established by the board.
As added by P.L.1-1996, SEC.8.

13-18-9-5

Sec. 5. The attorney general shall, upon the request of the department, institute injunction proceedings to enjoin acts constituting a violation of this chapter.
As added by P.L.1-1996, SEC.8.

13-18-9-6

Sec. 6. A person who violates this chapter is subject to the penalties imposed by the following:
(1) IC 13-30-4.
(2) IC 13-30-5.
(3) IC 13-30-8.
In addition, a person who violates this chapter may be subject to criminal prosecution under IC 13-30-10.
As added by P.L.1-1996, SEC.8. Amended by P.L.137-2007, SEC.11.

Chapter 10. Confined Feeding Control

13-18-10

13-18-10-1

Sec. 1. A person may not start:
(1) construction of a confined feeding operation; or
(2) expansion of a confined feeding operation that increases animal capacity or manure containment capacity, or both;
without obtaining the prior approval of the department.
As added by P.L.1-1996, SEC.8. Amended by P.L.24-2004, SEC.3; P.L.81-2009, SEC.2; P.L.127-2009, SEC.5; P.L.1-2010, SEC.62.

13-18-10-1.4

Sec. 1.4. (a) Subject to subsection (b), an application for approval under section 1 of this chapter must include for each responsible party the disclosure statement referred to in subsection (c) if either or both of the following apply:
(1) State or federal officials at any time alleged that the responsible party committed acts or omissions that constituted a material violation of state or federal environmental law.
(2) Foreign officials at any time alleged that the responsible party committed acts or omissions that:

(A) constituted a material violation of foreign environmental law; and
(B) would have constituted a material violation of state or federal environmental law if the act or omission had occurred in the United States.

(b) Subsection (a):
(1) applies only if the acts or omissions alleged under subsection (a)(1) or (a)(2) presented a substantial endangerment to human health or the environment; and
(2) does not apply to a renewal of an approval under section 1 of this chapter that does not involve construction or expansion as described in section 1 of this chapter.

(c) A responsible party referred to in subsection (a) must make reasonable efforts to provide complete and accurate information to the department in a disclosure statement that includes the following:
(1) The name and business address of the responsible party.
(2) A description of the responsible party's experience in managing the environmental aspects of the type of facility that will be managed under the permit.
(3) A description of all pending administrative, civil, or criminal enforcement actions filed in the United States against the responsible party alleging any acts or omissions that:
(A) constitute a material violation of state or federal environmental law; and
(B) present a substantial endangerment to human health or the environment.
(4) A description of all pending administrative, civil, or criminal enforcement actions filed in a foreign country against the responsible party alleging any acts or omissions that:
(A) constitute a material violation of foreign environmental law;
(B) would have constituted a material violation of state or federal environmental law if the act or omission on which the action is based had occurred in the United States; and
(C) present a substantial endangerment to human health or the environment.
(5) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions in the United States resolved against the responsible party within the five (5) years that immediately precede the date of the application involving acts or omissions that:
(A) constitute a material violation of federal or state environmental law; and
(B) present a substantial endangerment to human health or the environment.
(6) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions in a foreign country resolved against the responsible party within the five (5) years that immediately precede the date of the application involving acts or omissions that:
(A) constitute a material violation of foreign environmental law;
(B) would have constituted a material violation of state or federal environmental law if the act or omission on which the action is based had occurred in the United States; and
(C) present a substantial endangerment to human health or the environment.
(7) Identification of all state, federal, or foreign environmental permits:
(A) applied for by the responsible party that were denied; or
(B) previously held by the responsible party that were revoked.

(d) A disclosure statement submitted under subsection (c):
(1) must be executed under oath or affirmation; and
(2) is subject to the penalty for perjury under IC 35-44.1-2-1.

(e) The department may investigate and verify the information set forth in a disclosure statement submitted under this section.

As added by P.L.127-2009, SEC.6. Amended by P.L.126-2012, SEC.32.

13-18-10-1.9

Sec. 1.9. (a) This section applies:
(1) to a confined feeding operation for which a person is required to submit an application for approval under section 1 of this chapter if an application for approval under section 1 of this chapter submitted with respect to the confined feeding operation was not approved by the department before May 12, 2009; and
(2) notwithstanding the effective date of the addition or amendment by P.L.127-2009 of the provisions listed in subsection (b)(1) through (b)(8).

(b) The following, as added or amended by P.L.127-2009, effective July 1, 2009, apply to a confined feeding

operation described in subsection (a)(1) in the same manner as if they had been in effect on the date on which the application was submitted with respect to the confined feeding operation under section 1 of this chapter:

(1) IC 13-11-2-8.
(2) IC 13-11-2-40.
(3) IC 13-11-2-191.
(4) Section 1 of this chapter.
(5) Section 2 of this chapter.
(6) Section 2.1 of this chapter.
(7) Section 2.2 of this chapter.
(8) Section 4 of this chapter.

As added by P.L.1-2010, SEC.63.

13-18-10-2

Sec. 2. (a) Application for approval under section 1 of this chapter of the construction or expansion of a confined feeding operation must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.
(2) A manure management plan that outlines procedures for the following:
  (A) Soil testing.
  (B) Manure testing.
(3) Maps of manure application areas.
(4) Supplemental information that the department requires, including the following:
  (A) General features of topography.
  (B) Soil types.
  (C) Drainage course.
  (D) Identification of nearest streams, ditches, and lakes.
  (E) Location of field tiles.
  (F) Location of land application areas.
  (G) Location of manure treatment facilities.
  (H) Farmstead plan, including the location of water wells on the site.
(5) A fee of one hundred dollars ($100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(b) An applicant who applies for approval under section 1 of this chapter to construct or expand a confined feeding operation on land for which a valid existing approval has not been issued shall make a reasonable effort to provide notice not more than ten (10) working days after submitting an application:

(1) to the county executive of the county in which the confined feeding operation is to be located or expanded; and
(2) to each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the following:
  (A) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation is to be located:
    (i) A livestock or poultry production structure.
    (ii) A permanent manure storage facility.
  (B) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation is to be expanded:
    (i) A livestock or poultry production structure.
    (ii) The expanded area of a livestock or poultry production structure.

The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

(c) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction or expansion and the

operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.4; P.L.127-2009, SEC.7.

13-18-10-2.1

Sec. 2.1. (a) The department:

(1) shall make a determination on an application made under section 2 of this chapter not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation that concerns manure handling and application to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

(e) Subject to subsection (f), the commissioner may deny an application upon making either or both of the following findings:

(1) A responsible party intentionally misrepresented or concealed any material fact in either or both of the following:

(A) An application for approval under section 1 of this chapter.

(B) A disclosure statement required by section 1.4 of this chapter.

(2) An enforcement action was resolved against a responsible party as described in either or both of the following:

(A) Section 1.4(c)(5) of this chapter.

(B) Section 1.4(c)(6) of this chapter.

(f) Before making a determination to approve or deny an application, the commissioner must consider the following factors:

(1) The nature and details of the acts attributed to the responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state, federal, or foreign agencies involved in the investigation of the activities involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement

action referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts, omissions, or violations referred to in section 1.4(c)(5) and 1.4(c)(6) of this chapter.

(g) Except as provided in subsection (h), in taking action under subsection (e), the commissioner must make separately stated findings of fact to support the action taken. The findings of fact must:

(1) include a statement of ultimate fact; and

(2) be accompanied by a concise statement of the underlying basic facts of record to support the findings.

(h) If the commissioner denies an application under subsection (e), the commissioner is not required to explain the extent to which any of the factors set forth in subsection (f) influenced the denial.

(i) The department may amend an approval under section 1 of this chapter or revoke an approval under section 1 of this chapter:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

(D) rules adopted under the water pollution control laws; and

(2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

As added by P.L.125-1997, SEC.5. Amended by P.L.127-2009, SEC.8.

13-18-10-2.2

Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction or expansion, not more than thirty (30) days after the date the applicant completes the construction or expansion the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation:

(1) was constructed or expanded; and

(2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction or expansion of an approved confined feeding operation must:

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction or expansion of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction or expansion of the confined feeding operation have been completed, whichever is later.

As added by P.L.125-1997, SEC.6. Amended by P.L.127-2009, SEC.9.

13-18-10-2.3

Sec. 2.3. A confined feeding operation must submit a manure management plan that outlines procedures for soil testing, manure testing, and maps of manure application areas to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter.

As added by P.L.125-1997, SEC.7.

13-18-10-2.6

Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations that may be administered by:

(1) the department;

(2) a state college or university; or

(3) a contractor.

As added by P.L.125-1997, SEC.8.

13-18-10-3

Sec. 3. This chapter, including requirements established in a department approval under section 2 of this chapter, may be enforced under IC 13-30-3 or IC 13-14-2-6.

As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.9.

13-18-10-4

Sec. 4. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 and the department may adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter. The rules, policies, or statements may concern construction, expansion, and operation of confined feeding operations and may include uniform standards for:

(1) construction, expansion, and manure containment that are appropriate for a specific site; and

(2) manure application and handling that are consistent with best management practices:

(A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and

(B) that are appropriate for a specific site.

(b) Standards adopted in a rule, policy, or statement under subsection (a) must:

(1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) postsecondary educational institution extension bulletins; and

(2) be developed through technical review by the department, postsecondary educational institution specialists, and other animal industry specialists.

As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.10; P.L.2-2007, SEC.167; P.L.127-2009, SEC.10.

13-18-10-5

Sec. 5. The department may seek injunctive relief under this chapter.

As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.11.

13-18-10-6

Sec. 6. A person who violates this chapter is subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-8.

In addition, a person who violates this chapter may be subject to criminal prosecution under IC 13-30-10.

As added by P.L.1-1996, SEC.8. Amended by P.L.137-2007, SEC.12.

Chapter 11. Operator Certification

13-18-11

13-18-11-1

Sec. 1. (a) As used in this chapter, "transient noncommunity water system" has the meaning set forth in IC 13-11-2-237.5.

(b) The commissioner may determine that this chapter does not apply to a transient noncommunity water system.

As added by P.L.1-1996, SEC.8. Amended by P.L.132-2000, SEC.2; P.L.1-2001, SEC.18.

13-18-11-1.5

Sec. 1.5. The board shall adopt regulations to implement certification programs for operators of water treatment plants or water distribution systems. The certification program for the operators shall be classified in accordance with the complexity, size, and source of the water for the treatment system and the complexity and size for the distribution system.

As added by P.L.132-2000, SEC.3. Amended by P.L.133-2012, SEC.128.

13-18-11-2

Sec. 2. The commissioner shall classify all water treatment plants, wastewater treatment plants, and water distribution systems actually used or intended for use:

(1) with due regard to the:

(A) size;

(B) type;
(C) character of wastes or water to be treated; and
(D) other physical conditions affecting those plants and systems; and
(2) according to the:
(A) skill;
(B) knowledge; and
(C) experience;
that the operator in responsible charge must have to successfully supervise the operation of those facilities so as to protect the public health.
As added by P.L.1-1996, SEC.8.

13-18-11-3

Sec. 3. The commissioner shall certify persons as to their qualifications to supervise successfully the operation of:
(1) water treatment plants;
(2) water distribution systems; and
(3) wastewater treatment plants.
As added by P.L.1-1996, SEC.8.

13-18-11-4

Sec. 4. The commissioner shall issue certificates attesting to the competency of operators. A certificate must indicate the classification of works, plant, or system that the operator is qualified to supervise.
As added by P.L.1-1996, SEC.8. Amended by P.L.114-2008, SEC.9.

13-18-11-5

Sec. 5. The commissioner shall prescribe and provide an application form for use by applicants in applying for the appropriate certificate issued under this chapter. An applicant must deposit a fee of thirty dollars ($30) at the time of making application for certification.
As added by P.L.1-1996, SEC.8.

13-18-11-6

Sec. 6. (a) A wastewater treatment plant operator certified under this chapter may renew the operator's certificate biennially by paying a renewal fee of thirty dollars ($30).
(b) The fee is due and payable before July 2 of the year for which a renewal certificate is issued.
(c) A wastewater treatment plant operator who fails to renew a certificate for three (3) successive years may not receive a renewal certificate without reexamination.
As added by P.L.1-1996, SEC.8. Amended by P.L.132-2000, SEC.4.

13-18-11-6.5

Sec. 6.5. (a) A water treatment plant operator or water distribution system operator certified under this chapter may renew the operator's certificate triennially by:
(1) paying a renewal fee of thirty dollars ($30); and
(2) meeting any continuing education requirements established by the department.
(b) The:
(1) fee is due and payable; and
(2) proof of compliance with continuing education requirements must be submitted to the department;
before July 2 of the year for which a renewal certificate is to be issued.
(c) A water treatment plant operator or a water distribution system operator who fails to renew a certificate within one (1) year after the date the certificate expires may not receive a renewal certificate without reexamination.
As added by P.L.132-2000, SEC.5.

13-18-11-7

Sec. 7. (a) The commissioner shall notify by mail each person certified by the commissioner as a wastewater treatment plant operator under this chapter of the following:
(1) The date of the expiration of the operator's certificate.

(2) The amount of the required fee for renewal for two (2) years.

(b) The commissioner shall mail the notice at least one (1) month in advance of the date of expiration of the person's certificate to the last known address of the individual on file with the commissioner.

As added by P.L.1-1996, SEC.8. Amended by P.L.132-2000, SEC.6.

13-18-11-7.5

Sec. 7.5. (a) The commissioner shall notify by mail each person certified by the commissioner as a water treatment plant operator or water distribution system operator under this chapter of the following:

(1) The date of expiration of the operator's certificate.

(2) The amount of the required fee for renewal for three (3) years.

(3) The continuing education required for renewal for three (3) years.

(b) The commissioner shall mail the notice at least one (1) month in advance of the date of expiration of the person's certificate to the last known address of the individual on file with the commissioner.

As added by P.L.132-2000, SEC.7.

13-18-11-8

Sec. 8. (a) The commissioner may suspend or revoke the certificate of an operator issued under this chapter, following a hearing under IC 13-15-7-3 and IC 4-21.5, if any of the following conditions are found:

(1) The operator has practiced fraud or deception in any state or other jurisdiction.

(2) Reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties.

(3) The operator is incompetent or unable to properly perform the operator's duties.

(4) A certificate of the operator issued:

(A) under this chapter; or

(B) by any other state or jurisdiction for a purpose comparable to the purpose for which a certificate is issued under this chapter;

has been revoked.

(5) The operator has been convicted of a crime related to a certificate of the operator issued:

(A) under this chapter; or

(B) by any other state or jurisdiction for a purpose comparable to the purpose for which a certificate is issued under this chapter.

(b) A hearing and further proceedings shall be conducted in accordance with IC 4-21.5-7.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-1997, SEC.9; P.L.132-2000, SEC.8; P.L.159-2011, SEC.23.

13-18-11-9

Sec. 9. The commissioner may, upon receipt of an application and payment of the fee, issue a certificate without examination in a comparable classification to any person who holds a certificate in any state of the United States if:

(1) the requirements for certification of operators under which the person's certificate was issued:

(A) do not conflict with this chapter; or

(B) are of a standard not lower than that specified by this chapter and the rules adopted under this chapter; and

(2) reciprocal privileges are granted to certified operators of Indiana.

As added by P.L.1-1996, SEC.8.

13-18-11-10

Sec. 10. (a) Certificates in appropriate classification shall be issued upon application and payment of the fee to operators of wastewater treatment plants who, on July 1, 1968, hold certificates of competency attained by examination under the voluntary certification program administered by:

(1) the Indiana Water Pollution Control Association; or

(2) the Indiana Section, American Water Works Association.

However, application for a certificate under this subsection must be made not later than July 1, 1969.

(b) Certificates of proper classification shall be issued upon payment of the fee without examination to each person certified by the governing body or owner to have been in direct responsible charge of the wastewater treatment plant on July 1, 1968. A certificate issued under this subsection is valid only for that particular wastewater

treatment plant, which the certificate must indicate.
As added by P.L.1-1996, SEC.8. Amended by P.L.132-2000, SEC.9.

13-18-11-10.5

Sec. 10.5. (a) The commissioner may issue a certificate to a person under this chapter if all of the following conditions are met:

(1) The person is an operator in responsible charge of a water treatment plant or water distribution system that was:

(A) in operation before September 2, 2000; and

(B) required to have a certified operator for the first time under rules adopted in accordance with guidelines published by the United States Environmental Protection Agency in the Federal Register at 64 FR 5916 et seq.

(2) The owner of the water treatment plant or water distribution system applies for a certificate for the operator in responsible charge before September 1, 2002.

(3) The certificate issued by the commissioner:

(A) is site specific; and

(B) may not be transferred to another operator.

(4) The certificate will become invalid if the classification of the water treatment plant or water distribution system for which the certificate was issued changes to a higher level.

(b) A person certified under subsection (a) must meet all requirements for certification renewal that apply to the classification of the water treatment plant or water distribution system to renew the certificate under this chapter.

(c) A person certified under subsection (a) who commences work for a different water treatment plant or water distribution system must meet the initial certification requirements for the plant or system.

(d) Notwithstanding section 14 of this chapter, a water treatment plant or water distribution system that meets the conditions of subsection (a)(1) may continue to operate if the water treatment plant or water distribution system applies to the commissioner for certification of the operator in responsible charge of the water treatment plant or water distribution system as provided in this section.
As added by P.L.132-2000, SEC.10.

13-18-11-11

Sec. 11. (a) All water or wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the commissioner in a classification corresponding to the classification of the plant or distribution system to be supervised. However, this section does not prohibit a governmental agency, a corporation, or an individual from continuing to employ in that capacity a person in responsible charge of the operations of the works if the person is certified under section 10 of this chapter.

(b) A certified operator may supervise more than one (1) plant or system if it can be shown that adequate supervision to ensure safe and effective operation is provided for all plants and systems supervised.
As added by P.L.1-1996, SEC.8.

13-18-11-12

Sec. 12. (a) When a vacancy in a position of operator occurs due to death, resignation, extended illness, or a similar cause, the vacancy may be filled for a period not exceeding one (1) year by an operator with a provisional certification.

(b) On written request of the governing body or owner of a wastewater or public water system, the commissioner may issue a provisional certification under subsection (a) to a person with the required education and experience qualifications, until the person has had an opportunity to qualify by examination and be certified under this chapter.
As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.13.

13-18-11-13

Sec. 13. The board shall adopt rules under IC 4-22-2 that are necessary to carry out the intent of this chapter. The rules must include the following:

(1) Provisions establishing the basis for classification of water treatment plants, water distribution systems, and wastewater treatment plants.

(2) Provisions establishing qualifications of applicants and procedures for examination of candidates.
(3) Other provisions that are necessary for the administration of this chapter.
As added by P.L.1-1996, SEC.8.

13-18-11-14

Sec. 14. (a) A person, firm, or corporation, whether municipal or private, may not operate a water or wastewater treatment plant or a water distribution system unless the commissioner has certified the operator in responsible charge under this chapter.
(b) A person may not perform the duties of an operator in responsible charge of works described in subsection (a) without being certified under this chapter.
As added by P.L.1-1996, SEC.8.

13-18-11-15

Sec. 15. All fees collected under this chapter shall be deposited with the treasurer of state.
As added by P.L.1-1996, SEC.8.

13-18-11-16

Sec. 16. A person who violates this chapter commits a Class C infraction. Each day of violation of this chapter constitutes a separate infraction.
As added by P.L.1-1996, SEC.8.

Chapter 12. Wastewater Management

13-18-12

13-18-12-1

Sec. 1. The board and the department shall regulate persons who provide septage management services.
As added by P.L.1-1996, SEC.8. Amended by P.L.159-2011, SEC.24; P.L.133-2012, SEC.129.

13-18-12-2

Sec. 2. (a) A person may not transport, treat, store, or dispose of septage in violation of this chapter.
(b) A person may not engage in:
(1) the cleaning of sewage disposal systems; or
(2) the transportation, treatment, storage, or disposal of septage;
without a septage management permit unless the person is exempted under section 7 of this chapter.
(c) A person may not dispose of septage by land application without first obtaining approval of the land application site under this chapter.
(d) The department may issue a septage management permit that incorporates approval of a land application site.
(e) The department may issue new and renewal permits and approvals under this chapter for a period the department determines appropriate. However, the period may not exceed three (3) years.
As added by P.L.1-1996, SEC.8. Amended by P.L.31-1999, SEC.1; P.L.114-2008, SEC.10; P.L.159-2011, SEC.25; P.L.37-2012, SEC.20.

13-18-12-2.5

Sec. 2.5. (a) The department and the board may allow a person to use industrial waste products in a land application operation or as ingredients in a soil amendment or soil substitute to be land applied if:
(1) the industrial waste products are not hazardous wastes;
(2) the industrial waste products:
(A) have a beneficial use (as defined in 327 IAC 6.1-2-6); or
(B) otherwise provide a benefit to the process of creating the soil amendments or soil substitute or to the final soil amendment, soil substitute, or material to be land applied, such as bulking;
(3) the finished soil amendment, soil substitute, or material to be land applied satisfies the applicable criteria in 327 IAC 6.1;
(4) the finished soil amendment, soil substitute, or material to be land applied has a beneficial use;
(5) the requirements of subsection (b) are satisfied; and

(6) the person pays a permit fee in an amount determined by the department that does not exceed the costs incurred by the department to issue the permit.

(b) The department:

(1) may allow the use of industrial waste products:

(A) in a land application operation; or

(B) as ingredients in a soil amendment or soil substitute to be land applied;

on the same basis as other materials under the rules concerning land application and marketing and distribution permits;

(2) may not:

(A) discriminate against the use of industrial waste products on the basis that the industrial waste products lack biological carbon;

(B) impose requirements beyond applicable criteria in 327 IAC 6.1, unless additional requirements are necessary for the protection of human health and the environment;

(C) require that the finished soil amendment, soil substitute, or material to be land applied must be of a particular economic value; or

(D) for any pollutant that has a pollutant limit or concentration in 327 IAC 6.1, require that an industrial waste product or the finished soil amendment, soil substitute, or material to be land applied satisfies:

(i) the department's risk integrated system of closures nonrule policy document; or

(ii) any other standards other than criteria in 327 IAC 6.1;

(3) for any pollutant present in the industrial waste products that does not have a pollutant limit or concentration in 327 IAC 6.1, shall consider the benefits of the finished soil amendment, soil substitute, or material to be land applied as compared to the measurable risks to human health and the environment based on the anticipated use of the finished soil amendment, soil substitute, or material to be land applied; and

(4) shall require an application for a permit for the land application of industrial waste products to include characterization of individual industrial waste products at the point of waste generation before mixing the waste streams.

(c) The board may adopt rules for pollutant limits or concentrations for pollutants for which limits or concentrations do not exist in 327 IAC 6.1 as of July 1, 2011.

As added by P.L.223-2011, SEC.2. Amended by P.L.6-2012, SEC.104; P.L.133-2012, SEC.130.

13-18-12-3

Sec. 3. The board shall initiate, in accordance with IC 13-15, a septage management permit program for all persons who offer to perform or are performing septage management services.

As added by P.L.1-1996, SEC.8. Amended by P.L.159-2011, SEC.26.

13-18-12-4

Sec. 4. (a) The board shall, in accordance with IC 13-14-9, adopt rules to establish the following:

(1) Standards for the following:

(A) The issuance of septage management permits under section 3 of this chapter.

(B) Transportation, storage, and treatment of septage, and disposal of septage, including land application.

(2) Procedures and standards for approval of sites for land application of septage.

(b) The board may designate a county or city health agency as the board's agent to approve land application sites in accordance with rules adopted under this section.

As added by P.L.1-1996, SEC.8. Amended by P.L.31-1999, SEC.2; P.L.114-2008, SEC.11; P.L.159-2011, SEC.27; P.L.37-2012, SEC.21.

13-18-12-5

Sec. 5. (a) Subject to subsections (b) and (c), the board may adopt a fee schedule for the issuance of:

(1) septage management permits; and

(2) land application site approvals;

under this chapter.

(b) A permit fee may not exceed one hundred dollars ($100) per year.

(c) A land application approval fee may not exceed thirty dollars ($30) per year per site.

(d) Whenever the board designates a county or city health agency as the board's agent to approve land

application sites under this chapter, the county or city health agency shall collect and retain the land application approval fee.
As added by P.L.1-1996, SEC.8. Amended by P.L.114-2008, SEC.12; P.L.159-2011, SEC.28; P.L.37-2012, SEC.22.

13-18-12-6

Sec. 6. (a) This chapter shall be enforced under IC 13-30-3.
(b) Violations of this chapter are subject to the penalties imposed by the following:
(1) IC 13-30-4.
(2) IC 13-30-5.
(3) IC 13-30-8.
In addition, a violation of this chapter may lead to criminal prosecution under IC 13-30-10.
(c) The commissioner may make inspections under this chapter in accordance with IC 13-14-2-2 and IC 13-14-5.
As added by P.L.1-1996, SEC.8. Amended by P.L.137-2007, SEC.13.

13-18-12-6.5

Sec. 6.5. In addition to any other authority in this title, the commissioner or a designated staff member may, under IC 4-21.5, revoke or modify a permit or an approval issued under this chapter for any of the following reasons:
(1) Violation of a requirement of this chapter, rules adopted under this chapter, a permit, or an approval.
(2) Failure to disclose all relevant facts.
(3) A misrepresentation made in obtaining the permit or approval.
(4) Failing to meet the qualifications for a permit or an approval or failing to comply with the requirements of the water pollution control laws or rules adopted by the board.
(5) Changes in circumstances relating to the permit or approval that require either a temporary or permanent reduction in the discharge of contaminants.
As added by P.L.31-1999, SEC.3. Amended by P.L.114-2008, SEC.13; P.L.37-2012, SEC.23.

13-18-12-7

Sec. 7. This chapter does not require a person to obtain a permit under this chapter if the person is:
(1) engaged in:
(A) servicing or maintaining publicly owned wastewater treatment facilities; or
(B) transportation of wastewater from a publicly owned wastewater treatment facility;
as long as the wastewater at that facility has been fully treated and is stabilized;
(2) transporting septage from the point of its removal to another location on the same site or tract owned by the same person, although disposal of the septage must be done in accordance with this chapter; or
(3) a homeowner who cleans and services the sewage disposal system serving only the homeowner's residence, although transportation and disposal of septage, including land application, must be done in compliance with this chapter.
As added by P.L.1-1996, SEC.8. Amended by P.L.114-2008, SEC.14; P.L.159-2011, SEC.29; P.L.37-2012, SEC.24.

13-18-12-8

Sec. 8. (a) If a publicly owned treatment works permittee:
(1) determines that an upset has occurred in the publicly owned treatment works that is likely to pose a threat to human or animal life; or
(2) has knowledge of an imminent threat from a chemical or other release to the collection system that is likely to cause an upset in the publicly owned treatment works that is likely to pose a threat to human or animal life;
the permittee shall notify emergency response personnel of the department not more than two (2) hours after the determination under subdivision (1) or the acquisition of knowledge of an imminent threat under subdivision (2).
(b) If the department receives notification from a publicly owned treatment works permittee under subsection (a), the department:
(1) must notify all appropriate state and local government agencies;
(2) may provide technical assistance to the publicly owned treatment works as the department determines is

necessary; and

(3) must, if the department determines that there is or may be a threat to human health or animal life, notify the affected news media;

not more than forty-eight (48) hours after receiving the notification under subsection (a).

As added by P.L.112-2000, SEC.3.

13-18-12-9

Sec. 9. (a) This section applies only in a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000).

(b) Except as provided in subsection (c), the point source discharge of sewage, treated or untreated, from a dwelling or its associated residential sewage disposal system to waters is prohibited.

(c) The point source discharge of treated sewage from an onsite residential sewage discharging disposal system to waters is permitted if:

(1) the local health department for the jurisdiction in which the system is located issues an operating permit for the system under subsection (d); and

(2) the discharge is authorized under a general permit issued under 40 CFR 122.28.

(d) In a county onsite waste management district established under IC 36-11 that performs all the functions related to onsite waste management listed in IC 36-11-2-1, the local health department for the jurisdiction in which the system is located may issue an operating permit for an onsite residential sewage discharging disposal system if the system is installed to repair a sewage disposal system that fails to meet public health and environmental standards and if:

(1) the local health department adopts procedural rules for monitoring onsite residential sewage discharging disposal systems in the jurisdiction, including fines or penalties, or both, for noncompliance, to ensure that:

(A) required maintenance is performed on the systems; and

(B) the systems do not discharge effluent that violates water quality standards;

(2) the local health department certifies, with respect to the system for which the permit is issued, that:

(A) the system is capable of operating properly;

(B) the system does not discharge effluent that violates water quality standards;

(C) an acceptable septic tank soil absorption system cannot be located on the property served by the system because of:

(i) soil characteristics;

(ii) size; or

(iii) topographical conditions;

of the property;

(D) the system:

(i) was properly installed by a qualified installer; and

(ii) provides the best available technology for residential discharging onsite sewage disposal systems; and

(E) the local health department has:

(i) investigated all technologies available for repair of the sewage disposal system that fails to meet public health and environmental standards other than the use of an onsite residential sewage discharging disposal system; and

(ii) determined that an onsite residential sewage discharging disposal system is the only possible technology that can be used to effect a repair of the sewage disposal system that fails to meet public health and environmental standards without causing unreasonable economic hardship to the system owner; and

(3) the system for which the permit is issued cannot be connected to a sanitary sewer because:

(A) there is not a sanitary sewer connection available;

(B) the sanitary sewer operator refuses connection; or

(C) unreasonable economic hardship would result to the system owner because of:

(i) the connection requirements of the sanitary sewer operator; or

(ii) the distance to the sanitary sewer.

As added by P.L.172-2002, SEC.4.

Chapter 13. Wastewater Revolving Loan Program

13-18-13

13-18-13-1

Sec. 1. The wastewater revolving loan program is established.
As added by P.L.1-1996, SEC.8.

13-18-13-2

Sec. 2. (a) The wastewater revolving loan fund is established to provide money for loans and other financial assistance to or for the benefit of participants under this chapter. The authority shall administer, hold, and manage the fund.

(b) The general assembly may appropriate money to the fund. Grants or gifts of money to the fund from the federal government or other sources and the proceeds of the sale of:

(1) gifts to the fund; and

(2) loans and other financial assistance, as provided in sections 10 through 14 of this chapter;

shall be deposited in the fund.

(c) Repayments of loans and other financial assistance, including interest, premiums, and penalties, shall be deposited in the fund.

(d) The authority shall invest the money in the fund that is:

(1) not currently needed to meet the obligations of the fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from these investments shall be deposited in the fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may permit disbursements by the trustee to:

(1) the department;

(2) the budget agency;

(3) a participant;

(4) the Indiana bond bank;

(5) the authority; or

(6) any person to which the authority or a participant is obligated, as provided in the trust agreement or indenture.

(f) Except as provided in the Clean Water Act, the cost of administering the fund may be paid from the fund.

(g) All money accruing to the fund is appropriated continuously for the purposes specified in this chapter.

(h) Money in the fund does not revert to the state general fund at the end of a state fiscal year.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.8; P.L.235-2005, SEC.131.

13-18-13-3

Sec. 3. (a) Money in the fund may be used to do the following:

(1) Provide loans or other financial assistance to participants for the planning, designing, construction, renovation, improvement, or expansion of wastewater collection and treatment systems and other activities necessary or convenient to complete these tasks.

(2) Pay the cost of administering the fund and the program.

(3) Conduct all other activities that are permitted by the Clean Water Act.

(b) The authority may contract with the department, the budget agency, or any other entity or person for assistance in administering the program and the fund or in carrying out the purposes of this chapter.

As added by P.L.1-1996, SEC.8. Amended by P.L.235-2005, SEC.132.

13-18-13-4 Repealed

13-18-13-4 (Repealed by P.L.235-2005, SEC.212.)

13-18-13-5

Sec. 5. The authority shall do the following:

(1) Administer, hold, and manage all aspects of the fund, the program, the supplemental fund, and the supplemental program in accordance with this chapter.

(2) Be the point of contact in relations with the United States Environmental Protection Agency.

(3) Prepare and provide program information.

(4) Ensure that each proposed financial assistance agreement meets the environmental and technical aspects of the program or supplemental program.

(5) Periodically inspect project design and construction to determine compliance with the following:

(A) This chapter.

(B) The Clean Water Act.

(C) Construction plans and specifications.

(6) Negotiate the negotiable aspects of each financial assistance agreement.

(7) Manage any payment systems through which the state receives grant payments from the federal government for the program and disbursements to the fund.

(8) Be the point of contact with participants and other interested persons in preparing and providing program information.

(9) Prepare or cause to be prepared each financial assistance agreement.

(10) Sign each financial assistance agreement.

(11) Conduct or cause to be conducted an evaluation as to the financial ability of each participant to pay the loan or other financial assistance and other obligations evidencing the loans or other financial assistance, if required to be paid, and comply with the financial assistance agreement in accordance with the terms of the agreement.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.9; P.L.28-2004, SEC.116; P.L.235-2005, SEC.133.

13-18-13-6 Repealed

13-18-13-6 (Repealed by P.L.235-2005, SEC.212.)

13-18-13-7

Sec. 7. (a) The authority may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) bond counsel;

(D) other special counsel;

(E) accountants; and

(F) any other consultants, employees, and agents;

that the authority considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of those persons employed in subdivision (1) from money:

(A) available in the fund or supplemental fund; or

(B) otherwise made available for the program or the supplemental program.

(3) Enter into memoranda of understanding with the department and the budget agency concerning the administration and management of the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

(4) Provide services to a participant in connection with a loan or other financial assistance, including advisory and other services.

(b) Notwithstanding any other law, the authority, program, or fund, or any person or agent acting on behalf of the authority or program, is not liable in damages or otherwise to any participant or party seeking to be a participant for any act or omission in connection with a loan or other financial assistance, or any application, service, or other

undertaking, allowed by or taken under this chapter.

(c) No direction given by or service or other undertaking allowed or taken under this chapter by the authority is a defense for or otherwise excuses any act or omission of a participant otherwise required or imposed by law upon a participant.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.11; P.L.235-2005, SEC.134.

13-18-13-8

Sec. 8. (a) The authority may:

(1) charge a fee for services provided; and

(2) charge a fee for costs and services incurred in the review or consideration of an application for a proposed loan or other financial assistance to or for the benefit of a participant under this chapter, regardless of whether the application is approved or rejected.

(b) A participant may pay fees charged under this section.

As added by P.L.1-1996, SEC.8. Amended by P.L.235-2005, SEC.135.

13-18-13-9

Sec. 9. The authority shall use a priority ranking system in making loans or other financial assistance from the fund. The authority, in consultation with the department, shall develop the priority ranking system to achieve optimum water quality consistent with the water quality goals of the state and the Clean Water Act.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.12; P.L.235-2005, SEC.136.

13-18-13-10

Sec. 10. The authority may make loans or provide other financial assistance from the fund to or for the benefit of a participant under the following conditions:

(1) The loan or other financial assistance must be used:

(A) for:

(i) planning, designing, constructing, renovating, improving, or expanding wastewater collection and treatment systems;

(ii) any purpose eligible for assistance under the Clean Water Act; and

(iii) other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish guaranties, reserves, or sinking funds, including guaranties, reserves, or sinking funds to secure and pay, in whole or in part, loans or other financial assistance made from sources other than the fund (including financial institutions) for a purpose permitted by clause (A); or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan or other financial assistance during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Any other costs or expenses necessary or incident to the loan, other financial assistance, or the administration of the fund and the program.

(2) The authority shall establish the terms and conditions that the authority considers necessary or convenient to:

(A) make loans; or

(B) provide other financial assistance under this chapter.

(3) Notwithstanding any other law, the authority may establish and implement requirements that:

(A) apply to loans and other financial assistance to be made to participants that are not political subdivisions; and

(B) are different from, or in addition to, requirements that apply to loans and financial assistance made to political subdivisions.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.13; P.L.235-2005, SEC.137.

13-18-13-11

Sec. 11. A loan or other financial assistance from the fund must be accompanied by the following:

(1) All papers and opinions required by the authority.
(2) Unless otherwise provided by the guidelines of the authority, the following:
(A) An approving opinion of nationally recognized bond counsel.
(B) A certification and guarantee of signatures.
(C) A certification that, as of the date of the loan or other financial assistance:
(i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or
(ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.
(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.
As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.14; P.L.235-2005, SEC.138.

13-18-13-12

Sec. 12. A participant receiving a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the participant.
As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.15; P.L.235-2005, SEC.139.

13-18-13-13

Sec. 13. The authority may sell loans or evidences of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund periodically at any price and on terms acceptable to the authority. Proceeds of sales under this section shall be deposited in the fund.
As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.16; P.L.235-2005, SEC.140.

13-18-13-14

Sec. 14. (a) The authority may pledge loans or evidences of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund to secure:
(1) other loans or financial assistance from the fund to or for the benefit of participants; or
(2) other loans or financial assistance from the supplemental fund to or for the benefit of participants;
to the extent permitted by the Clean Water Act.
(b) The authority must approve the terms of a pledge under this section.
(c) Notwithstanding any other law, a pledge of property made by the department and the budget agency under this section or IC 4-23-21-8(e) (before its repeal) or a pledge of property made by the authority under this section is binding from the time the pledge is made. Any pledge of property made by the department and the budget agency under this section or IC 4-23-21-8(e) (before its repeal) is binding on the authority. Revenues, other money, or other property pledged and thereafter received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:
(1) the department;
(2) the budget agency;
(3) the fund; or
(4) the authority;
regardless of whether the parties have notice of any lien.
(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the authority.
(e) Action taken to:
(1) enforce a pledge under this section or IC 4-23-21-8(e) (before its repeal); and
(2) realize the benefits of the pledge;
is limited to the property pledged.
(f) A pledge under this section or IC 4-23-21-8(e) (before its repeal) does not create a liability or indebtedness of the state.
As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.17; P.L.235-2005, SEC.141.

13-18-13-15

Sec. 15. (a) The authority shall establish the interest rate or parameters for establishing the interest rate on each loan made under this chapter, including parameters for establishing the amount of interest subsidies.

(b) The authority, in setting the interest rate or parameters for establishing the interest rate on each loan, may take into account the following:

(1) Credit risk.

(2) Environmental enforcement and protection.

(3) Affordability.

(4) Other fiscal factors the authority considers relevant, including the program's cost of funds and whether the financial assistance provided to a particular participant is taxable or tax exempt under federal law.

Based on the factors set forth in subdivisions (1) through (4), more than one (1) interest rate may be established and used for loans or other financial assistance to different participants or for different loans or other financial assistance to the same participants.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.18; P.L.235-2005, SEC.142.

13-18-13-16

Sec. 16. The authority shall require that a participant receiving a loan or other financial assistance under this chapter establish under applicable statute and maintain sufficient user charges or other charges, fees, taxes, special assessments, or revenues available to the participant to:

(1) operate and maintain the wastewater collection and treatment system; and

(2) pay the obligations of the system.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.19; P.L.235-2005, SEC.143.

13-18-13-17

Sec. 17. (a) Notwithstanding any other law and if provided in a financial assistance agreement, any state department or state agency, including the treasurer of state:

(1) that is the custodian of money payable to a participant, other than money in payment for goods or services provided by the participant; and

(2) after written notice from the budget director that the participant is in default on the payment of principal or interest on a loan or evidence of other financial assistance;

may withhold payment of money from that participant and pay over the money to the authority or the Indiana bond bank as directed by the chairman of the authority, for the purpose of curing the default.

(b) The withholding of payment from the participant and payment to:

(1) the authority; or

(2) the Indiana bond bank;

as applicable, may not adversely affect the validity of the loan or other financial assistance.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.20; P.L.235-2005, SEC.144.

13-18-13-18

Sec. 18. The authority may adopt guidelines, without complying with IC 4-22-2, to govern the administration of this chapter.

As added by P.L.1-1996, SEC.8. Amended by P.L.235-2005, SEC.145.

13-18-13-19

Sec. 19. (a) Notwithstanding any other law, a political subdivision may borrow money from the authority by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision shall observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell its notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of its bonds or other available money at the time the notes are due. The notes must be issued pursuant to a resolution or ordinance and the proceeds must be used to carry out the purposes specified in this chapter.

(c) A political subdivision that issues notes under subsection (b) or IC 4-23-21-13 (before its repeal) may renew or extend the notes periodically on terms agreed to with the authority, and the authority may purchase and sell the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including any renewals or extensions, must mature:

(1) in the amounts; and

(2) at the times not exceeding four (4) years from the date of original issuance;

that are agreed to by the political subdivision and the authority.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue its notes and sell the notes to the authority, and the political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of its notes. These notes are:

(1) valid and binding obligations of the political subdivision;

(2) enforceable in accordance with the terms of the notes; and

(3) payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes.

(f) If the political subdivision issues bonds, all or part of the proceeds of which will be used to pay the notes issued under subsection (b), neither:

(1) the provisions of this section; nor

(2) the actual issuance by a political subdivision of notes under subsection (b);

relieves the political subdivision of the obligation to comply with the statutory requirements for the issuance of bonds.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.21; P.L.235-2005, SEC.146.

13-18-13-20

Sec. 20. (a) As an alternative to making loans or providing other financial assistance to participants, the authority may use the money in the fund or the supplemental fund to provide a leveraged loan program and other financial assistance programs permitted by the Clean Water Act to or for the benefit of participants, including using money in the fund or the supplemental fund to enhance the obligations of participants issued for the purposes of this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 4-4-11 or another statute or a trust agreement or indenture as contemplated by section 2(e) of this chapter; or

(ii) an account established within such a fund; or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or costs for obligations of a participant or for bonds issued by the authority or the Indiana bond bank, if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or a part of obligations issued by participants or of bonds issued by the authority or the Indiana bond bank.

(b) The authority may enter into any agreements with the Indiana bond bank or participants to carry out the purposes specified in this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund and the supplemental fund. A guarantee under subsection (a)(3) does not create a liability or indebtedness of the state.

As added by P.L.1-1996, SEC.8. Amended by P.L.126-1997, SEC.22; P.L.235-2005, SEC.147.

13-18-13-21 Repealed

13-18-13-21 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-22 Repealed

13-18-13-22 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-23 Repealed
13-18-13-23 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-24 Repealed
13-18-13-24 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-25 Repealed
13-18-13-25 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-26 Repealed
13-18-13-26 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-27 Repealed
13-18-13-27 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-28 Repealed
13-18-13-28 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-29 Repealed
13-18-13-29 (Repealed by P.L.132-1999, SEC.33.)

13-18-13-30
Sec. 30. Notwithstanding any other law, and to the extent permitted by the federal Clean Water Act and the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), money in the fund, together with loan repayments to be deposited in the fund, may be used to secure a leveraged loan program or other financial assistance programs established in connection with the drinking water revolving loan fund established by IC 13-18-21-2.
As added by P.L.104-1998, SEC.2.

13-18-13-31 Version a
Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 31. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance from the fund commits a Class D felony.
As added by P.L.137-2007, SEC.14.

13-18-13-31 Version b
Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 31. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance from the fund commits a Level 6 felony.
As added by P.L.137-2007, SEC.14. Amended by P.L.158-2013, SEC.185.

Chapter 14. Interstate Sewage

13-18-14

13-18-14-1
Sec. 1. Predominantly domestic sewage and surface run-off or sludges derived from domestic sewage or surface run-off may not be transported through any drain, pipe, railroad car, truck, or barge from another state into Indiana for use in any land filtration or land treatment project without the express approval of the following:

(1) The general assembly.

(2) The county executive of each county affected by the land filtration or transportation.

As added by P.L.1-1996, SEC.8.

Chapter 15. Connection to Sewage Service

13-18-15

13-18-15-1

Sec. 1. If the commissioner finds it is in the interest of the health, safety, convenience, and welfare of the residents of an area, a person may be ordered to connect to or receive and treat sewage from any other person or from an industry, a shopping center, a mobile home community, or a housing development when the service and use will not:

(1) result in irreparable injury to the receiving equipment; or

(2) make impossible the provision of the service previously provided to the users of the equipment.

As added by P.L.1-1996, SEC.8. Amended by P.L.87-2005, SEC.1.

13-18-15-2

Sec. 2. (a) The persons involved shall negotiate the terms for connection and service under this chapter.

(b) If service is ordered under this chapter, a receiver of that service that is located in an unincorporated area may grant a waiver to a municipality providing the service. A waiver under this section:

(1) must waive the receiver's right of remonstrance against annexation of the areas in which the service is to be provided; and

(2) may be one (1) of the terms for connection and service described in subsection (a).

(c) The waiver, if granted:

(1) shall be noted on the deed of each property affected and recorded as provided by law; and

(2) is considered a covenant running with the land.

As added by P.L.1-1996, SEC.8.

13-18-15-3

Sec. 3. (a) If the negotiations fail:

(1) any person involved; or

(2) the department;

may apply to the Indiana utility regulatory commission for a determination of any question upon which an agreement was not reached.

(b) Upon application to the commission, the commission shall, in accordance with the commission's procedures:

(1) determine:

(A) the reasonable and just charges; and

(B) the compensation to be made for the connection and service; and

(2) enter an order designating:

(A) each person who shall perform the work of establishing the connection; and

(B) the other conditions that are necessary to effect the connection.

As added by P.L.1-1996, SEC.8.

13-18-15-4

Sec. 4. Any person aggrieved by an order under section 3 of this chapter has all rights of appeal as with other orders of the commission.

As added by P.L.1-1996, SEC.8.

13-18-15-5

Sec. 5. A landowner in an unincorporated area who connects to a sewer or water service because a person other than the landowner has polluted or contaminated the area is not required to grant a municipality a waiver against remonstrance if:

(1) the area in which the service to be provided is annexed; and

(2) a person other than the landowner or the municipality has paid the cost of extension of or connection to the service.

As added by P.L.1-1996, SEC.8. Amended by P.L.124-1996, SEC.8.

Chapter 16. Public Water Supplies

13-18-16

13-18-16-1

Sec. 1. (a) A permit is required for the construction, installation, or modification of:

(1) sources;

(2) facilities;

(3) equipment; or

(4) devices;

of a public water system, including water distribution systems.

(b) Plans and specifications for the construction, installation, or modification of sources, facilities, equipment, or devices of a public water system must be submitted to the commissioner with a permit application. The plans and specifications must be complete and of sufficient detail to show all proposed construction, changes, or modifications that may affect the sanitary quality, chemical quality, or adequacy of the public water system involved. The applicant shall supply any additional data or material considered appropriate by the commissioner to a review of the plans and specifications.

(c) Unless otherwise provided in rules adopted under section 8(b) of this chapter, plans and specifications must be submitted to the commissioner with the permit application for water distribution systems.

(d) Construction, installation, or modification of a public water system may not begin until the commissioner has issued a permit under subsection (a).

(e) In determining whether to issue a permit under this section, the commissioner shall proceed under IC 13-15.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-1997, SEC.10; P.L.184-2002, SEC.14.

13-18-16-2

Sec. 2. The commissioner may initiate action under IC 13-15-7 to revoke or modify a permit.

As added by P.L.1-1996, SEC.8.

13-18-16-3

Sec. 3. The commissioner may initiate action under IC 4-21.5-3 to assess a civil penalty against a permit holder who fails to take action to correct or prevent contamination of the sanitary or chemical quality of the water supply after the permit holder knew or should have known that the action should be taken. The civil penalty assessed under this section may not exceed one thousand dollars ($1,000) for each day of violation.

As added by P.L.1-1996, SEC.8.

13-18-16-4

Sec. 4. This chapter does not preclude emergency repairs or proceedings.

As added by P.L.1-1996, SEC.8.

13-18-16-5

Sec. 5. Plans and specifications submitted to the commissioner under section 1 of this chapter shall be approved if it is determined that the plans and specifications meet all of the following conditions:

(1) The plans and specifications are satisfactory with respect to the following:

(A) Sanitary quality, including chlorination, if required.

(B) Chemical quality.

(C) Adequacy of the water supply.

(2) The plans and specifications meet the requirements of any rules or standards adopted by the board under section 8 of this chapter governing the location, design, construction, and operation and maintenance of:

(A) public water system installations; and

(B) changes or additions to public water system installations.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.15.

13-18-16-6

Sec. 6. (a) All public water systems shall be continuously operated and maintained so that water is:

(1) safe in quality;

(2) clean and adequate in quantity; and

(3) chemically satisfactory for ordinary domestic consumption.

(b) The person responsible for the operation of a public water system shall take all measures that are necessary to

carry out the requirements of subsection (a) so as to protect the quality and quantity of the raw water supply from actual or threatened contamination. These measures include the relocation of the point of raw water collection to a site that is not contaminated or threatened by contamination.

(c) The failure to carry out a duty set forth in subsection (a) or (b) constitutes a violation subject to the penalties imposed under this chapter. Each day a violation occurs under this section constitutes a separate violation.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.16.

13-18-16-7

Sec. 7. A person responsible for the operation of public water systems shall submit:

(1) samples of water for analysis; and

(2) reports of operation pertaining to the sanitary quality, chemical quality, or adequacy of water supplied by those systems;

that the commissioner requests. The operator certified under IC 13-18-11 must verify under oath the reports of operation.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.17.

13-18-16-8

Sec. 8. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 establishing requirements for the issuance of permits to control public water systems, including the following:

(1) Permits for the construction, installation, or modification of facilities, equipment, or devices for any public water system.

(2) Permits for the operation of sources, facilities, equipment, or devices for any public water system.

(b) The board shall adopt a permit by rule for water main extensions (as defined in 327 IAC 8-3-1) to satisfy the permit requirement in section 1(a) of this chapter.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-1997, SEC.11; P.L.184-2002, SEC.18.

13-18-16-9

Sec. 9. Except as provided in IC 14-37, the department:

(1) is the state agency with responsibility concerning the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j) in effect January 1, 1988; and

(2) may take any action necessary to secure the benefits of that act for Indiana.

As added by P.L.1-1996, SEC.8.

13-18-16-10

Sec. 10. The department shall conduct a program of continuing surveillance and inspection of public water systems and technical assistance in connection with public water systems.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.19.

13-18-16-11

Sec. 11. The department shall encourage and advise units of local government in developing programs and facilities for public water systems.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.20.

13-18-16-12

Sec. 12. A person may not:

(1) install or contract for the construction of any public water system facilities, including water purification or treatment works; or

(2) make any material change in any public water system facilities;

until a permit has been issued by the commissioner.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-1997, SEC.12; P.L.184-2002, SEC.21.

13-18-16-13

Sec. 13. (a) The commissioner may investigate and determine whether any public water system is providing water that is impure and dangerous to public health. If the commissioner determines that the water supply:

(1) is impure and dangerous to public health; or

(2) is not sufficiently purified because of improper construction, inadequate size, or inefficient management or operation;

the commissioner may under IC 13-30-3-10 through IC 13-30-3-12 order that the water supply be made pure and safe to health.

(b) If the commissioner determines under subsection (a) that a water supply is impure and dangerous to public health because of inefficient management or operation of the public water system providing the water, the commissioner may order the person responsible for the public water system to appoint, not later than fifteen (15) days after the commissioner's determination, a competent person to take charge of and superintend the operation of the water system plant or works.

(c) The commissioner must approve the person appointed in response to the commissioner's order under subsection (b). However, the person responsible for the water system plant or works shall pay the salary of the person appointed.

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.22.

13-18-16-14

Sec. 14. (a) If a sewage treatment works or plant is not producing a reasonably pure effluent because of inefficient supervision or operation and has consequently:

(1) made any public water supply impure or dangerous to health;

(2) polluted any waters; or

(3) created a public nuisance;

the commissioner may under IC 13-30-3-10 through IC 13-30-3-12 order the person responsible for the sewage treatment works or plant to appoint, not later than fifteen (15) days after the commissioner's order, a competent person to take charge of and superintend the operation of the sewage treatment works or plant.

(b) The commissioner must approve the person appointed in response to the commissioner's order under subsection (a). However, the person responsible for the sewage treatment works or plant shall pay the salary of the person appointed.

As added by P.L.1-1996, SEC.8.

13-18-16-15

Sec. 15. The commissioner may enforce this chapter under IC 13-30-3.

As added by P.L.1-1996, SEC.8.

13-18-16-16

Sec. 16. (a) A nonprofit water utility may adopt a resolution approved by its board of directors under this section that reconstitutes the nonprofit water utility as a water authority to be named as provided in the resolution.

(b) A resolution adopted under this section must allow:

(1) the structure of the board of directors; and

(2) the rules governing the water authority;

to remain the same as those applicable to the nonprofit water utility.

(c) The water authority shall retain all its powers, privileges, rights, and exemptions as a nonprofit water utility under:

(1) its existing bylaws and articles; and

(2) all laws applicable to nonprofit water utilities and local water corporations, including powers granted under IC 32-24-4-1.

(d) Except as provided in subsection (g), a water authority constituted under this section is a political subdivision of the state.

(e) A copy of a resolution adopted under this section must be filed with the secretary of state. When the secretary of state receives a copy of a resolution under this subsection, the secretary of state shall dissolve the corporate status of the nonprofit water utility for purposes of state law.

(f) A water authority constituted under this section shall:

(1) remain obligated under any existing contracts or agreements; and

(2) remain obligated and assume the indebtedness;

of the nonprofit water utility.

(g) Notwithstanding any other law and subject to subsections (h) and (i), a water authority constituted under this

section is subject only to the laws applicable to nonprofit water utilities and local water corporations and is not subject to the following:

(1) IC 5-3.
(2) IC 5-4-1.
(3) IC 5-11.
(4) IC 5-13.
(5) IC 5-14-1.5.
(6) IC 5-14-3.
(7) IC 5-22.
(8) IC 36-1-8.
(9) IC 36-1-10.
(10) IC 36-1-10.5.
(11) IC 36-1-11.
(12) IC 36-1-12.
(13) IC 36-1-15.

(h) A water authority constituted under this section is subject to IC 8-1.5-3-8 for purposes of setting rates and charges.

(i) For each fiscal or calendar year of a water authority constituted under this section that ends after December 31, 2006, the water authority:

(1) shall:
(A) have an audit of its financial records performed by an independent certified public accounting firm; and
(B) keep the audit report on file at the water authority; and
(2) notwithstanding IC 5-11-1-9, is not subject to the following:
(A) Audit or examination by the state board of accounts.
(B) The examination guidelines and reporting requirements of the state board of accounts.

As added by P.L.104-1998, SEC.3. Amended by P.L.220-1999, SEC.3; P.L.2-2002, SEC.57; P.L.166-2006, SEC.1.

Chapter 17. Groundwater Protection

13-18-17

13-18-17-1 Repealed

13-18-17-1 (Repealed by P.L.131-2006, SEC.14.)

13-18-17-2

Sec. 2. (a) The department, with the assistance of other state agencies as requested, shall establish and maintain a registry of sites within Indiana at which contamination of groundwater has been detected.

(b) The information in the registry shall be made available to the public under IC 5-14-3 for inspection and copying during ordinary business hours.

(c) The department shall continuously supplement and clarify information in the registry as additional information on sites with groundwater contamination becomes available.

As added by P.L.1-1996, SEC.8.

13-18-17-3

Sec. 3. (a) The department, with the assistance of other state agencies as requested, shall establish and operate a groundwater quality clearinghouse within the department.

(b) The groundwater quality clearinghouse established under this section shall do all of the following:

(1) Receive complaints about groundwater contamination.
(2) Screen reports of groundwater pollution.
(3) Ensure that complaints and reports are adequately investigated.
(4) Provide information to the public about groundwater and groundwater pollution.
(5) Coordinate the management of groundwater quality data in Indiana.

As added by P.L.1-1996, SEC.8.

13-18-17-4

Sec. 4. (a) The department under IC 13-14-2-2:

(1) may investigate allegations of; and

(2) shall investigate confirmed incidents of;

contamination of groundwater that affect private water supply wells.

(b) The commissioner shall:

(1) issue an advisory to the users and owners of a water well found to be contaminated concerning the hazards to health posed by the contamination;

(2) take emergency action, including emergency action under IC 13-14-10, to reduce exposure to well water contaminants that pose a threat to human health; and

(3) as appropriate to safeguard human health, order abandonment of contaminated water wells.

As added by P.L.1-1996, SEC.8.

13-18-17-5

Sec. 5. (a) The board shall adopt rules under IC 4-22-2 establishing groundwater quality standards that include numeric and narrative criteria, a groundwater classification plan, and a method of determining where the groundwater quality standards must apply. The standards established under this subsection shall be used for the following purposes:

(1) To establish minimum compliance levels for groundwater quality monitoring at regulated facilities.

(2) To ban the discharge of effluents into potable groundwater.

(3) To establish health protection goals for untreated water in water supply wells.

(4) To establish concentration limits for contaminants in ambient groundwater.

(b) Except as provided in subsection (c) and subject to subsection (d), the following agencies shall adopt rules under IC 4-22-2 to apply the groundwater quality standards established under this section to activities regulated by the agencies:

(1) The department.

(2) The department of natural resources.

(3) The state department of health.

(4) The office of the state chemist.

(5) The division of fire and building safety.

(c) The executive board of the state department of health may not adopt rules to apply the nitrate and nitrite numeric criteria included in groundwater quality standards established in rules adopted by the board under subsection (a) to onsite sewage systems.

(d) Any rule adopted by the executive board of the state department of health is void to the extent that the rule applies the nitrate and nitrite numeric criteria included in groundwater quality standards established in rules adopted by the Indiana water pollution control board under subsection (a) to onsite sewage systems.

As added by P.L.1-1996, SEC.8. Amended by P.L.168-1999, SEC.1; P.L.24-2004, SEC.6; P.L.1-2006, SEC.201.

13-18-17-5.5

Sec. 5.5. (a) The department shall pay the costs of well water testing if:

(1) the testing is required by state law, federal law, or both; and

(2) the costs are incurred:

(A) after June 30, 2007;

(B) by a nontransient noncommunity water system operated by a nonprofit center for advocacy for abused and neglected children that does not provide overnight care on site; and

(C) for testing of water from a well operated by the entity as part of the system.

(b) To receive payment from the department for the costs described in subsection (a), an entity described in subsection (a)(2)(B) shall do the following:

(1) Conduct or cause to be conducted the testing required by state law, federal law, or both, by:

(A) submitting samples from the nontransient noncommunity water system to the state department of health for testing; and

(B) arranging for a private laboratory to perform any tests not performed by the state department of health.

(2) Submit to the department a request for reimbursement of the amount paid for the testing by the entity

described in subsection (a)(2)(B). A request under this subdivision must include the following:

(A) The name or type of testing conducted.

(B) The date of the testing.

(C) The name of each laboratory conducting the testing.

(D) The cost of each test conducted.

(E) A paid invoice from each laboratory conducting the testing, indicating:

(i) the amount paid by the entity described in subsection (a)(2)(B); and

(ii) the date paid.

(F) The name of the facility served by the nontransient noncommunity water system.

(c) The department shall establish any additional procedures necessary for an entity referred to in subsection (a)(2)(B) to apply to the department for payments under subsection (a).

As added by P.L.61-2007, SEC.3.

13-18-17-6

Sec. 6. (a) The board shall adopt rules under IC 4-22-2 to establish protection zones around community water system wells.

(b) The state agencies referred to in section 5(b) of this chapter may not permit activities within the zones established under subsection (a) that would violate the rules or interfere with the purposes of the rules.

(c) The department shall establish and operate a program of education and assistance to local officials in developing and managing well field protection zones.

(d) The rules adopted under subsection (a) or any zoning under IC 36-7 to establish protection zones around community water system wells may not restrict any activity by:

(1) an owner of land;

(2) a mineral owner; or

(3) a mineral leaseholder of record;

unless the owner or leaseholder is sent written notice of, and has an opportunity to be heard on, the establishment of the zone and the construction of the community public water system that caused the establishment of the zone.

(e) A person that requests a permit for construction of a community water system or establishment of a well field protection zone is responsible for any notice requirements the board establishes.

As added by P.L.1-1996, SEC.8. Amended by P.L.25-1997, SEC.13; P.L.184-2002, SEC.23.

13-18-17-7

Sec. 7. (a) The board shall adopt rules under IC 4-22-2 for the construction and monitoring of surface impoundments, including pits, ponds, and lagoons, used for the storage or treatment of nonhazardous waste and wastewater.

(b) The requirements of the rules adopted under this section must apply to all the state agencies referred to in section 5(b) of this chapter.

As added by P.L.1-1996, SEC.8.

Chapter 19. NPDES Permits

13-18-19

13-18-19-1

Sec. 1. When the department receives an application for an original National Pollutant Discharge Elimination System (NPDES) permit required for discharge into a stream, the department shall do the following:

(1) Send a list in writing, on a monthly basis, of original applications received during the month to the county surveyor of the affected county, not later than thirty (30) days after receipt of the application.

(2) Advise the applicant in writing that if the stream is a regulated drain under IC 36-9-27, the county drainage board must also review the application for approval under IC 36-9-27.

As added by P.L.1-1996, SEC.8.

13-18-19-2

Sec. 2. (a) The department may issue National Pollutant Discharge Elimination System (NPDES) permits

containing conditions that include alternate water quality based effluent limits that:

(1) are based on receiving water flows associated with, or characteristic of:

(A) wet weather events of various degrees of duration and intensity; or

(B) low flow stream conditions derived on a monthly, quarterly, or annual basis;

(2) provide increased mass limitations, concentration limitations, or mass and concentration limitations, for publicly owned treatment works (POTW) that:

(A) are capable of treating wastewater flows that exceed the design flow used to calculate normal water quality based effluent limitations; and

(B) as a result of the increased limitations, can reduce the volume of discharge of wastewater from plant bypasses or combined sewer overflows; or

(3) include any factor or combination of factors described in subdivisions (1) and (2).

(b) The department may require an applicant for an NPDES permit containing at least one (1) of the conditions described in subsection (a) to document, in a reasonable manner, stream conditions and local controls that are germane to a condition described in subsection (a) before the department issues the NPDES permit.

As added by P.L.140-2000, SEC.22.

Chapter 20. NPDES Permit Fees

13-18-20

13-18-20-1

Sec. 1. Notwithstanding NPDES fees established under IC 13-16-1, the annual fees contained in this chapter shall be assessed to each facility that has a NPDES permit.

As added by P.L.1-1996, SEC.8.

13-18-20-2

Sec. 2. For industrial permits, other than coal mine permits or stone quarry permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
	>100.0	$34,800

Annual flow fees are reduced by twenty percent (20%) for discharges that are comprised of greater than ninety percent (90%) of non-contact cooling water.

As added by P.L.1-1996, SEC.8.

13-18-20-3

Sec. 3. Each facility for which a coal mine operator files a notice of intent under the general coal mine permit rules adopted under IC 13-18-18 shall pay an annual fee of five hundred dollars ($500) instead of the following

individual permit fees. The annual fee must accompany the initial notice of intent and is due each year on the anniversary date of the date when the initial notice of intent was filed.

Outfalls	Fee
1 Outfall	$500
2-3 Outfalls	$750
4-6 Outfalls	$1,000
7-10 Outfalls	$1,500
11-20 Outfalls	$2,500
21-99 Outfalls	$3,500

As added by P.L.1-1996, SEC.8.

13-18-20-4

Sec. 4. For stone quarry permits, the annual fee is as follows:

Outfalls	Fee
1 Outfall	$750
2 Outfalls	$1,500
3 Outfalls	$2,000
4 Outfalls	$2,500

As added by P.L.1-1996, SEC.8.

13-18-20-5

Sec. 5. For municipal permits, the annual base fee per facility is:

(1) one thousand five hundred dollars ($1,500) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD	Fee
.001 - .05	$300
.051 - .1 $600	
.101 - .2 $2,000	
.201 - .3 $4,000	
.301 - .5 $5,000	
.501 - 1.0	$6,000
1.001 - 2.0	$7,000
2.001 - 5.0	$8,000
5.001 - 10.0	$10,000
10.001 - 15.0	$13,000
15.001 - 30.0	$15,000
30.001 - 50.0	$20,000
50.001 - 100.0	$22,000

As added by P.L.1-1996, SEC.8.

13-18-20-6

Sec. 6. For state permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD	Fee
.001 - .05	$240
.051 - .1	$360
.101 - .2	$840
.201 - .3	$1,200
.301 - .5	$1,680

.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
>	100.0	$34,800

As added by P.L.1-1996, SEC.8.

13-18-20-7

Sec. 7. For federal permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
>	100.0	$34,800

As added by P.L.1-1996, SEC.8.

13-18-20-8

Sec. 8. For semipublic permits, the annual base fee per facility is:

(1) seven hundred fifty dollars ($750) for a major permit; and

(2) two hundred dollars ($200) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Design Flow in MGD		Fee
.001 -	.05	$150
.051 -	.1	$300
.101 -	.2	$1,000
.201 -	.3	$2,000
.301 -	.5	$2,500
.501 -	1.0	$3,000
1.001 -	2.0	$3,500
2.001 -	5.0	$4,000
5.001 -	10.0	$5,000
10.001 -	15.0	$6,500
15.001 -	30.0	$7,500
30.001 -	50.0	$10,000
50.001 -	100.0	$11,000

As added by P.L.1-1996, SEC.8.

13-18-20-9

Sec. 9. For public water system permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility based on projected daily average flow in MGD as set forth in a facility NPDES permit:

Projected Daily Average Flow in MGD	Fee
.001 - .05	$240
.051 - .1	$360
.101 - .2	$840
.201 - .3	$1,200
.301 - .5	$1,680
.501 - 1.0	$2,060
1.001 - 2.0	$3,600
2.001 - 5.0	$5,400
5.001 - 10.0	$8,400
10.001 - 15.0	$12,000
15.001 - 30.0	$16,800
30.001 - 50.0	$22,800
50.001 - 100.0	$28,800
> 100.0	$34,800

As added by P.L.1-1996, SEC.8. Amended by P.L.184-2002, SEC.24.

13-18-20-10

Sec. 10. (a) For storm water permits for construction activity, a fee of one hundred dollars ($100) shall be submitted with a notice of intent (NOI).

(b) For storm water permits for industrial activity, the annual fee is one hundred dollars ($100).

As added by P.L.1-1996, SEC.8.

13-18-20-11

Sec. 11. For an industrial waste pretreatment permit, the annual fee is three hundred fifty dollars ($350).

As added by P.L.1-1996, SEC.8.

13-18-20-11.5

Sec. 11.5. (a) In addition to the fee under section 12 of this chapter, when a person files a notice of intent with the department concerning:

(1) an initial; or

(2) the renewal of a;

general NPDES permit for a CAFO, the person must remit a permit fee of one hundred dollars ($100) to the department.

(b) In addition to the fee under section 12 of this chapter, when a person files an application with the department concerning:

(1) an initial; or

(2) the renewal of an;

individual NPDES permit for a CAFO, the person must remit a permit fee of two hundred fifty dollars ($250) to the department.

(c) If a person is subject to a fee for a CAFO under this section, no other fee under this chapter applies to the CAFO other than the fee under section 12 of this chapter.

As added by P.L.24-2004, SEC.4.

13-18-20-12

Sec. 12. (a) When a person files an application with the department concerning a NPDES permit, including:
(1) an application for an initial permit;
(2) the renewal of a permit;
(3) the modification of a permit; or
(4) a variance from a permit;
the person must remit an application fee of fifty dollars ($50) to the department.
(b) If a person does not remit an application fee to the department, the department shall deny the person's application.
As added by P.L.1-1996, SEC.8.

13-18-20-13

Sec. 13. NPDES annual fees begin accruing January 1 of each year. The department shall assess the fees not later than January 15 of that year.
As added by P.L.1-1996, SEC.8.

13-18-20-14

Sec. 14. (a) In addition to the penalties described under:
(1) IC 13-30-4-1;
(2) IC 13-30-4-2; and
(3) IC 13-30-5-1;
if a person does not remit an annual NPDES fee or an installment established by the department under IC 13-16-2 to the department not more than sixty (60) days after the date the fee is assessed or not more than thirty (30) days after the date the installment is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the annual fee or ten percent (10%) of the installment, whichever is applicable.
(b) A delinquency charge, if applicable, is due and payable sixty (60) days after the date an annual NPDES fee is assessed or thirty (30) days after the date the installment is due.
As added by P.L.1-1996, SEC.8. Amended by P.L.130-1996, SEC.2; P.L.2-1997, SEC.41.

13-18-20-15

Sec. 15. If a person does not remit an annual NPDES fee or an installment established by the department under IC 13-16-2 and any applicable delinquency charge to the department not more than ninety (90) days after the date the fee is assessed or not more than sixty (60) days after the date the installment is due, the department may revoke the person's NPDES permit. However, before the department may revoke the permit:
(1) not earlier than sixty (60) days after the date the annual NPDES fee is assessed or not earlier than thirty (30) days after the installment is due; and
(2) not later than thirty (30) days before the department revokes the permit;
the department must deliver a written notice to the person that describes what fees and delinquency charges are due and indicates that the department may revoke the person's permit for nonpayment after thirty (30) days.
As added by P.L.1-1996, SEC.8. Amended by P.L.130-1996, SEC.3; P.L.2-1997, SEC.42.

13-18-20-16

Sec. 16. The fees and delinquency charges established under this chapter:
(1) are payable to the department; and
(2) shall be deposited in the environmental management permit operation fund established by IC 13-15-11-1.
As added by P.L.1-1996, SEC.8.

Chapter 20.5. Federal Safe Drinking Water Act

13-18-20.5

13-18-20.5-1

Sec. 1. The provisions in this chapter are to defray the costs of administering activities of the federal Safe Drinking Water Act.
As added by P.L.224-2003, SEC.134.

13-18-20.5-2

Sec. 2. For public water systems, the annual operation fees are as follows:

(1) For a community water system with more than four hundred (400) service connections, ninety-five cents ($0.95) per service connection.

(2) For a community water system with four hundred (400) or fewer service connections, the annual operation fee is three hundred fifty dollars ($350).

(3) For a nontransient noncommunity water system, the annual operation fees are as follows:

Number served	Fee
25 - 100	$150
101 - 250	$180
251 - 500	$240
501 - 1,000	$300
1,001 - 3,300	$450
3,301 - 5,000	$600
5,001 - 10,000	$1,500
more than 10,000	$3,000

(4) For a transient noncommunity water system, the annual operation fees are as follows:

Type of transient noncommunity water system	Fee
Groundwater	$100
Purchase	$ 50
Surface	$200

As added by P.L.224-2003, SEC.134.

13-18-20.5-3

Sec. 3. (a) Public water system annual operation fees begin accruing January 1 of each year.

(b) This subsection applies only to fees that are due in 2004. The department shall assess the public water system annual operation fees not earlier than July 1. Notwithstanding section 2 of this chapter, the annual fee assessed under this subsection is equal to one-third (1/3) of the fee required under section 2 of this chapter.

(c) This subsection applies only to fees that are due in 2005. The department shall assess the public water system annual operation fees not earlier than July 1. Not withstanding section 2 of this chapter, the annual fee assessed under this subsection is equal to two-thirds (2/3) of the fee required under section 2 of this chapter.

(d) Beginning in 2006 and in each year thereafter, the department shall assess public water system annual operation fees not later than January 15 of each year.

(e) A person must remit a public water system annual operation fee or an installment established under IC 13-16-2 to the department not more than thirty (30) days after the date the fee is assessed or on the date the installment is due.

As added by P.L.224-2003, SEC.134.

13-18-20.5-4

Sec. 4. (a) In addition to the penalties prescribed under:

(1) IC 13-30-4-1;

(2) IC 13-30-4-2; and

(3) IC 13-30-5-1;

if a person does not remit a public water system annual operation fee or installment of the fee under IC 13-16-2 to the department not later than sixty (60) days after the date the fee is assessed or not later than thirty (30) days after the date the installment is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the fee or ten percent (10%) of the installment, whichever applies.

(b) A delinquency charge assessed under this section is due and payable not later than sixty (60) days after the date a fee is assessed or not later than thirty (30) days after the date an installment of the fee is due under IC 13-16-2.

As added by P.L.224-2003, SEC.134.

13-18-20.5-5

Sec. 5. If a person does not remit a public water system annual operation fee or an installment of the fee under IC 13-16-2 to the department not later than ninety (90) days after the date the fee is assessed or not later than sixty (60) days after the date the installment is due, the department may pursue enforcement action under IC 13-30. However, before the department may pursue enforcement action, the department must:

(1) not earlier than sixty (60) days after the date the fee is assessed or not earlier than thirty (30) days after the installment is due; and

(2) not later than thirty (30) days before the department pursues enforcement action;

notify the person by United States mail of the fees and delinquency charges due. The notice must state that the department may pursue enforcement action for nonpayment after thirty (30) days from the date of the notice.
As added by P.L.224-2003, SEC.134.

13-18-20.5-6

Sec. 6. The fees and delinquency charges collected under this chapter:

(1) are payable to the department; and

(2) shall be deposited in the environmental management permit operation fund established by IC 13-15-11-1.

As added by P.L.224-2003, SEC.134.

Chapter 21. Drinking Water Revolving Loan Program

13-18-21

13-18-21-1

Sec. 1. The drinking water revolving loan program is established.
As added by P.L.126-1997, SEC.30.

13-18-21-2

Sec. 2. (a) The drinking water revolving loan fund is established to provide money for loans and other financial assistance under this chapter to or for the benefit of participants, including forgiveness of principal if allowed under federal law. The authority shall administer, hold, and manage the fund.

(b) The general assembly may appropriate money to the fund. Grants or gifts of money to the fund from the federal government or other sources and the proceeds of the sale of:

(1) gifts to the fund; and

(2) loans and other financial assistance, as provided in sections 10 through 14 of this chapter;

shall be deposited in the fund.

(c) Repayments of loans and other financial assistance, including interest, premiums, and penalties, shall be deposited in the fund.

(d) The authority shall invest the money in the fund that is:

(1) not currently needed to meet the obligations of the fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from these investments shall be deposited in the fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or part of the fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, an investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may allow disbursements by the trustee to:

(1) the department;

(2) the budget agency;

(3) a participant;

(4) the Indiana bond bank;

(5) the authority; or

(6) any person to which the authority or a participant is obligated, as provided in the trust agreement or indenture.

(f) Except as provided in the Safe Drinking Water Act, the cost of administering the fund and the program may be paid from the fund or from other money.

(g) All money accruing to the fund and money allotted to the state under 42 U.S.C. 300j-12 is appropriated continuously for the purposes specified in this chapter.

(h) Money in the fund does not revert to the state general fund at the end of a state fiscal year.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.11; P.L.235-2005, SEC.148.

13-18-21-3

Sec. 3. (a) Money in the fund may be used to do the following:

(1) Provide loans or other financial assistance to participants for the:

(A) planning;

(B) designing;

(C) construction;

(D) renovation;

(E) improvement;

(F) expansion; or

(G) any combination of clauses (A) through (F);

for public water systems that will facilitate compliance with national primary drinking water regulations applicable to public water systems under the Safe Drinking Water Act or otherwise significantly further the health protection objectives of the Safe Drinking Water Act and other activities necessary or convenient to complete these tasks.

(2) Pay the cost of administering the fund and the program.

(3) Conduct all other activities that are allowed by the Safe Drinking Water Act.

(b) The authority shall develop and implement a strategy to assist participants in acquiring and maintaining technical, managerial, and financial capacity as contemplated by 42 U.S.C. 300g-9. The authority shall ensure that all new community water systems and new nontransient, noncommunity water systems, as contemplated by the Safe Drinking Water Act, commencing operations after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each federal primary drinking water regulation in effect on the date operations commence.

(c) This chapter does not require the authority to provide a loan or other financial assistance to any participant that would cause any bonds or other obligations issued to finance the program to lose their exemption from federal income taxation.

(d) The authority may contract with the department, the budget agency, or any other entity or person for assistance in administering the program and the fund and in carrying out the purposes of this chapter.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.12; P.L.184-2002, SEC.25; P.L.235-2005, SEC.149.

13-18-21-4 Repealed

13-18-21-4 (Repealed by P.L.235-2005, SEC.212.)

13-18-21-5

Sec. 5. The authority shall do the following:

(1) Administer, hold, and manage all aspects of the fund, the program, the supplemental fund, and the supplemental program in accordance with this chapter.

(2) Be the point of contact in relations with the United States Environmental Protection Agency.

(3) Prepare and provide program and supplemental program information.

(4) Ensure that each proposed financial assistance agreement meets the environmental and technical aspects of the program or the supplemental program.

(5) Periodically inspect project design and construction to determine compliance with the following:

(A) This chapter.

(B) The Safe Drinking Water Act.

(C) Construction plans and specifications.

(6) Negotiate the negotiable aspects of each financial assistance agreement.

(7) Manage any payment system through which the state receives grant payments from the federal government

for the program and disbursements to the fund.
(8) Prepare annual reports concerning the following:
(A) The fund.
(B) The program.
(C) The supplemental fund.
(D) The supplemental program.
(9) Be the point of contact with participants and other interested persons in preparing and providing program information.
(10) Prepare or cause to be prepared each financial assistance agreement.
(11) Sign each financial assistance agreement.
(12) Conduct or cause to be conducted an evaluation as to the financial ability of each participant to pay the loan or other financial assistance and other obligations evidencing the loans or other financial assistance, if required to be paid, and comply with the financial assistance agreement.
As added by P.L.126-1997, SEC.30. Amended by P.L.28-2004, SEC.119; P.L.235-2005, SEC.150.

13-18-21-6 Repealed
13-18-21-6 (Repealed by P.L.235-2005, SEC.212.)

13-18-21-7
Sec. 7. The authority may do the following:
(1) Employ:
(A) fiscal consultants;
(B) engineers;
(C) bond counsel;
(D) special counsel;
(E) accountants; and
(F) any other consultants, employees, and agents;
that the authority considers necessary to carry out the purposes of this chapter.
(2) Fix and pay the compensation of persons employed in subdivision (1) from money:
(A) available in the fund and the supplemental fund; or
(B) otherwise made available for the program and the supplemental program.
(3) Enter into memoranda of understanding with the department and the budget agency concerning the administration and management of the fund, the program, the supplemental fund, and the supplemental program.
(4) Provide services to a participant in connection with a loan or other financial assistance, including advisory and other services.
As added by P.L.126-1997, SEC.30. Amended by P.L.235-2005, SEC.151.

13-18-21-8
Sec. 8. (a) The authority may:
(1) charge a fee for services provided; and
(2) charge a fee for costs and services incurred in the review or consideration of an application for a proposed loan or other financial assistance under this chapter to or for the benefit of a participant, regardless of whether the application is approved or rejected.
(b) A participant may pay fees charged under this section.
As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.14; P.L.235-2005, SEC.152.

13-18-21-9
Sec. 9. The authority shall use a priority ranking system in making loans or other financial assistance from the fund. The authority shall develop the priority ranking system consistent with federal primary drinking water regulations and health protection objectives of the Safe Drinking Water Act.
As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.15; P.L.235-2005, SEC.153.

13-18-21-10

Sec. 10. The authority may make loans or provide other financial assistance from the fund to or for the benefit of a participant under the following conditions:

(1) The loan or other financial assistance must be used:

(A) for:

(i) planning, designing, constructing, renovating, improving, and expanding public water systems;

(ii) any purpose eligible for assistance under the Safe Drinking Water Act; and

(iii) for other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish guaranties, reserves or sinking funds, including guaranties, reserves, or sinking funds to secure and pay, in whole or in part, loans or other financial assistance made from sources other than the fund (including financial institutions) for a purpose permitted by clause (A); or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan or other financial assistance during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the loan, other financial assistance, or the administration of the fund and the program.

(2) The authority shall establish the terms and conditions that the authority considers necessary or convenient to:

(A) make loans; or

(B) provide other financial assistance under this chapter.

(3) Notwithstanding any other law, the authority may establish and implement requirements that:

(A) apply to loans and other financial assistance to be made to participants that are not political subdivisions; and

(B) are different from, or in addition to, requirements that apply to loans and financial assistance made to political subdivisions.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.16; P.L.235-2005, SEC.154.

13-18-21-11

Sec. 11. A loan or other financial assistance from the fund must be accompanied by the following:

(1) All papers and opinions required by the authority.

(2) Unless otherwise provided by the guidelines of the authority, the following:

(A) An approving opinion of nationally recognized bond counsel.

(B) A certification and guarantee of signatures.

(C) A certification that, as of the date of the loan or other financial assistance:

(i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or

(ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.

(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.

As added by P.L.126-1997, SEC.30. Amended by P.L.235-2005, SEC.155.

13-18-21-12

Sec. 12. A participant receiving a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the participant.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.17.

13-18-21-13

Sec. 13. The authority may sell loans or evidence of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund periodically at any price and on terms

acceptable to the authority. Proceeds of sales under this section shall be deposited in the fund.
As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.18; P.L.235-2005, SEC.156.

13-18-21-14

Sec. 14. (a) The authority may pledge loans or evidence of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund to secure:

(1) other loans or financial assistance from the fund to or for the benefit of participants; or

(2) other loans or financial assistance from the supplemental fund to or for the benefit of participants;

to the extent allowed by the Safe Drinking Water Act.

(b) The authority must approve the terms of a pledge under this section.

(c) Notwithstanding any other law, a pledge of property made by the department and the budget agency under this section, or a pledge of property made by the authority under this section, is binding from the time the pledge is made. Any pledge of property made by the department and the budget agency under this section is binding on the authority. Revenues, other money, or other property pledged and received are immediately subject to the lien of the pledge without any other act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:

(1) the department;

(2) the budget agency;

(3) the fund; or

(4) the authority;

regardless of whether the parties have notice of any lien.

(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the authority.

(e) Action taken to:

(1) enforce a pledge under this section; and

(2) realize the benefits of the pledge;

is limited to the property pledged.

(f) A pledge under this section does not create a liability or indebtedness of the state.
As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.19; P.L.235-2005, SEC.157.

13-18-21-15

Sec. 15. (a) The authority shall establish the interest rate or parameters for establishing the interest rate on each loan made under this chapter, including parameters for establishing the amount of interest subsidies.

(b) The authority, in setting the interest rate or parameters for establishing the interest rate on each loan, may take into account the following:

(1) Credit risk.

(2) Environmental, water quality, and health protection.

(3) Affordability.

(4) Other fiscal factors the authority considers relevant, including the program's cost of funds and whether the financial assistance provided to a particular participant is taxable or tax exempt under federal law.

Based on the factors set forth in subdivisions (1) through (4), more than one (1) interest rate may be established and used for loans or other financial assistance to different participants or for different loans or other financial assistance to the same participants.
As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.20; P.L.235-2005, SEC.158.

13-18-21-16

Sec. 16. The authority shall require a participant receiving a loan or other financial assistance under this chapter to establish under applicable law and maintain sufficient user charges or other charges, fees, taxes, special assessments, or revenues available to the participant to:

(1) operate and maintain the public water system; and

(2) pay the obligations of the public water system.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.21; P.L.235-2005, SEC.159.

13-18-21-17

Sec. 17. (a) Notwithstanding any other law and if provided in a financial assistance agreement, a state department or state agency, including the treasurer of state, that is the custodian of money payable to a participant, other than money in payment for goods or services provided by the participant, may withhold payment of money from that participant and pay over the money to the authority or the Indiana bond bank, as directed by the chairman of the authority, for the purpose of curing a default.

(b) The withholding of payment from the participant and payment to:

(1) the authority; or

(2) the Indiana bond bank;

as applicable, may not adversely affect the validity of the loan or other financial assistance.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.22; P.L.235-2005, SEC.160.

13-18-21-18

Sec. 18. The authority may adopt guidelines, without complying with IC 4-22-2, to govern the administration of this chapter.

As added by P.L.126-1997, SEC.30. Amended by P.L.235-2005, SEC.161.

13-18-21-19

Sec. 19. (a) Notwithstanding any other law, a political subdivision may borrow money under this chapter by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision shall observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of bonds or other available money at the time the notes are due. The notes must be issued under a resolution or ordinance and the proceeds must be used to carry out the purposes specified in this chapter.

(c) A political subdivision that issues notes under subsection (b) may renew or extend the notes periodically on terms agreed to with the authority, and the authority may purchase and sell the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including any renewals or extensions, must mature:

(1) in the amounts; and

(2) at the times not exceeding four (4) years from the date of original issuance;

that are agreed to by the political subdivision and the authority.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue notes and sell the notes to the authority, and the political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of the notes. The notes are:

(1) valid and binding obligations of the political subdivision;

(2) enforceable in accordance with the terms of the notes; and

(3) payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes.

(f) If the political subdivision issues bonds, all or part of the proceeds of which will be used to pay notes issued under subsection (b), the:

(1) provisions of this section; or

(2) actual issuance by a political subdivision of notes under subsection (b);

do not relieve the political subdivision of the obligation to comply with the statutory requirements for the issuance of bonds.

As added by P.L.126-1997, SEC.30. Amended by P.L.235-2005, SEC.162.

13-18-21-20

Sec. 20. (a) As an alternative to making loans or providing other financial assistance to participants, the authority may use the money in the fund to provide a leveraged loan program and other financial assistance programs allowed by the Safe Drinking Water Act to or for the benefit of participants, including using money in the fund or a

supplemental fund, including the supplemental fund established by section 22 of this chapter, to enhance the obligations of participants issued for the purposes of this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 4-4-11 or another statute or a trust agreement or indenture as contemplated by IC 13-18-21-2(e); or

(ii) an account established within a fund described in item (i); or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or costs for obligations of a participant or for bonds issued by the Indiana bond bank or the authority if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or part of:

(A) obligations issued by participants; or

(B) bonds issued by the Indiana bond bank or the authority.

(b) The authority may enter into any agreements with the Indiana bond bank or participants to carry out the purposes specified in this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund. A guarantee under subsection (a)(3) does not create a liability or indebtedness of the state.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.23; P.L.235-2005, SEC.163.

13-18-21-21

Sec. 21. The supplemental drinking water and wastewater assistance program is established.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.24.

13-18-21-22

Sec. 22. (a) The supplemental drinking water and wastewater assistance fund is established to provide money for grants, loans, and other financial assistance to or for the benefit of participants for the purposes described in section 23 of this chapter.

(b) The general assembly may appropriate money to the supplemental fund. Grants or gifts of money to the supplemental fund and proceeds of the sale of:

(1) gifts to the supplemental fund; and

(2) loans and other financial assistance, as provided in sections 25 through 29 of this chapter;

shall be deposited in the supplemental fund.

(c) Repayments of loans and other financial assistance from the supplemental fund, including interest, premiums, and penalties, shall be deposited in the supplemental fund.

(d) The authority shall invest the money in the supplemental fund that is:

(1) not currently needed to meet the obligations of the supplemental fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from the investments shall be deposited in the supplemental fund.

(e) As an alternative to the investment provided for in subsection (d), the authority may invest or cause to be invested all or a part of the supplemental fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with one (1) or more trust agreements or indentures. A trust agreement or indenture may permit disbursements by the trustee to the authority, the department, the budget agency, a participant, or any other person as provided in the trust agreement or indenture.

(f) The cost of administering the supplemental fund may be paid from money in the supplemental fund.

(g) All money accruing to the supplemental fund is appropriated continuously for the purposes specified in this chapter.

(h) Money in the supplemental fund does not revert to the state general fund at the end of a state fiscal year.

(i) The authority shall administer, hold, and manage the supplemental fund.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.25; P.L.235-2005, SEC.164.

13-18-21-22.3

Sec. 22.3. (a) On July 1, 1999, the treasurer of state shall transfer the balance remaining in the supplemental wastewater assistance fund on June 30, 1999, to the supplemental drinking water and wastewater assistance fund established by IC 13-18-21-22, as amended by P.L.132-1999.

(b) On July 1, 1999, all liabilities of the supplemental wastewater assistance fund become liabilities of the supplemental drinking water and wastewater assistance fund established by IC 13-18-21-22, as amended by P.L.132-1999.

As added by P.L.220-2011, SEC.282.

13-18-21-23

Sec. 23. Money in the supplemental fund may be used to do the following:

(1) Provide grants, loans, or other financial assistance to or for the benefit of participants for the planning, designing, acquisition, construction, renovation, improvement, or expansion of public water systems and other activities necessary or convenient to complete these tasks, whether or not those other activities are permitted by the Clean Water Act or the Safe Drinking Water Act.

(2) Provide grants, loans, or other financial assistance to or for the benefit of participants for the planning, designing, acquisition, construction, renovation, improvement, or expansion of wastewater or storm water collection and treatment systems and other activities necessary or convenient to complete these tasks, whether or not those other activities are permitted by the Clean Water Act or the Safe Drinking Water Act.

(3) Provide grants to political subdivisions for tasks associated with the development and preparation of:

(A) long term control plans;

(B) use attainability analyses; and

(C) storm water management programs.

(4) Pay the cost of administering the supplemental fund and the supplemental program.

(5) Conduct all other activities that are permitted by the Clean Water Act or the Safe Drinking Water Act.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.26; P.L.55-2001, SEC.2; P.L.235-2005, SEC.165.

13-18-21-24

Sec. 24. The authority shall develop criteria to make or provide grants, loans, or other financial assistance from the supplemental fund.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.27; P.L.235-2005, SEC.166.

13-18-21-25

Sec. 25. (a) The authority may make grants or loans or provide other financial assistance from the supplemental fund for the benefit of a participant under the following conditions:

(1) A grant, loan, or other financial assistance may be used:

(A) for planning, designing, acquiring, constructing, renovating, improving, or expanding public water systems, and other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish guaranties, reserves, or sinking funds, including guaranties, reserves, or sinking funds to secure and pay, in whole or in part, loans or other financial assistance made from sources other than the fund (including financial institutions) for a purpose permitted by clause (A); or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the grant, loan, or other financial assistance or the administration of the supplemental fund or the supplemental program.

(2) The authority must establish the terms and conditions that the authority considers necessary or convenient to make grants or loans or provide other financial assistance under this chapter.

(b) In addition to its powers under subsection (a), the authority may also make grants or loans or provide other

financial assistance from the supplemental fund to or for the benefit of a participant under the following conditions:

(1) A grant, loan, or other financial assistance may be used:

(A) for planning, designing, acquiring, constructing, renovating, improving, or expanding wastewater or storm water collection and treatment systems, and other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish guaranties, reserves, or sinking funds, including guaranties, reserves, or sinking funds to secure and pay, in whole or in part, loans or other financial assistance made from sources other than the fund (including financial institutions) for a purpose permitted by clause (A); or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the grant, loan, or other financial assistance or the administration of the supplemental fund or the supplemental program.

(2) A grant may be used for tasks associated with the development and preparation of:

(A) long term control plans;

(B) use attainability analyses; and

(C) storm water management programs.

(3) The authority must establish the terms and conditions that the authority considers necessary or convenient to make grants or loans or provide other financial assistance under this chapter.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.28; P.L.55-2001, SEC.3; P.L.235-2005, SEC.167.

13-18-21-26

Sec. 26. (a) A grant, loan, or other financial assistance from the supplemental fund must be accompanied by all papers and opinions required by the authority.

(b) The authority may require that a loan or other financial assistance be accompanied by the following:

(1) A certification and guarantee of signatures.

(2) A certification that, as of the date of the loan or other financial assistance, no litigation is pending challenging the validity of or entry into:

(A) the grant, loan, or other financial assistance; or

(B) any security for the loan or other financial assistance.

(3) Any other certifications, agreements, security, or requirements that the authority requests.

(4) An approving opinion of nationally recognized bond counsel.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.29; P.L.235-2005, SEC.168.

13-18-21-27

Sec. 27. A participant receiving a grant, loan, or other financial assistance from the supplemental fund shall enter into a financial assistance agreement. A financial assistance agreement under this section is a valid, binding, and enforceable agreement of the participant.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.30.

13-18-21-28

Sec. 28. (a) The authority may sell loans or evidences of other financial assistance and other obligations evidencing the loans or other financial assistance from the supplemental fund:

(1) periodically;

(2) at any price; and

(3) on terms acceptable to the authority.

(b) Proceeds of sales under this section shall be deposited in the supplemental fund, the wastewater revolving loan fund, or the fund at the direction of the authority.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.31; P.L.235-2005, SEC.169.

13-18-21-29

Sec. 29. (a) The authority may pledge:

(1) loans or evidences of other financial assistance; and

(2) other obligations evidencing the loans or other financial assistance;

from the supplemental fund to secure other loans or financial assistance from the fund, the wastewater revolving loan fund, or the supplemental fund for the benefit of participants.

(b) The terms of a pledge under this section must be acceptable to the authority.

(c) Notwithstanding any other law, a pledge of property made by the authority under this section is binding from the time the pledge is made. Revenues, other money, or other property pledged and thereafter received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:

(1) the authority;

(2) the budget agency; or

(3) the supplemental fund;

regardless of whether the parties have notice of any lien.

(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the authority.

(e) Action taken to:

(1) enforce a pledge under this section; and

(2) realize the benefits of the pledge;

is limited to the property pledged.

(f) A pledge under this section does not create a liability or indebtedness of the state.

As added by P.L.126-1997, SEC.30. Amended by P.L.132-1999, SEC.32; P.L.235-2005, SEC.170.

13-18-21-30

Sec. 30. Notwithstanding any other law, and to the extent permitted by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and the federal Clean Water Act, money in the fund, together with loan repayments to be deposited in the fund, may be used to secure a leveraged loan program or other financial assistance programs established in connection with the wastewater revolving loan fund established by IC 13-18-13-2.

As added by P.L.104-1998, SEC.4.

13-18-21-31 Version a

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 31. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance from the fund commits a Class D felony.

As added by P.L.137-2007, SEC.15.

13-18-21-31 Version b

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 31. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance from the fund commits a Level 6 felony.

As added by P.L.137-2007, SEC.15. Amended by P.L.158-2013, SEC.186.

Chapter 22. State Regulated Wetlands

13-18-22

13-18-22-1

Sec. 1. (a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.

(b) A permit is not required for the following wetland activities:

(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including:

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

As added by P.L.282-2003, SEC.38.

13-18-22-2

Sec. 2. (a) The board may adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2005, to implement the part of the definition of Class I wetland under IC 13-11-2-25.8(a)(1)(B).

(b) Before the adoption of rules by the board under subsection (a), the department shall determine the class of a wetland in a manner consistent with the definitions of Class I, II, and III wetlands in IC 13-11-2-25.8.

(c) The classification of an isolated wetland that is based on the level of disturbance of the wetland by human activity or development may be improved to a higher numeric class if an action is taken to restore the isolated wetland, in full or in part, to the conditions that existed on the isolated wetland before the disturbance occurred.

As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.5; P.L.2-2005, SEC.55.

13-18-22-3

Sec. 3. (a) An individual permit is required to authorize a wetland activity in a Class III wetland.

(b) Except as provided in section 4(a) of this chapter, an individual permit is required to authorize a wetland activity in a Class II wetland.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than June 1, 2005, to govern the issuance of individual permits by the department under subsections (a) and (b).

As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.6.

13-18-22-4

Sec. 4. (a) Wetland activities with minimal impact in Class I wetlands and Class II wetlands, including the activities analogous to those allowed under the nationwide permit program (as published in 67 Fed. Reg. 2077-2089 (2002)), shall be authorized by a general permit rule.

(b) Wetland activities in Class I wetlands shall be authorized by a general permit rule.

(c) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2005, to establish and

implement the general permits described in subsections (a) and (b).
As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.7.

13-18-22-5

Sec. 5. (a) The rules adopted under section 3 of this chapter:

(1) must require that the applicant demonstrate, as a prerequisite to the issuance of the permit, that wetland activity:

(A) is:

(i) without reasonable alternative; and

(ii) reasonably necessary or appropriate;

to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; and

(B) for a Class III wetland, is without practical alternative and will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland;

(2) except as provided in subsection (c), must establish that compensatory mitigation will be provided as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the permits; and

(3) may prescribe additional conditions that are reasonable and necessary to carry out the purposes of this chapter.

(b) The rules adopted under section 4 of this chapter must require, as a prerequisite to the applicability of the general permit by rule to a specific wetland activity, that the person proposing the discharge submit to the department a notice of intent to be covered by the general permit by rule that:

(1) identifies the wetlands to be affected by the wetland activity; and

(2) except as provided in subsection (c), provides a compensatory mitigation plan as set forth in section 6 of this chapter to reasonably offset the loss of wetlands allowed by the general permit.

(c) Under subsections (a) and (b), the rules adopted under sections 3 and 4 of this chapter may provide for exceptions to compensatory mitigation in specific, limited circumstances.

(d) For purposes of subsection (a)(1)(A):

(1) a resolution of the executive of the county or municipality in which the wetland is located; or

(2) a permit or other approval from a local government entity having authority over the proposed use of the property on which the wetland is located;

that includes a specific finding that the wetland activity is as described in subsection (a)(1)(A) is considered conclusive evidence of that fact.
As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.8.

13-18-22-6

Sec. 6. (a) Except as otherwise specified in subsections (b) and (c), compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the

characteristics of a Class I, Class II, or Class III wetland, as appropriate, to the replacement wetland as if it were an isolated wetland.

(d) The off-site location of compensatory mitigation must be within:

(1) the same eight (8) digit U.S. Geological Service hydrologic unit code; or

(2) the same county;

as the isolated wetlands subject to the authorized wetland activity.

(e) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

As added by P.L.282-2003, SEC.38. Amended by P.L.241-2005, SEC.4.

13-18-22-7

Sec. 7. (a) The department shall:

(1) administer the permit programs established by this chapter; and

(2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the rules issued by the board under this chapter.

(b) Before the adoption of rules by the board under this chapter, the department shall:

(1) issue individual permits under this chapter consistent with the general purpose of this chapter; and

(2) for wetland activities in Class I wetlands, issue permits under this subsection:

(A) that are simple, streamlined, and uniform;

(B) that do not require development of site specific provisions; and

(C) promptly upon submission by the applicant to the department of a notice of registration for a permit.

(c) Not later than June 1, 2004, the department shall make available to the public:

(1) a form for use in applying for a permit under subsection (b)(1); and

(2) a form for use in submitting a notice of registration for a permit to undertake a wetland activity in a Class I wetland under subsection (b)(2).

As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.9.

13-18-22-8

Sec. 8. (a) Subject to subsection (f), the department shall make a decision to issue or deny an individual permit under section 3 or 7(b)(1) of this chapter not later than one hundred twenty (120) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this subsection or subsection (f), a permit is considered to have been issued by the department in accordance with the application.

(b) A general permit under section 4 of this chapter becomes effective with respect to a proposed wetland activity that is within the scope of the general permit on the thirty-first day after the department receives a notice of intent from the person proposing the wetland activity that the wetland activity be authorized under the general permit.

(c) Except as provided in subsection (d), a permit to undertake a wetland activity in a Class I wetland under section 7(b)(2) of this chapter is considered to have been issued to an applicant on the thirty-first day after the department receives a notice of registration submitted under section 7(b)(2) of this chapter if the department has not previously authorized the wetland activity.

(d) The department may deny a registration for a permit for cause under subsection (c) before the period specified in subsection (c) expires.

(e) The department must support a denial under subsection (a) or (d) by a written statement of reasons.

(f) The department may notify the applicant that the completed application referred to in subsection (a) is deficient. If the department fails to give notice to the applicant under this subsection not later than fifteen (15) days after the department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this subsection, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

(1) one hundred twenty (120) days; minus

(2) the number of days the department held the initial application before giving a notice of deficiency under this subsection.

As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.10.

13-18-22-9

Sec. 9. (a) The owner of a Class III wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the wetland is a Class III wetland and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an outstanding state protected wetland.

(b) A rule adopted by the board under subsection (a) must specifically identify each wetland to be designated as an outstanding state protected wetland, including:

(1) the wetland type;

(2) a legal description of the wetland as delineated; and

(3) other information considered necessary by the board.

(c) The owner of a Class III wetland designated as an outstanding state protected wetland under this section shall:

(1) not cause or allow any anthropogenic activities on the property on which the wetland is located that may adversely affect or degrade the wetland, except for activities with minimal and short term effect, such as construction of an observation pathway or installation of an underground pipeline that are:

(A) authorized by rules adopted by the board; or

(B) approved by the department in the absence of rules under clause (A); and

(2) provide for the long term assurance of the protections described in subdivision (1) through:

(A) a restrictive covenant that is recorded with respect to the property on which the delineated wetland is located; or

(B) a grant of title to or a conservation easement in the property on which the delineated wetland is located to:

(i) the department of natural resources; or

(ii) a nonprofit entity with demonstrated ability in the maintenance and protection of wetlands.

(d) Notwithstanding the designation of a wetland under this section by the board as an outstanding state protected wetland, the owner of a Class III wetland may petition the board for rescission of the designation if the owner can demonstrate important social or economic needs that warrant adverse effects to the wetland. In its review of the petition, the board shall give great weight to a resolution of the legislative body of the municipality or county in which the Class III wetland is located describing important social or economic needs, the accomplishment of which would necessitate adverse effects to the wetland.

As added by P.L.282-2003, SEC.38.

13-18-22-10

Sec. 10. (a) Except as provided in subsection (b), the department has no authority over the:

(1) filling;

(2) draining; or

(3) elimination by other means;

before January 1, 2004, of a wetland that would have been an isolated wetland.

(b) The department has authority over wetland activities in an isolated wetland, including an exempt isolated wetland, that are subject to the provisions of:

(1) a National Pollutant Discharge Elimination System (NPDES) permit issued by the department under 33 U.S.C. 1342;

(2) an agreed order under IC 13-30-3-3, consent order, or consent decree executed by the department and the regulated party;

(3) an order issued under IC 13-30-3-4; or

(4) a judgment of a court enforcing or upholding an enforcement order or decree described in subdivision (2) or (3);

that became effective before January 1, 2004.

As added by P.L.282-2003, SEC.38. Amended by P.L.52-2004, SEC.11.

13-18-22-11

Sec. 11. When land referred to in IC 13-11-2-74.5(a)(7) is no longer subject to United States Department of Agriculture wetland conservation rules:

(1) isolated wetlands located on the land are subject to this chapter; and

(2) any past wetland activities in the isolated wetlands located on the land become subject to this chapter, unless the wetland activities were in compliance with United States Department of Agriculture wetland conservation rules.

As added by P.L.282-2003, SEC.38.

Chapter 23. Department Action on Certification Applications

13-18-23

13-18-23-1

Sec. 1. (a) The department shall:

(1) make a final determination on an application for a certification under Section 401 of the Clean Water Act not later than one hundred twenty (120) days after its receipt of a complete application; and

(2) include in its notice of the final determination to the applicant a statement of reasons for the final determination.

(b) A failure by the department to act within the period specified in subsection (a)(1) constitutes a waiver of the certification.

As added by P.L.282-2003, SEC.39.

Chapter 1. Purposes of Regional Districts

13-26-1

13-26-1-1

Sec. 1. Any area may be established as a regional water, sewage, or solid waste district under this article for one (1) or more of the following purposes:

(1) To provide a water supply for domestic, industrial, and public use to users inside and outside the district.

(2) To provide for the collection, treatment, and disposal of sewage inside and outside the district.

(3) To provide for the collection, treatment, and disposal of solid waste and refuse inside and outside the district.

As added by P.L.1-1996, SEC.16.

13-26-1-2

Sec. 2. (a) At any time after the creation of a district, the district, after motion by the district's board, may file a petition with the department requesting the approval of the department permitting the district to:

(1) increase or add to the district's purposes or modify the district plan approved by the department;

(2) abandon or surrender all or part of a purpose or plan approved by the department; or

(3) subject to IC 13-26-4-1, increase the number of persons serving on the board of trustees.

(b) The department may:

(1) approve;

(2) modify and approve; or

(3) reject;

a request received under this section.

As added by P.L.1-1996, SEC.16. Amended by P.L.101-2003, SEC.1.

Chapter 2. Establishment of Regional Districts

13-26-2

13-26-2-1

Sec. 1. The establishment of a regional district may be initiated only by a petition filed with the department. A copy of the petition shall also be filed not later than ten (10) days after the filing with the department in the office of the executive of each governmental entity having territory within the proposed district.

As added by P.L.1-1996, SEC.16. Amended by P.L.133-1997, SEC.1.

13-26-2-2

Sec. 2. (a) The petition may be filed by any representative of one (1) or more eligible entities involved after being authorized by the fiscal body of the petitioning eligible entity or entities included in the plan of the proposed district.

(b) If the proposed district includes:

(1) a state park or recreational area, forest land, or a reservoir; or

(2) land owned, leased, or controlled by the department of natural resources;

the petition may be joined or filed by any representative of that department after having been authorized by the natural resources commission, with the approval of the executive of the county containing the territory of the district.

As added by P.L.1-1996, SEC.16. Amended by P.L.133-1997, SEC.2.

13-26-2-2.5

Sec. 2.5. (a) Before a representative may file a petition to establish a district, the representative must provide notice to all owners of property to be served by the proposed district that is the subject of the petition.

(b) Notice under subsection (a) must be provided as follows:

(1) Beginning at least thirty (30) days before the date on which a public meeting under subsection (c) is scheduled, by publication of notice one (1) time each week for three (3) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, in the proposed district. If there is only one (1) newspaper of general circulation in a county, a single publication each week for three (3) consecutive weeks satisfies the requirement of this subdivision.

(2) Beginning at least fourteen (14) days before the date on which a public meeting under subsection (c) is scheduled, by:

(A) first class United States mail, postage prepaid, mailed to each freeholder within the proposed district; and

(B) broadcasting at least three (3) public service announcements each day for fourteen (14) days on at least two (2) radio stations operating in each of the counties, in whole or in part, in the proposed district.

(c) After providing notice under subsection (b), a representative that seeks to file a petition to establish a district must conduct a public meeting to discuss and receive comments on the proposed district.

(d) A representative may not file a petition to establish a district:

(1) more than one hundred eighty (180) or less than sixty (60) days after providing notice under subsection (b); or

(2) less than thirty (30) days after a meeting held under subsection (c).

As added by P.L.97-2012, SEC.4. Amended by P.L.292-2013, SEC.4.

13-26-2-3

Sec. 3. A petition to establish a district under this chapter must state the following:

(1) The proposed name of the district.

(2) The place in which the district's principal office is to be located.

(3) The following information:

(A) The need for the proposed district.

(B) The purpose to be accomplished.

(C) How the district will be conducive to the public health, safety, convenience, or welfare, including a specific statement of how:

(i) water supply, for a water district;

(ii) sewage collection, disposal, and treatment, for a sewage district; or

(iii) solid waste disposal, recovery, or treatment, for a solid waste district;

is currently being provided.

(D) Whether there is any outstanding indebtedness for the purpose proposed in the proposed district, including a statement as to how the current situation creates or adds to pollution or health hazards or impedes development in the area.

(4) An accurate description of the territory to be included in the district, which does not have to be given by metes and bounds or by legal subdivisions. The territory does not have to be contiguous, but the territory must

be so situated that the public health, safety, convenience, or welfare will be promoted by the establishment as a single district of the territory described.

(5) The petitioner's recommendations on:

(A) the manner of selection;

(B) the number; and

(C) the term, not exceeding four (4) years;

of the members of the board of trustees.

(6) The plan for financing the cost of the operations of the district until the district is in receipt of revenue from the district's operations or proceeds from the sale of bonds.

(7) Estimates of the following:

(A) The costs of accomplishing the purpose of the district.

(B) The costs of operating and maintaining the works.

(C) The sources of the funding of these costs.

(D) The rates and charges that will be required.

(E) The median income for households in the proposed district based on the most recent federal decennial census.

(8) A summary of alternatives to creating the district.

As added by P.L.1-1996, SEC.16. Amended by P.L.97-2012, SEC.5.

13-26-2-3.5

Sec. 3.5. Not more than one hundred eighty (180) days after the date a petition is filed with the department under section 1 of this chapter to establish a regional district, if another petition is filed with the department that is signed by a majority of the owners of property that would be served by the proposed district and indicating that the owners of the property are opposed to the establishment of the proposed district, the department shall declare that the petition filed under section 1 of this chapter to establish the regional district:

(1) is void; and

(2) is not a sufficient petition for purposes of section 5 of this chapter.

As added by P.L.292-2013, SEC.5.

13-26-2-4

Sec. 4. Upon the filing of a petition to establish a district under this chapter, the department shall determine whether the petition complies with the requirements of this chapter as to form and content. The department:

(1) may not declare a petition void because of alleged defects; and

(2) may, in subsequent proceedings at any time, permit the petition to be amended in form or substance.

As added by P.L.1-1996, SEC.16.

13-26-2-5

Sec. 5. Upon the determination of the department that a sufficient petition has been filed in accordance with this chapter, the commissioner shall appoint a hearing officer, who does not have to be a state employee. If the hearing officer is not a full-time state employee, the hearing officer is entitled to be paid reasonable:

(1) expenses; and

(2) per diem;

for each day or part of a day in actual attendance at a meeting or hearing or in performance of duties. The reasonable per diem and expenses are valid claims against the department.

As added by P.L.1-1996, SEC.16.

13-26-2-6

Sec. 6. (a) Except as provided in section 9 of this chapter, the hearing officer shall fix a time and place inside or within ten (10) miles of the proposed district for the hearing on any matter for which a hearing is authorized under this chapter.

(b) The hearing officer shall make a reasonable effort to provide notice of the hearing as follows:

(1) By publication of notice two (2) times each week for two (2) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, in the district. The publication of notice must, at a minimum, include a legal notice and a prominently displayed three (3) inches by five (5)

inches advertisement.

(2) By United States mail sent at least two (2) weeks before the hearing to the following:

(A) The fiscal and executive bodies of each county with territory in the proposed district.

(B) The executive of all other eligible entities with territory in the proposed district.

(C) The state and any of its agencies owning, controlling, or leasing land within the proposed district, excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation.

(D) Each sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 respecting territory in the proposed district.

(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each freeholder within the proposed district.

(4) By including the date on which the hearing is to be held and a brief description of:

(A) the subject of the petition, including a description of the general boundaries of the area to be included in the proposed district; and

(B) the locations where copies of the petition are available for viewing.

As added by P.L.1-1996, SEC.16. Amended by P.L.106-2000, SEC.1; P.L.1-2001, SEC.22; P.L.263-2013, SEC.7.

13-26-2-7

Sec. 7. A person or an eligible entity that resides or lies in or partially resides or lies in an area affected by the establishment of a district:

(1) may, on or before the date set for the cause to be heard, file a written objection to the granting of the requests made in the petition; and

(2) may be heard at the hearing.

As added by P.L.1-1996, SEC.16.

13-26-2-8

Sec. 8. (a) After the hearing on the petition for the establishment of the proposed district, which may be adjourned periodically, the hearing officer shall make findings on the petition and other relevant facts and recommendations as to whether:

(1) the petition should be:

(A) approved;

(B) approved with modifications; or

(C) denied; and

(2) a district should be established.

(b) If the recommendation is in the affirmative, the recommendation must also include recommendations on:

(1) the manner of the selection or appointment;

(2) the number; and

(3) the terms;

of the board.

(c) The description of the territory to be included in a district may not include territory in a municipality that has, by ordinance or resolution filed with the department, exercised the option not to be included in the district.

As added by P.L.1-1996, SEC.16.

13-26-2-9

Sec. 9. (a) If the department of natural resources has filed a petition, the commissioner may waive the requirement for notice and hearing provided in section 6 of this chapter.

(b) If the commissioner waives the notice and hearing requirement, the hearing officer shall give written notice in the manner provided under section 6(b)(2) or 6(b)(3) of this chapter. Each recipient of notice has thirty (30) days from the mailing of the notice within which to file objections or material with the hearing officer.

(c) The hearing officer shall then proceed to make findings and recommendations as provided in section 8 of this chapter, based upon any material:

(1) received by the hearing officer; or

(2) obtained at the hearing officer's discretion through the hearing officer's own investigation.

As added by P.L.1-1996, SEC.16. Amended by P.L.263-2013, SEC.8.

13-26-2-10

Sec. 10. (a) If the commissioner determines that the findings show that the establishment of a recommended district:

(1) complies with the conditions of this chapter for establishment of a district; and

(2) appears capable of accomplishing the purpose or purposes in an economically feasible manner;

the commissioner shall issue an order directing that the district be established as an independent municipal corporation with a name and for the purposes designated in the order.

(b) An order must do the following:

(1) Provide for the selection or appointment and terms of offices, not to exceed four (4) years, of the board.

(2) Provide requirements for sufficient bond for all officers, trustees, or employees having power to dispense money of the district.

(3) If an eligible entity with territory in the district has a public water or solid waste sewer system, contain provisions protecting the investments of the entities and protecting the rights of the holders of bonds or other obligations issued to provide money for the system.

(4) Direct the district to file a detailed plan for the initial project of the district not later than nine (9) months after the date of the preliminary order or within a further time that the department from time to time orders.

As added by P.L.1-1996, SEC.16.

13-26-2-11

Sec. 11. An order for the establishment of a district is subject to review as provided in IC 4-21.5-5.

As added by P.L.1-1996, SEC.16.

Chapter 3. Districts Established Under Prior Law

13-26-3

13-26-3-1

Sec. 1. (a) A district established in accordance with IC 19-3-1 (before its repeal) by an order of the court before February 17, 1972, as a special district for any purpose provided in:

(1) IC 13-3-2 (before its repeal); or

(2) this article;

is considered to be a district under this article.

(b) Orders of the court and acts of the board of directors are valid if permitted by this article. The district shall function as a district the same as if the district were established under this article.

As added by P.L.1-1996, SEC.16.

Chapter 4. Board of Trustees of Regional Districts

13-26-4

13-26-4-1

Sec. 1. The board of trustees of a district is the governing body of the district. A board may consist of:

(1) three (3);

(2) five (5);

(3) seven (7);

(4) nine (9);

(5) eleven (11); or

(6) thirteen (13);

trustees.

As added by P.L.1-1996, SEC.16. Amended by P.L.101-2003, SEC.2.

13-26-4-2

Sec. 2. An order establishing a district may provide for the board to be elected by the voters in the district from districts or wards or from the district at large. Elections and provisions for filling vacancies must be in accordance

with IC 3, with the commissioner or the commissioner's designees performing the functions of the election officials.
As added by P.L.1-1996, SEC.16.

13-26-4-3

Sec. 3. Instead of electing the board, an order establishing a district may provide for appointments to the board by the elected executive or legislative officers of the eligible entities having territory in the district.
As added by P.L.1-1996, SEC.16.

13-26-4-4

Sec. 4. (a) If:

(1) a district will include territory in more than one (1) county;

(2) a county executive has filed a petition for a district including territory owned, leased, or controlled by the department of natural resources; or

(3) the department of natural resources has filed a petition;

the order establishing the district may provide that the governor appoints any number of trustees, but less than one-half (1/2) of the total.

(b) If a district contains or a proposed district will contain a state correctional facility, the department, when:

(1) issuing an order establishing the district under IC 13-26-2-10; or

(2) approving or modifying a petition filed by the district's board of trustees under IC 13-26-1-2;

may allow for the appointment of one (1) member of the board of trustees of the district by the commissioner of the department of correction.
As added by P.L.1-1996, SEC.16. Amended by P.L.101-2003, SEC.3.

13-26-4-5

Sec. 5. If a plan also contemplates that sewage treatment for the district will be provided in cooperation with a municipality, the order must provide that:

(1) at least one (1) trustee shall be appointed by the executive of the municipality; and

(2) at least:

(A) one (1) trustee shall be appointed by the fiscal body; and

(B) one (1) trustee shall be appointed by the executive;

of the county having the largest amount of territory in the district.
As added by P.L.1-1996, SEC.16.

13-26-4-6

Sec. 6. (a) This section does not apply to a district described in section 6.1 of this chapter.

(b) An appointed trustee does not have to be a resident of the district.

(c) An appointed trustee must:

(1) own real property within the district;

(2) be a trustee appointed under section 4 or 5 of this chapter;

(3) be an elected official who represents a political subdivision that has territory in the district; or

(4) be a ratepayer of the district.

As added by P.L.1-1996, SEC.16. Amended by P.L.97-2012, SEC.6; P.L.179-2013, SEC.1; P.L.292-2013, SEC.6.

13-26-4-6.1

Sec. 6.1. (a) This section applies to a district that is:

(1) a countywide district; and

(2) established in response to an agreed order entered into after December 31, 1982, by the department and the executive and fiscal bodies of the county.

(b) Not later than December 31, 2012, the parties to an agreed order described in subsection (a)(2) shall amend the agreed order to provide for the appointment of trustees as follows:

(1) Beginning July 1, 2013, at least one (1) appointed trustee must reside in the geographic area that is the subject of the department investigation resulting in the agreed order.

(2) Beginning July 1, 2013, an appointed trustee may not be served by a municipal sewer system.

(3) Beginning July 1, 2013, at least one (1) appointed trustee must be an elected official who represents a

political subdivision that has territory in the district.
As added by P.L.97-2012, SEC.7. Amended by P.L.139-2012, SEC.4.

13-26-4-7

Sec. 7. (a) Except as provided in subsection (b), the board of a district may provide for the payment of not more than fifty dollars ($50) per day to members of the board for each day or major part of a day devoted to the work of the district.

(b) This subsection applies only to a regional water and sewage district that:

(1) is located in more than one (1) county; and

(2) was formed in 1975 by order of the stream pollution control board of the state of Indiana (which was succeeded by the water pollution control board in 1986).

The board of a district may provide for the payment of not more than one hundred twenty-five dollars ($125) per day to members of the board for each day or major part of a day devoted to the work of the district.

(c) Members of the board are entitled to receive an amount for travel expenses equal to the amount paid to state employees for expenses incurred in the performance of their duties.

(d) Payments made to board members under subsections (a), (b), and (c) shall be made from the general fund of the district.
As added by P.L.1-1996, SEC.16. Amended by P.L.179-2013, SEC.2.

13-26-4-8

Sec. 8. (a) When the board of a district conducts a public hearing or meeting, the board shall allow any person an opportunity to be heard:

(1) in the presence of others who are present to testify; and

(2) in accordance with subsection (b).

(b) The board may limit testimony at a public hearing or meeting to a reasonable time stated at the opening of the public hearing or meeting.
As added by P.L.97-2012, SEC.8.

Chapter 5. Powers and Duties of Regional Districts

13-26-5

13-26-5-1

Sec. 1. Upon:

(1) the declaration of the commissioner organizing a district;

(2) the qualification of the board; and

(3) the election of a president, a treasurer, and a secretary;

the district may exercise in the district's own name, as a municipal corporation, all the rights, powers, and duties conferred upon the district by this article.
As added by P.L.1-1996, SEC.16.

13-26-5-2

Sec. 2. A district may do the following:

(1) Sue or be sued.

(2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.

(3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.

(4) Adopt, amend, and repeal the following:

(A) Bylaws for the administration of the district's affairs.

(B) Rules and regulations for the following:

(i) The control of the administration and operation of the district's service and facilities.

(ii) The exercise of all of the district's rights of ownership.

(5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a

person or an eligible entity.
(6) Assume in whole or in part any liability or obligation of:
(A) a person;
(B) a nonprofit water, sewage, or solid waste project system; or
(C) an eligible entity;
including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
(7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:
(A) The payment of the expenses of the district.
(B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
(C) The payment of principal or interest on the district's obligations.
(D) To fulfill the terms of agreements made with:
(i) the purchasers or holders of any obligations; or
(ii) a person or an eligible entity.
(8) Except as provided in sections 2.5 and 2.6 of this chapter, require connection to the district's sewer system of property producing sewage or similar waste, and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:
(A) there is an available sanitary sewer within three hundred (300) feet of:
(i) the property line, if the property is adjacent to a body of water, including a lake, river, or reservoir;
(ii) any part of a subdivision, or land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale; or
(iii) for all other properties, the improvement or other structure from which the sewage or similar waste is discharged;
(B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice; and
(C) if the property is located outside the district's territory:
(i) the district has obtained and provided to the property owner (along with the notice required by clause (B)) a letter of recommendation from the local health department that there is a possible threat to the public's health; and
(ii) if the property is also located within the extraterritorial jurisdiction of a municipal sewage works under IC 36-9-23 or a public sanitation department under IC 36-9-25, the municipal works board or department of public sanitation has acknowledged in writing that the property is within the municipal sewage works or department of public sanitation's extraterritorial jurisdiction, but the municipal works board or department of public sanitation is unable to provide sewer service.
However, a district may not require the owner of a property described in this subdivision to connect to the district's sewer system if the property is already connected to a sewer system that has received an NPDES permit and has been determined to be functioning satisfactorily.
(9) Provide by ordinance for a reasonable penalty, not to exceed one hundred dollars ($100) per day, for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.
(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.
(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.
(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into

contracts for the operation of works owned, leased, or held by another entity, whether public or private.
(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:
(A) the location or protection of works;
(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or
(C) obtaining or storing material to be used in constructing and maintaining the works.
(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:
(A) is possessed of all rights, franchises, and authority of the constituent districts; and
(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.
(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.
(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:
(A) The distribution or purification of water.
(B) The collection or treatment of sanitary sewage.
(C) The collection, disposal, or recovery of solid waste.
(17) Make provision for, contract for, or sell the district's byproducts or waste.
(18) Exercise the power of eminent domain, including for purposes of siting sewer or water utility infrastructure, but only after the district attempts to use existing public rights-of-way or easements.
(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:
(A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and
(B) the cost is determined by the board to be less than that of purchase or condemnation;
the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.
(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.
(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.
(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:
(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or
(B) pay adequate compensation for the property.
(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.
As added by P.L.1-1996, SEC.16. Amended by P.L.193-2001, SEC.2; P.L.221-2007, SEC.18; P.L.1-2009, SEC.110; P.L.97-2012, SEC.9; P.L.178-2013, SEC.2.

13-26-5-2.5

Sec. 2.5. (a) As used in this section, "septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5.
(b) Subject to subsection (d), a property owner is exempt from the requirement to connect to a district's sewer

system and to discontinue use of a septic tank soil absorption system if the following conditions are met:

(1) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.

(2) The property owner, at the property owner's own expense, obtains a written determination from the local health department or the department's designee that the septic tank soil absorption system is not failing. The local health department or the department's designee shall provide the owner with a written determination not later than sixty (60) days after receipt of the owner's request. If the local health department or the department's designee fails to provide a written determination within the time established in this subdivision, the owner, at the owner's expense, may obtain a written determination from a qualified inspector. If the local health department or the department's designee determines that a septic tank soil absorption system is failing, the property owner may appeal the determination to the board of the local health department. The decision of the board is final and binding.

(3) The property owner provides the district with:

(A) the written notification of potential qualification for the exemption described in subsection (f); and

(B) the written determination described in subdivision (2);

within the time limits set forth in subsection (f).

(c) If a property owner, within the time allowed under subsection (f), notifies a district in writing that the property owner qualifies for the exemption under this section, the district shall, until the property owner's eligibility for an exemption under this section is determined, suspend the requirement that the property owner discontinue use of a septic tank soil absorption system and connect to the district's sewer system.

(d) A property owner who qualifies for the exemption provided under this section may not be required to connect to the district's sewer system for a period of ten (10) years beginning on the date the new septic tank soil absorption system was installed. A property owner may apply for two (2) five (5) year extensions of the exemption provided under this section by following the procedures set forth in subsections (b) and (c). If ownership of an exempt property is transferred during a valid exemption period, including during an extension of an initial exemption:

(1) the exemption applies to the subsequent owner of the property for the remainder of the exemption period during which the transfer occurred; and

(2) the subsequent owner may apply for any remaining extensions.

However, the total period during which a property may be exempt from the requirement to connect to a district's sewer system under this section may not exceed twenty (20) years, regardless of ownership of the property.

(e) A district that has filed plans with the department to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected property owners:

(1) that the property owner may be required to discontinue the use of a septic tank soil absorption system;

(2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and

(3) of the procedures to claim an exemption.

(f) To qualify for an exemption under this section, a property owner must:

(1) within sixty (60) days after the date of the written notice given to the property owner under subsection (e), notify the district in writing that the property owner qualifies for the exemption under this section; and

(2) within one hundred twenty (120) days after the district receives the written notice provided under subdivision (1), provide the district with the written determination required under subsection (b)(2).

(g) When a property owner who qualifies for an exemption under this section subsequently discontinues use of the property owner's septic tank soil absorption system and connects to the district's sewer system, the property owner may be required to pay only the following to connect to the sewer system:

(1) The connection fee the property owner would have paid if the property owner connected to the sewer system on the first date the property owner could have connected to the sewer system.

(2) Any additional costs:

(A) considered necessary by; and

(B) supported by documentary evidence provided by;

the district.

(h) A property owner who connects to a district's sewer system may provide, at the owner's expense, labor, equipment, materials, or any combination of labor, equipment, and materials from any source to accomplish the

connection to the sewer system, subject to inspection and approval by the board or a designee of the board.

(i) This section does not affect the authority of the state department of health, a local health department, or a county health officer with respect to a septic tank soil absorption system.

(j) For purposes of this section, a septic tank soil absorption system is "failing" if one (1) or more of the following apply:

(1) The system refuses to accept sewage at the rate of design application and interferes with the normal use of plumbing fixtures.

(2) Effluent discharge exceeds the absorptive capacity of the soil into which the system discharges, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters.

(3) Effluent discharged from the system contaminates a potable water supply, ground water, or surface waters.

(k) As used in this section, "qualified inspector" means any of the following:

(1) An employee of a local health department who is designated by the local health department as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

(2) An individual who is certified by the Indiana Onsite Wastewater Professionals Association as an onsite sewage system installer or inspector.

(3) An individual listed by the state department of health or a local health department with jurisdiction over the service area of the property inspected as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

As added by P.L.193-2001, SEC.3. Amended by P.L.1-2002, SEC.67; P.L.123-2011, SEC.1; P.L.97-2012, SEC.10; P.L.292-2013, SEC.7.

13-26-5-2.6

Sec. 2.6. A district may not require the owner of a property described in section 2(8) of this chapter to connect to the district's sewer system if:

(1) the property is located on at least ten (10) acres;

(2) the owner can demonstrate the availability of at least two (2) areas on the property for the collection and treatment of sewage that will protect human health and the environment;

(3) the waste stream from the property is limited to domestic sewage from a residence or business;

(4) the system used to collect and treat the domestic sewage has a maximum design flow of seven hundred fifty (750) gallons per day; and

(5) the owner, at the owner's expense, obtains and provides to the district a certification from the local health department or the department's designee that the system is functioning satisfactorily.

As added by P.L.97-2012, SEC.11.

13-26-5-3

Sec. 3. (a) The board may by rules and resolutions provide the following:

(1) The procedure for the board's actions.

(2) The manner of selection of the board's president, treasurer, and secretary and other officers or employees of the district, including the titles, terms of office, compensation, duties, number, and qualifications.

(3) Any other lawful subject necessary to the operation of the district and the exercise of the power granted.

(b) The board must adopt an ordinance by a majority vote to take action of a legislative nature. Proposed ordinances may be read by title only unless a trustee requests a reading in full.

(c) A majority of the board or the officers of the board or employees of the district that are authorized by the board may take action of an administrative or executive nature.

As added by P.L.1-1996, SEC.16.

13-26-5-4

Sec. 4. (a) The board may adopt and enforce rules for the following purposes:

(1) To accomplish the purpose of a district.

(2) To protect the works, improvements, and properties, both real and personal, that the district owns.

(3) To secure the best results from the construction, operation, and maintenance of works, improvements, and properties.

(4) To prevent damage by the misuse of the works, improvements, or properties by:

(A) the pollution or misuse of the waters in the district or of the sewerage system; or

(B) the improper disposal of solid waste.

(b) The board may adopt and enforce rules under subsection (a) that are necessary and advisable to do the following:

(1) Protect and preserve the works, improvements, and properties owned or controlled by the district, prescribe the manner of use by any person, and preserve order in and adjacent to the works.

(2) Prescribe the manner:

(A) in which ditches, sewers, pipelines, or other works should be adjusted to or connected with the works of the district; and

(B) of waste disposal in the district.

(3) Prescribe the permissible uses of the water supply and the manner of distribution and prevent the pollution or unnecessary waste of the water supply.

(4) Prohibit or regulate the discharge into the sewers of the district of liquid or solid waste detrimental to the works and improvements.

(c) Rules must be:

(1) consistent with:

(A) statutes; and

(B) the rules of the solid waste management board or the water pollution control board; and

(2) maintained and open to inspection in the office of the district.

(d) The board may enforce by injunction or other legal remedy rules adopted under this section. The board may remove a harmful or improper construction or obstruction or may close an opening or connection made improperly or in violation of the rules. A person that willfully fails to comply with the rules is liable for damage caused by the failure and for the cost of restoring or replacing construction damaged.

As added by P.L.1-1996, SEC.16.

13-26-5-5

Sec. 5. The board or an officer or employee designated by the board may contract for the following:

(1) The purchase of supplies in accordance with IC 5-22.

(2) Labor for a work in accordance with IC 36-1-12.

As added by P.L.1-1996, SEC.16. Amended by P.L.49-1997, SEC.48.

13-26-5-6

Sec. 6. (a) Subject to subsections (b) and (c), the board may condemn for the use of the district public or private land, easements, rights, rights-of-way, franchises, or other property within or outside the district required by the district for the accomplishment of the district's purposes according to the statutory procedure for the appropriation of land or other property taken by an eligible entity.

(b) The power of condemnation by a district under this article may not be exercised against a sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 until the expiration of twelve (12) years after the granting of the certificate of territorial authority.

(c) If the board of a regional sewage district exercises eminent domain to acquire an easement or right-of-way within or outside the district required by the district for the accomplishment of the district's purposes, the easement or right-of-way may not exceed fifty (50) feet in width.

As added by P.L.1-1996, SEC.16. Amended by P.L.123-2011, SEC.2.

13-26-5-6.5

Sec. 6.5. A district that intends to extend service within its territory shall provide notice to all owners of property to be served by the proposed extension of service in the following manner not later than sixty (60) days from the date of the decision to extend service:

(1) By publication of notice one (1) time each week for three (3) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, of the district affected by the proposed extension of service. If there is only one (1) newspaper of general circulation in a county, a single publication each week for three (3) consecutive weeks satisfies the requirement of this subdivision.

(2) By United States mail, postage prepaid, mailed to each freeholder within the territory to which the district proposes to extend service.

As added by P.L.292-2013, SEC.8.

13-26-5-7

Sec. 7. (a) Exclusive of building a sewage treatment plant, solid waste disposal or recovery system, or installing a supply of water, a district that desires to own, acquire, construct, equip, improve, enlarge, extend, operate, and maintain a works may proceed under this article if the district first contracts for:

(1) a supply of water;

(2) the required treatment of the sewage emanating from the district's works; or

(3) the disposition of solid waste generated within the district.

(b) A governmental or private body owning and operating facilities for water supply, sewage, or solid waste disposal, recovery, or treatment may contract to supply water or treat all or part of the sewage and solid waste of a district. The contracts:

(1) must be authorized by ordinance; and

(2) are subject to approval by the department.

(c) All bonds issued under this article or IC 13-3-2 (before its repeal) by a district contracting for:

(1) water supply;

(2) sewage or solid waste disposal; or

(3) recovery treatment service;

under this section are payable before the expiration date of the contract and districts may contract for the term of the bonds, including a term or terms beyond the last maturity of the bonds.

As added by P.L.1-1996, SEC.16.

13-26-5-8

Sec. 8. A district may make contracts or incur obligations only if the contracts or obligations are payable solely from:

(1) the money provided under this article; or

(2) federal, state, or other grants or contributions.

As added by P.L.1-1996, SEC.16.

13-26-5-9

Sec. 9. (a) As used in this section, "electronic funds transfer" means a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, a telephone, a computer, magnetic tape, or other electronic means to order, instruct, or authorize a financial institution to debit or credit an account.

(b) A board may adopt an ordinance allowing money to be disbursed for lawful district purposes under this section.

(c) As part of an ordinance adopted under subsection (b), or by a separate ordinance adopted by the board, the board may authorize the district to do one (1) or both of the following through an electronic funds transfer method of payment:

(1) Pay claims owed by the district.

(2) Receive payments owed to the district.

If the board adopts an ordinance to grant the district the authority described in subdivision (1), the district may pay money from its funds by electronic funds transfer. However, the authority granted to a district by this subsection does not affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), and a regional district that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by the regional district.

(d) Notwithstanding IC 5-11-10, with the prior written approval of the board, the fiscal officer of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted an ordinance under subsection (b):

(1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.

(2) License or permit fees.

(3) Insurance premiums.

(4) Utility payments or utility connection charges.

(5) General grant programs for which advance funding is not prohibited and the contracting party posts

sufficient security to cover the amount advanced.
(6) Grants of state funds authorized by statute.
(7) Maintenance or service agreements.
(8) Leases or rental agreements.
(9) Bond or coupon payments.
(10) Payroll.
(11) State or federal taxes.
(12) Expenses that must be paid because of emergency circumstances.
(13) Expenses described in an ordinance.

(e) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer of the district.

(f) The board shall review and allow a claim paid under subsection (d) at the board's next regular or special meeting following the preapproved payment of the expense.

As added by P.L.78-2009, SEC.20. Amended by P.L.71-2011, SEC.1.

Chapter 6. District Plan

13-26-6

13-26-6-1

Sec. 1. A district plan for the operation of the district must include:
(1) engineering reports;
(2) plans and specifications; and
(3) a feasibility study in a form that the department requires.

As added by P.L.1-1996, SEC.16.

13-26-6-2

Sec. 2. If the department approves a district plan, the department shall authorize the district to proceed.

As added by P.L.1-1996, SEC.16.

13-26-6-3

Sec. 3. If the department disapproves a district plan, the department may recommend revisions and authorize the district to proceed with a revised plan.

As added by P.L.1-1996, SEC.16.

13-26-6-4

Sec. 4. If:
(1) the department determines that the project or operation of the district is not economically feasible, fair, or reasonable; or
(2) the district fails to file a plan for the operation of the district within the time prescribed by the department;

the department may declare the district dissolved and enter an order for the distribution of all assets owned by the district after the payment of liabilities.

As added by P.L.1-1996, SEC.16.

Chapter 7. Payment of District Expenses

13-26-7

13-26-7-1

Sec. 1. Each district must keep proper records showing the district's finances.

As added by P.L.1-1996, SEC.16.

13-26-7-2

Sec. 2. A local, state, or federal agency or person may advance or give a district money to be used by the district for the following purposes:

(1) The preparation of a plan for the operation of the district.
(2) Other purposes of the district until the district is in receipt of revenue from its operations or proceeds from the sale of bonds.
As added by P.L.1-1996, SEC.16.

13-26-7-3

Sec. 3. When a district receives revenue for its operations or proceeds from the sale of bonds, the district shall repay any money advanced to the advancing agency in the manner agreed.
As added by P.L.1-1996, SEC.16.

13-26-7-4

Sec. 4. If the commissioner orders a district dissolved as permitted in IC 13-26-6-4, the interest an entity has in the assets of the district is limited to those assets remaining after the payment of all other liabilities of the district.
As added by P.L.1-1996, SEC.16.

Chapter 8. Addition of Territory to Regional Districts

13-26-8

13-26-8-1

Sec. 1. After the establishment of a district, an eligible entity whose territory is not wholly included within the district may file an application with the district setting forth the following:
(1) A general description of the territory the eligible entity desires to have included in the district.
(2) The necessity for the inclusion of the territory in the district.
(3) That inclusion of the territory in the district will be conducive to the public health, safety, convenience, or welfare.
(4) That it will be practical and feasible for the territory to be included in the district.
As added by P.L.1-1996, SEC.16.

13-26-8-2

Sec. 2. If an application is approved by a majority of the board, the territory described in the application becomes part of the district. The district shall then notify the department of the inclusion of the additional territory in the district.
As added by P.L.1-1996, SEC.16.

13-26-8-3

Sec. 3. (a) If an application fails to receive the approval of a majority of the board not later than sixty (60) days after the filing of the application with the district, the entity filing the application may file a petition with the department as described in IC 13-26-2 requesting the order of the department to include the territory described in the application within the district.
(b) Upon the filing of a petition, the department shall proceed in the same manner that is set forth in IC 13-26-2, IC 13-26-4, IC 13-26-6, and IC 13-26-7.
As added by P.L.1-1996, SEC.16.

13-26-8-4

Sec. 4. (a) This section applies to the addition of territory to a regional sewage or solid waste district other than at the request of an eligible entity described in section 1 of this chapter. This section does not apply to a regional water district.
(b) To add territory to a district already established, the board must file with the department a motion adopted by the board requesting the addition of territory to the district.
(c) Except as provided under subsections (d) and (e), if a motion is filed with the department under subsection (b):
(1) the same procedure must be used to add territory to the district as is provided for the establishment of a district under IC 13-26-2; and
(2) the department shall proceed in the same manner that is set forth in IC 13-26-2, IC 13-26-4, IC 13-26-6,

and IC 13-26-7.

(d) Not more than one hundred eighty (180) days after the date a motion is filed with the department under subsection (b) to add territory to a district already established, if a petition is filed with the department that is signed by a majority of the freeholders within the area proposed to be added and indicating that the freeholders are opposed to the addition of the area by the district:

(1) the department may not proceed under subsection (c); and

(2) the territory may not be added to the district.

(e) For purposes of subsection (c):

(1) the commissioner is not required to appoint a hearing officer under IC 13-26-2-5;

(2) the board shall:

(A) provide the notice of; and

(B) conduct;

the hearing required under IC 13-26-2-6; and

(3) instead of making findings and recommendations under IC 13-26-2-8, the board shall submit documentary evidence to the commissioner to prove the:

(A) notice was provided; and

(B) hearing was conducted;

by the board as required under subdivision (2).

As added by P.L.123-2011, SEC.3. Amended by P.L.292-2013, SEC.9.

Chapter 9. Territorial Authority of Sewage Disposal Companies

13-26-9

13-26-9-1

Sec. 1. This article does not limit the following:

(1) The formation and operation under IC 8-1-2-89 of a sewage disposal company to provide sewage disposal service to a territory lying in the territory of a district.

(2) The granting of a certificate of territorial authority under IC 8-1-2-89 encompassing a part of the territory within the district.

As added by P.L.1-1996, SEC.16.

13-26-9-2

Sec. 2. The granting of a certificate of territorial authority to a sewage disposal company under IC 8-1-2-89 for a territory lying in the territory of a district may be conditioned upon the following requirements:

(1) That the sewage disposal company connect the company's collection system to the collection system of a district when the district has extended to within three hundred (300) feet of the territorial area of the sewage disposal company a system sufficient to provide reasonable and adequate service to the territorial area.

(2) That the sewage disposal company contribute the company's collection system to the district instead of all connection charges that could otherwise be imposed under this article upon:

(A) the sewage disposal company; or

(B) those parcels and lots served by the collection system of the sewage disposal company that have been contributed by the company to the district.

As added by P.L.1-1996, SEC.16.

13-26-9-3

Sec. 3. A sewage disposal company that is subject to the jurisdiction of the Indiana utility regulatory commission under IC 8-1-2-89, and all of the territory lying in the area to which the company holds a certificate of territorial authority, is exempt from all ordinances and rules adopted by the board, except those ordinances and rules pertaining to maintenance and operation, until:

(1) the connection is made to the sewerage system of the district; and

(2) the district begins to provide service within the area covered by the certificate of territorial authority.

As added by P.L.1-1996, SEC.16.

Chapter 10. Bonds

13-26-10

13-26-10-1

Sec. 1. A district may obtain money for the payment of the costs of the works or an improvement, enlargement, or extension of the works by the issuance of revenue bonds of the district. The principal and interest of the revenue bonds must be paid solely from the net revenues of the works.
As added by P.L.1-1996, SEC.16.

13-26-10-2

Sec. 2. A district obtaining a loan from the federal government or an agency of the federal government may issue obligations under this article to the federal government or agency to evidence the indebtedness without advertising for or receiving bids. The obligations:

(1) are payable solely from the net revenues of the works; and

(2) may be made of equal priority or subordinate to other revenue bonds issued or to be issued under this article or IC 13-3-2 (before its repeal).

As added by P.L.1-1996, SEC.16.

13-26-10-3

Sec. 3. Revenue bonds may:

(1) bear interest, at a rate or rates not exceeding the maximum determined by the board, that is payable or accretes as determined by the board;

(2) mature at a time or times to be determined by ordinance; and

(3) be made redeemable before maturity at the option of the district, to be exercised by the board, at not more than the par value and a premium not exceeding five percent (5%) under terms and conditions that are fixed by the ordinance authorizing the issuance of the bonds.

As added by P.L.1-1996, SEC.16. Amended by P.L.53-2004, SEC.2.

13-26-10-4

Sec. 4. The principal and interest of revenue bonds may be made payable in any lawful medium. The ordinance must do the following:

(1) Determine the form of the bonds, including the interest coupons, if any, to be attached.

(2) Fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be any bank or trust company within or outside Indiana.

As added by P.L.1-1996, SEC.16.

13-26-10-5

Sec. 5. (a) The revenue bonds must contain a statement on the face of the bonds that the district is not obligated to pay the bonds or the interest on the bonds except from the special fund provided from the net revenues of the works.

(b) All bonds are negotiable instruments.

(c) The bonds and interest are exempt from all state, county, and municipal taxation.

(d) The bonds may be registered in the name of the owner:

(1) as to principal alone; or

(2) as to both principal and interest.

Fully registered bonds may be made convertible to coupon bonds at the option of the registered owner.
As added by P.L.1-1996, SEC.16.

13-26-10-6

Sec. 6. The:

(1) president of the board shall execute; and

(2) secretary of the board shall attest;

the bonds and coupons. The coupons must bear facsimile signature.

As added by P.L.1-1996, SEC.16.

13-26-10-7

Sec. 7. (a) Subject to subsection (b), the treasurer of the district shall sell the revenue bonds in a manner and at a price that is determined to be in the best interests of the district.

(b) If the bonds are sold at public sale, the bonds shall be sold in accordance with IC 5-1-11 as IC 5-1-11 applies to counties.

As added by P.L.1-1996, SEC.16.

13-26-10-8

Sec. 8. (a) A surplus of revenue bond proceeds over the cost of the works shall be paid into the sinking fund provided by this article.

(b) If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the works, additional bonds may in the same manner be issued to provide the amount of the deficit. Unless otherwise provided in:

(1) the ordinance authorizing the issuance of the bonds first issued; or

(2) the trust indenture authorized by this article or IC 13-3-2 (before its repeal);

the additional bonds are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority of the bonds first issued.

As added by P.L.1-1996, SEC.16.

13-26-10-9

Sec. 9. Before the preparation of the definite revenue bonds, temporary revenue bonds under the same restrictions may be issued with or without coupons, exchangeable for definite revenue bonds upon the issuance of the latter.

As added by P.L.1-1996, SEC.16.

13-26-10-10

Sec. 10. The fund to finance the construction of any of the self-liquidating works authorized by this article may be obtained from a federal or state agency.

As added by P.L.1-1996, SEC.16.

13-26-10-11

Sec. 11. An action to contest the validity of bonds issued under this article or IC 13-3-2 (before its repeal) must be brought not later than ten (10) days after the advertised sale date of the bonds.

As added by P.L.1-1996, SEC.16.

13-26-10-12

Sec. 12. Subject to an ordinance or trust indenture pertaining to outstanding bonds, additional bonds payable from the revenues of the works may be authorized and issued in accordance with this article for the purpose of improving, enlarging, or extending works acquired or constructed under this article or IC 13-3-2 (before its repeal).

As added by P.L.1-1996, SEC.16.

13-26-10-13

Sec. 13. The board may secure the revenue bonds by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana. However, a trust indenture may not convey or mortgage all or any part of the works.

As added by P.L.1-1996, SEC.16.

13-26-10-14

Sec. 14. The ordinance authorizing the revenue bonds and fixing the details of the revenue bonds may provide that the trust indenture contain reasonable and lawful provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the district and the board in relation to the following:

(1) The construction or acquisition of the works.

(2) The improvement, operation, repair, and maintenance of the works.
(3) The issuance of bonds, including the custody, safeguarding, and application of all money.
As added by P.L.1-1996, SEC.16.

13-26-10-15

Sec. 15. The ordinance may also provide that the works shall be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns, or nominees. The original bond purchasers, successors, assigns, or nominees may be given the right to require that the security given by:
(1) contractors; and
(2) any depository of the proceeds of bonds or revenues of the works or other money pertaining to the works;
be satisfactory to the purchasers, successors, assigns, or nominees.
As added by P.L.1-1996, SEC.16.

13-26-10-16

Sec. 16. The trust indenture may set forth the rights and remedies of the bondholders or trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.
As added by P.L.1-1996, SEC.16.

13-26-10-17

Sec. 17. Unless this article otherwise provides, the board may provide by ordinance or in the trust indenture for the payment of:
(1) the proceeds of the sale of the bonds; and
(2) the revenues of the works;
to the officer, board, or depository that the board determines for the custody of the money and for the method of disbursement, with safeguards and restrictions that the board determines.
As added by P.L.1-1996, SEC.16.

13-26-10-18

Sec. 18. (a) At or before the time of issuance of the revenue bonds, the board shall by ordinance create a sinking fund for the payment of the following:
(1) The bonds.
(2) The interest on the bonds.
(3) The charges of banks or trust companies for making payment of the bonds or interest.
(b) The board shall set aside and pledge the net revenues of the works remaining after the payment of the reasonable expense of operation, repair, and maintenance of the works for payment of the:
(1) principal of and interest on all bonds payable from the revenues of the works, to the extent necessary for that purpose; and
(2) necessary fiscal agency charges for paying the principal and interest of the bonds.
(c) The ordinance may also provide for the accumulation of reasonable reserves in the sinking fund:
(1) as a margin for safety and a protection against default; and
(2) for the payment of premiums upon bonds retired by call or purchase as provided by this article.
As added by P.L.1-1996, SEC.16.

13-26-10-19

Sec. 19. (a) The holder of revenue bonds or attached coupons and the trustee, if any, except to the extent the rights given may be restricted by the ordinance authorizing issuance of the bonds or by the trust indenture, may, by civil action, protect and enforce rights granted:
(1) by this article or IC 13-3-2 (before its repeal); or
(2) under the ordinance or trust indenture;
to be performed by the district issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for services provided by the works.
(b) If there is failure to pay the principal or interest on any of the revenue bonds on the date named for payment,

and upon application by a bondholder or a trustee, any court having jurisdiction to appoint receivers shall appoint a receiver to administer the works on behalf of the district and the bondholders or trustee. A receiver may do the following:

(1) Charge and collect rates sufficient to provide for the payment of the expenses of operation, repair, and maintenance.

(2) Pay any revenue bonds and interest outstanding.

(3) Apply the revenues in conformity with this article and the ordinance or trust indenture.

As added by P.L.1-1996, SEC.16.

Chapter 11. Rates and Charges

13-26-11

13-26-11-1

Sec. 1. The rates and charges for a waterworks may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water consumed.

(3) The size of the meter or connection.

(4) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(5) A combination of these or other factors that the board determines is necessary to establish just and equitable rates and charges.

As added by P.L.1-1996, SEC.16.

13-26-11-2

Sec. 2. (a) Except as provided in subsection (b), the rates or charges for a sewage works may be determined based on a combination of the following factors:

(1) A flat charge for each connection. If a board uses a flat charge as a factor to determine a rate or charge for a sewage works, the board must:

(A) prepare a concise written statement that summarizes the calculations and processes used to determine the amount of the flat charge; and

(B) provide a copy of the written statement to each person who:

(i) is required to pay the rate or charge; and

(ii) requests a paper copy of the summary.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish nondiscriminatory, just, and equitable rates or charges.

(b) A campground or youth camp may be billed for sewage service at a flat rate or by installing, at the campground's or youth camp's expense, a meter to measure the actual amount of sewage discharged by the campground or youth camp into the sewers. If a campground or youth camp elects to be billed by use of a meter:

(1) the rate charged by a board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by a board for the campground's or youth camp's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the actual amount that would be charged for the sewage discharged during the month by the campground or youth camp as measured by the meter.

(c) If a campground or youth camp does not install a meter under subsection (b) and is billed for sewage service at a flat rate, for a calendar year beginning after December 31, 2004:

(1) each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit; and

(2) each bed at the youth camp may not equal more than one-eighth (1/8) of one (1) residential equivalent unit. The basic monthly charge for the campground's or youth camp's sewage service must be equal to the number of the campground's or youth camp's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground or youth camp under subsections (b) and (c) if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground or youth camp, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground or youth camp; and

(2) concentrations of biochemical oxygen demand (BOD) that exceed federal pollutant standards.

As added by P.L.1-1996, SEC.16. Amended by P.L.239-2003, SEC.1; P.L.189-2005, SEC.5; P.L.97-2012, SEC.12.

13-26-11-2.1

Sec. 2.1. (a) As used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) This section applies to an owner or operator of a campground described in section 2(b) or 2(c) of this chapter who disputes:

(1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;

(2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or

(3) that any additional charges imposed on the campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

(1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:

(A) any grievance or complaint procedure prescribed by the board; or

(B) other negotiations with the board; and

(2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

(1) the owner or operator of the campground; and

(2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the

commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

(1) a copy of the appeals division's and commission's decision under subsection (f) for each dispute filed; and

(2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

(h) The right of a campground owner or operator to request a review under this section is in addition to the right of the campground owner or operator to file a petition under section 15 of this chapter as a freeholder of the district.

(i) The commission may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.189-2005, SEC.6.

13-26-11-3

Sec. 3. The rates or charges for solid waste disposal and recovery systems may be determined based on the following:

(1) A flat charge for each residence or building in use in the district.

(2) On the weight of the refuse received.

(3) On the hazardous character of the waste received.

(4) On a combination of the weight and hazardous character of the waste received.

As added by P.L.1-1996, SEC.16.

13-26-11-4

Sec. 4. The rates and charges for services of a water, sewer, or solid waste disposal or recovery system do not have to be uniform throughout the district or for all users. The board may exercise reasonable discretion in:

(1) adopting different schedules of rates and charges; or

(2) making classifications in schedules of rates and charges:

(A) based upon variations in the costs of furnishing the services, including capital expenditures required, to various classes of users or to various locations in the district; or

(B) where there are variations in the number of users in various locations in the district.

As added by P.L.1-1996, SEC.16.

13-26-11-5

Sec. 5. A district may bill and collect rates and charges for the services to be provided after the contract for construction of a sewage works has been let and actual work commenced in an amount sufficient to meet the interest on the revenue bonds and other expenses payable before the completion of the works.

As added by P.L.1-1996, SEC.16.

13-26-11-6

Sec. 6. Unless the board finds and directs otherwise, the sewage works are considered to benefit every:

(1) lot;

(2) parcel of land; or

(3) building;

connected or to be connected under the terms of an ordinance requiring connections with the sewer system of the district as a result of construction work under the contract. The rates or charges shall be billed and collected accordingly.

As added by P.L.1-1996, SEC.16.

13-26-11-7

Sec. 7. (a) If a district constructs sewers or water mains as a part of the construction of the works that are suitable for use as a local or lateral sewer or main by abutting or adjoining property, the district may charge for the connection on the basis of the pro rata cost of construction of a local or lateral sewer or water main sufficient to serve the property.

(b) Each property owner must agree to pay for the connection in making an application for service. If payment is not made as agreed, the payment constitutes a lien on the property for which the connection is made.

(c) The proceeds of the connection charges may be handled as:
(1) net revenues of the works; or
(2) payments toward the cost of construction or future improvements.
As added by P.L.1-1996, SEC.16.

13-26-11-8

Sec. 8. (a) The board shall, by ordinance, establish just and equitable rates or charges for the use of and the service provided by a works. The rates or charges are payable by the owner of each lot, parcel of land, or building that:
(1) is connected with and uses a works; or
(2) in any way uses or is served by a works.
(b) Subject to section 15 of this chapter, the board may periodically change and readjust the rates or charges as provided in this article.
As added by P.L.1-1996, SEC.16. Amended by P.L.221-2007, SEC.19.

13-26-11-9

Sec. 9. (a) Just and equitable rates and charges are those that produce sufficient revenue to:
(1) pay all expenses incident to the operation of the works, including maintenance cost, operating charges, upkeep, repairs, and interest charges on bonds or other obligations;
(2) provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds; and
(3) provide adequate money to be used as working capital, as well as money for making improvements, additions, extensions, and replacements.
(b) Rates and charges too low to meet the financial requirements described in subsection (a) are unlawful. The initial rates and charges established after notice and hearing under this article are prima facie just and equitable.
As added by P.L.1-1996, SEC.16.

13-26-11-10

Sec. 10. Revenue collected under sections 8 through 14 of this chapter is revenue of the works.
As added by P.L.1-1996, SEC.16.

13-26-11-11

Sec. 11. The initial rates or charges may be established only after a public hearing at which all:
(1) the users of the works and owners of property served or to be served; and
(2) others interested;
have an opportunity to be heard concerning the proposed rates or charges.
As added by P.L.1-1996, SEC.16.

13-26-11-12

Sec. 12. After introduction of the ordinance initially fixing rates or charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates or charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in each of the counties with territory in the district. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary.
As added by P.L.1-1996, SEC.16.

13-26-11-13

Sec. 13. (a) The ordinance establishing the initial rates or charges, either as:
(1) originally introduced; or
(2) modified and amended;
shall be passed and put into effect after the hearing.
(b) A copy of the schedule of the rates and charges established must be:
(1) kept on file in the office of the district; and
(2) open to public inspection.
(c) Whenever the board acts under section 8(b) of this chapter, to change or readjust the rates and charges, the

board shall mail, either separately or along with a periodic billing statement, a notice of the new rates and charges to each user affected by the change or readjustment. In the case of a sewage district, if the change or readjustment increases the rates and charges by the amount specified in section 15(c) of this chapter, the notice required by this subsection:

(1) must include a statement of a ratepayer's rights under section 15 of this chapter; and

(2) shall be mailed within the time specified in section 15(c) of this chapter.

(d) Following the passage of an ordinance under subsection (a), the lesser of fifty (50) or ten percent (10%) of the ratepayers of the district may file a written petition objecting to the initial rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance; and

(3) set forth the grounds for the ratepayers' objection.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the first listed petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine the following:

(1) Whether the board of trustees of the district, in adopting the ordinance establishing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

(g) After the district authority hears the evidence produced and makes the determinations set forth in subsection (f), the district authority, by a majority vote, shall:

(1) sustain the ordinance establishing the rates and charges;

(2) sustain the petition; or

(3) make any other ruling appropriate in the matter, subject to the standards set forth in section 9 of this chapter.

(h) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

(1) Whether the board of trustees of the district, in adopting the ordinance establishing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.
As added by P.L.1-1996, SEC.16. Amended by P.L.123-2011, SEC.4; P.L.97-2012, SEC.13.

13-26-11-14

Sec. 14. (a) The rates or charges established for a class of users of property served shall be extended to cover any additional premises served after the rates or charges are established that are in the same class, without the necessity of hearing or notice.

(b) Subject to section 15 of this chapter, a change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established.
As added by P.L.1-1996, SEC.16. Amended by P.L.221-2007, SEC.20.

13-26-11-15

Sec. 15. (a) A district authority is established in each regional sewage district established under this article. A district authority:

(1) must consist of an odd number of members;

(2) must consist of at least three (3) members; and

(3) may not include as a member any person who serves on the board of trustees of the district.

(b) The district authority of a regional sewage district consists of the following members:

(1) In the case of a regional sewage district located in one (1) county, the following members:

(A) If no members of the county executive are trustees of the regional sewage district, the county executive of the county.

(B) If:

(i) one (1) or more members of the county executive are trustees of the regional sewage district; and

(ii) no members of the county fiscal body are trustees of the regional sewage district;

the members of the county fiscal body.

(C) If the regional sewage district's board of trustees consists of one (1) or more members of the county executive and one (1) or more members of the county fiscal body, three (3) members appointed as follows:

(i) Two (2) members appointed by the county executive. If not all of the members of the county executive are trustees of the district, the county executive may appoint either or both of the two (2) members required by this item from among the county executive's own membership, subject to subsection (a)(3).

(ii) One (1) member appointed by the county fiscal body. If not all of the members of the county fiscal body are trustees of the district, the county fiscal body may appoint the member required by this item from among the county fiscal body's own membership, subject to subsection (a)(3).

(2) In the case of a regional sewage district located in more than one (1) county, the following members:

(A) If:

(i) an odd number of counties are part of the regional sewage district; and

(ii) each county in the district has at least one (1) county executive member who is not a trustee of the regional sewage district;

one (1) county executive member, appointed by that member's county executive, from each county in which the district is located, subject to subsection (a)(3).

(B) If an even number of counties are part of the regional sewage district, the following members:

(i) Two (2) county executive members, appointed by those members' county executive, from the county that has the largest number of customers served by the district's sewer system. However, if the county that has the largest number of customers served by the district's sewer system does not have at least two (2) members of its executive who are not also trustees of the district, the county executive of that county may appoint one (1) or more of the members required by this item from outside the county executive's own membership in order to comply with subsection (a)(3).

(ii) One (1) county executive member, appointed by that member's county executive, from each county, other than the county described in item (i), in which the district is located. However, if a county described in this item does not have at least one (1) member of its executive who is not also a trustee of the district, the county executive of that county may appoint the member required by this item from outside the county executive's own membership in order to comply with subsection (a)(3).

(C) If an odd number of counties are part of the regional sewage district and an odd number of those counties in the district do not have at least one (1) county executive member who is not also a trustee of the district, the following members:

(i) One (1) county executive member, appointed by that member's county executive, from each county that has at least one (1) county executive member who is not also a trustee of the district, subject to subsection (a)(3).

(ii) One (1) member appointed by the county executive of each county that does not have at least one (1) county executive member who is not also a trustee of the district. A member appointed under this item must be appointed from outside the appointing county executive's own membership, subject to subsection (a)(3).

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase, the district shall mail, either separately or along with a periodic billing statement, a notice of the new rates and charges to each user of the sewer system who is affected by the increase. The notice:

(1) shall be mailed not later than seven (7) days after the district adopts the ordinance increasing the rates and charges; and

(2) must include a statement of a ratepayer's rights under this section.

(d) If subsection (c) applies, fifty (50) ratepayers of the district or ten percent (10%) of the district's ratepayers,

whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the ratepayers' objection.

If a petition meeting the requirements of this subsection is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the first listed petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine the following:

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

(g) After the district authority hears the evidence produced and makes the determinations set forth in subsection (f), the district authority, by a majority vote, shall:

(1) sustain the ordinance establishing the rates and charges;

(2) sustain the petition; or

(3) make any other ruling appropriate in the matter, subject to the standards set forth in section 9 of this chapter.

(h) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

As added by P.L.193-2001, SEC.4. Amended by P.L.1-2002, SEC.68; P.L.221-2007, SEC.21; P.L.71-2011, SEC.2; P.L.97-2012, SEC.14.

Chapter 14. Foreclosure of Liens

13-26-14

13-26-14-1

Sec. 1. A district may, as an additional or alternative remedy, foreclose a lien established by this article as a means of collection of rates or charges, including the penalty on the rates or charges.

As added by P.L.1-1996, SEC.16.

13-26-14-2

Sec. 2. (a) In all actions brought to foreclose the liens, the district is entitled to recover the following:

(1) The amount of the rates or charges.

(2) The penalty on the rates or charges.

(3) A reasonable attorney's fee.

(b) The court shall order that the sale be made without relief from valuation or appraisement statutes.

As added by P.L.1-1996, SEC.16.

13-26-14-3

Sec. 3. Except as otherwise provided by this article, in all actions to foreclose the liens:

(1) the laws concerning municipal public improvement assessments; and

(2) the rights, remedies, procedure, and relief granted the parties to the action;

apply.

As added by P.L.1-1996, SEC.16.

13-26-14-4

Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien, in the same manner established under IC 36-9-23 for municipal sewage works, on a lot, parcel of land, or building that is connected with or uses the works of the district. Liens under this chapter:

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-34. A lien under this chapter that is the only lien on a property may not be foreclosed.

As added by P.L.131-2005, SEC.4. Amended by P.L.71-2011, SEC.3; P.L.97-2012, SEC.15.

Chapter 2. Ohio River Valley Water Sanitation Compact

13-29-2

13-29-2-1

Sec. 1. The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of Indiana as a party thereto and signatory state, namely:

Whereas, A substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio river; and

Whereas, The rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas, The control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;

Now Therefore, The states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia do hereby covenant and agree as follows:

Article 1.

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio river basin which flow through, into, or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such state to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article 2.

The signatory states hereby create a district to be known as the "Ohio River Valley Water Sanitation District", hereinafter called the district, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio river, or its tributaries.

Article 3.

The signatory states hereby create the "Ohio River Valley Water Sanitation Commission", hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional

powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the congress of the United States.

Article 4.

The commission shall consist of three (3) commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three (3) commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the laws of the state from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

Article 5.

The commission shall elect from its number a chairman and vice chairman and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert, and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications, and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one (1) or more offices within the district for the transaction of its business, and may meet at any time or place. One (1) or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory states as may be duly constituted for that purpose.

On or before the first day of December of each year, the commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof.

Article 6.

It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into those portions of the Ohio River and its tributary waters which form boundaries between or are contiguous to two (2) or more signatory states, or which flow from one (1) signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five percent (45 percent) of the total suspended solids: Provided, That in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article 1, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the commission after investigation, due notice, and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article 1, to such degree as may be determined to be necessary by the commission after investigation, due notice, and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one (1) state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately

above the confluence.

The commission is hereby authorized to adopt, prescribe, and promulgate rules, regulations, and standards for administering and enforcing the provisions of this article.

Article 7.

Nothing in this compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

Article 8.

The commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The commission shall draft and recommend to the governors of the various signatory states uniform legislation dealing with the pollution of rivers, streams, and waters and other pollution problems within the district. The commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial, and other waste. The commission shall, more than one (1) month prior to any regular meeting of the legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of his compact.

Article 9.

The commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio river or any other river, stream, or water, any part of which constitutes any part of the boundary line between any two (2) or more of the signatory states, or into any stream any part of which flows from any portion of one (1) signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified, or treated or otherwise disposed of. The commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation, or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory states; and no such order upon a municipality, corporation, person, or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person, or other entity to comply with any such order issued against it or him by the commission and any court of general jurisdiction or any United States district court in any of the signatory states shall have the jurisdiction, by mandamus, injunction, specific performance, or other form of remedy, to enforce any such order against any municipality, corporation, or other entity domiciled or located within such state or whose discharge of the waste takes place within or adjoining such state, or against any employee, department, or subdivision of such municipality, corporation, person, or other entity: Provided, however, such court may review the order and affirm, reverse, or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The commission or, at its request, the attorney general or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

Article 10.

The signatory states agree to appropriate for the salaries, office, and other administrative expenses, their proper proportion of the annual budget as determined by the commission and approved by the governors of the signatory states, one-half (1/2) of such amount to be prorated among the several states in proportion to their population within the district at the last preceding federal census, the other half to be prorated in proportion to their land area within the district: Provided, that the total cost to the state of Indiana be limited to the appropriation specifically mentioned in section 5 of this bill.

Article 11.

This compact shall become effective upon ratification by the legislatures of a majority of the states located within the district and upon approval by the Congress of the United States; and shall become effective as to any additional states signing thereafter at the time of such signing.

In Witness Whereof, The various signatory states have executed this compact through their respective compact

commissioners.

The state of Indiana hereby consents that the state of Virginia may become a party to and a signatory state of the aforesaid compact as fully as if it had been expressly named herein.

As added by P.L.1-1996, SEC.19.

13-29-2-2

Sec. 2. "Commission", for purposes of sections 5 through 7 of this chapter, refers to the Ohio River Valley Water Sanitation Commission.

As added by P.L.1-1996, SEC.19.

13-29-2-3

Sec. 3. "Commissioner", for purposes of sections 5 through 7 of this chapter, means a member of the Ohio River Valley Water Sanitation Commission.

As added by P.L.1-1996, SEC.19.

13-29-2-4

Sec. 4. "Compact", for purposes of sections 5 through 7 of this chapter, refers to the Ohio River Valley Water Sanitation Compact.

As added by P.L.1-1996, SEC.19.

13-29-2-5

Sec. 5. (a) In pursuance of Article 4 of the Ohio River Valley Water Sanitation Compact, there are three (3) members of the Ohio River Valley Water Sanitation Commission from Indiana.

(b) The governor shall appoint two (2) commissioners, each of whom must be a resident and citizen of Indiana. The term of one (1) of the two (2) commissioners first appointed is three (3) years and the term of the other commissioner is six (6) years. The successors shall be appointed by the governor for terms of six (6) years each. Each commissioner holds office until a successor is appointed and qualified. Vacancies occurring in the office of a commissioner from any reason or cause shall be filled by appointment by the governor for the unexpired term.

(c) The third commissioner from Indiana is the commissioner of the department of environmental management ex officio. The term of the ex officio commissioner terminates at the time the individual ceases to hold the office of commissioner of the department of environmental management, and the commissioner's successors as a commissioner are the commissioner's successors as the commissioner of the department of environmental management.

(d) With the exception of the issuance of any order under Article 9 of the compact, the ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in the commissioner's department or office the power to be present and participate, including voting, as the commissioner's representative or substitute at any meeting of or hearing by or other proceeding of the commission.

(e) The terms of each of the initial three (3) members begin at the date of the appointment of the two (2) appointive commissioners if the compact has gone into effect in accordance with Article 11 of the compact. If the compact has not gone into effect, the terms begin upon the date upon which the compact becomes effective in accordance with Article 11 of the compact.

(f) The governor may remove a commissioner from office upon charges and after a hearing but the commissioner shall be given the opportunity to be heard.

As added by P.L.1-1996, SEC.19.

13-29-2-6

Sec. 6. (a) There is granted to the commission and the commissioners all the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact in every way. All officers of the state shall do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of the compact in every way. It is the policy of the state to perform and carry out the compact and to accomplish the purposes of the compact. All officers, bureaus, departments, and persons of and in the state government or administration of the state shall, at convenient times and upon request of the commission:

(1) furnish the commission with information and data possessed by any of them; and

(2) aid the commission by loan of personnel or other means lying within their legal powers respectively.

(b) The courts of general jurisdiction of the state have the jurisdiction specified in Article 9 of the compact, and the office of the attorney general or any other law enforcing officer of the state may institute any action for the enforcement of the orders of the commission as specified in Article 9 of the compact.
As added by P.L.1-1996, SEC.19.

13-29-2-7

Sec. 7. Any powers granted to the commission by this chapter shall be construed as in aid of and supplemental to and not as a limitation upon any of the powers vested in the commission by any of the following:

(1) Other laws of the state.
(2) The laws of any of the other states in the compact other than Indiana.
(3) The United States Congress.
(4) The terms of the compact.

As added by P.L.1-1996, SEC.19.

Chapter 2. Prohibited Acts

13-30-2

13-30-2-1

Sec. 1. A person may not do any of the following:

(1) Discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into:
(A) the environment; or
(B) any publicly owned treatment works;
in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the board under the environmental management laws.
(2) Increase the quantity or strength of a discharge of contaminants into the waters or construct or install a sewer or sewage treatment facility or a new outlet for contaminants into the waters of Indiana without prior approval of the department.
(3) Deposit any contaminants upon the land in a place and manner that creates or would create a pollution hazard that violates or would violate a rule adopted by the board.
(4) Deposit or cause or allow the deposit of any contaminants or solid waste upon the land, except through the use of sanitary landfills, incineration, composting, garbage grinding, or another method acceptable to the board.
(5) Dump or cause or allow the open dumping of garbage or of any other solid waste in violation of rules adopted by the board.
(6) Dispose of solid waste in, upon, or within the limits of or adjacent to a public highway, state park, state nature preserve, or recreation area or in or immediately adjacent to a lake or stream, except:
(A) in proper containers provided for sanitary storage of the solid waste; or
(B) as a part of a sanitary landfill operation or other land disposal method approved by the department.
(7) Construct, install, operate, conduct, or modify, without prior approval of the department, any equipment or facility of any type that may:
(A) cause or contribute to pollution; or
(B) be designed to prevent pollution.
However, the commissioner or the board may approve experimental uses of any equipment, facility, or pollution control device that is considered necessary for the further development of the state of the art of pollution control.
(8) Conduct any salvage operation or open dump by open burning or burn, cause, or allow the burning of any solid waste in a manner that violates either:
(A) the air pollution control laws; or
(B) the rules adopted by the board.
(9) Commence construction of a proposed hazardous waste facility without having first:
(A) filed an application for; and
(B) received;

a permit from the department.
(10) Commence or engage in the operation of a hazardous waste facility without having first obtained a permit from the department.
(11) Deliver any hazardous waste to a hazardous waste facility that:
(A) is not approved; or
(B) does not hold a permit from the department.
(12) Cause or allow the transportation of a hazardous waste without a manifest if a manifest is required by law.
(13) Violate any:
(A) condition;
(B) limitation; or
(C) stipulation;
placed upon a certificate of environmental compatibility by the hazardous waste facility site approval authority or any other provision of IC 13-22-10.
(14) Apply or allow the application of used oil to any ground surface, except for purposes of treatment in accordance with a permit issued by the department under any of the following:
(A) IC 13-15, except IC 13-15-9.
(B) IC 13-17-11.
(C) IC 13-18-18.
(D) IC 13-20-1.
(15) Commence construction of a solid waste incinerator without first obtaining a permit from the department under IC 13-20-8.
(16) Commence operation of a solid waste incinerator without first obtaining the approval of the department under IC 13-20-8.
As added by P.L.1-1996, SEC.20. Amended by P.L.133-2012, SEC.158.

13-30-2-2

Sec. 2. (a) A person, excluding a municipality, who owns or operates a water pollution treatment or control facility or sanitary sewer may not offer to provide service or allocate a sewer tap to a person without:
(1) having the capacity to provide the service or allocation; and
(2) reserving the capacity to provide the service or allocation;
to the property owner to whom the offer or allocation was made.
(b) A person who violates subsection (a) who:
(1) issued a written letter of intent or commitment to provide service or allocate a sewer tap to a property owner;
(2) failed to reserve the capacity to provide the service or tap; and
(3) as a result of failing to reserve that capacity, adversely affected the value of property of a property owner to whom the letter of intent was issued;
is liable for damages to the property owner.
(c) In an action brought by a property owner under this section, the damages are equal to the value of the property as the property would have appreciated in value but for the failure of the property to have been provided sewer service or a sewer tap.
(d) Notwithstanding IC 34-11-1-2, a property owner who has a continuing claim under this section may assert that claim until May 15, 1997.
As added by P.L.1-1996, SEC.20. Amended by P.L.1-1998, SEC.107.

Chapter 3. Investigation of Violations; Administrative Proceedings and Orders

13-30-3

13-30-3-1

Sec. 1. The commissioner or a designated member of the staff of the department may initiate an investigation on receipt of information of an alleged violation of any of the following:
(1) Environmental management laws.

(2) Air pollution control laws.
(3) Water pollution control laws.
(4) IC 36-9-30-35.
(5) A rule or standard adopted under the following:
(A) Environmental management laws.
(B) Air pollution control laws.
(C) Water pollution control laws.
As added by P.L.1-1996, SEC.20.

13-30-3-2

Sec. 2. If an investigation discloses a possible violation, the commissioner shall proceed under:
(1) section 3 of this chapter; or
(2) first section 3 of this chapter and then section 4 of this chapter.
As added by P.L.1-1996, SEC.20.

13-30-3-3

Sec. 3. (a) The commissioner shall:
(1) notify the alleged violator in writing that the commissioner believes a violation may exist; and
(2) offer the alleged violator an opportunity to enter into an agreed order providing for:
(A) the actions required to correct the violation; and
(B) if appropriate, the payment of a civil penalty.
(b) The commissioner is not required to extend the offer under subsection (a)(2) for more than sixty (60) days.
(c) An alleged violator may enter into an agreed order without admitting that the violation occurred.
(d) A notification under this section does not constitute a notice of violation for purposes of IC 14-34-3-3(20).
(e) If an agreed order is not entered into, the commissioner may proceed under section 4 of this chapter to issue a notice and order.
As added by P.L.1-1996, SEC.20.

13-30-3-4

Sec. 4. (a) The commissioner shall issue written notice to an alleged violator in accordance with IC 13-14-2-1.
(b) The notice must:
(1) specify the provision of:
(A) the environmental management laws;
(B) the air pollution control laws; or
(C) the water pollution control laws; or
(D) the rule;
allegedly being violated;
(2) include:
(A) a statement of:
(i) the manner in which; and
(ii) the extent to which;
the alleged violation exists; and
(B) an order under sections 10 through 12 of this chapter:
(i) requiring that the alleged violator take specific action to correct the violation;
(ii) assessing a civil penalty under IC 13-30-4-1, IC 13-30-4-2, and section 11 of this chapter for the violation; or
(iii) containing the substance of both item (i) and item (ii); and
(3) include a brief description of the procedure for requesting review under IC 4-21.5.
(c) A copy of the notice and order may also be sent to a local governmental unit that is a party to the action.
As added by P.L.1-1996, SEC.20. Amended by P.L.263-2013, SEC.9.

13-30-3-5

Sec. 5. (a) Except as otherwise provided in:
(1) a notice issued under section 4 of this chapter; or

(2) a law relating to emergency orders;
an order of the commissioner under this chapter takes effect twenty (20) days after the alleged violator receives the notice, unless the alleged violator requests under subsection (b) a review of the order before the twentieth day after receiving the notice.

(b) To request a review of the order, the alleged violator must:

(1) file a written request with the office of environmental adjudication under IC 4-21.5-7; and

(2) serve a copy of the request on the commissioner.

(c) If a review of an order is requested under this section, the office of environmental adjudication established under IC 4-21.5-7 shall review the order under IC 4-21.5.

As added by P.L.1-1996, SEC.20.

13-30-3-6

Sec. 6. If an alleged violator who has requested a review of an order of the commissioner under section 5 of this chapter agrees to resolve the controversy concerning the order in a manner satisfactory to the commissioner before a final order is issued by the office of environmental adjudication, the commissioner may approve an agreed order based on the agreement.

As added by P.L.1-1996, SEC.20.

13-30-3-7

Sec. 7. A final order of an environmental law judge is subject to judicial review under IC 4-21.5-5.

As added by P.L.1-1996, SEC.20.

13-30-3-8

Sec. 8. (a) A person who has filed a complaint under IC 13-30-1 may proceed against the alleged violator if the department does not:

(1) commence:

(A) an administrative proceeding; or

(B) a civil action;

on the alleged pollution, impairment, or destruction not later than ninety (90) days after receiving notice under IC 13-30-1-2;

(2) take steps not later than ninety (90) days after receiving notice under IC 13-30-1-2 to have a criminal prosecution commenced on the alleged pollution, impairment, or destruction; or

(3) diligently pursue:

(A) an administrative proceeding; or

(B) a civil action;

concerning the alleged pollution, impairment, or destruction after the administrative proceeding or civil action is commenced.

(b) The department does not have to be joined as a party in an action under this section.

As added by P.L.1-1996, SEC.20.

13-30-3-9

Sec. 9. In hearings under this chapter, the burden is on the complainant to show the alleged violation.

As added by P.L.1-1996, SEC.20.

13-30-3-10

Sec. 10. In accordance with the procedure set forth in this chapter, the commissioner shall:

(1) issue and enter an order; or

(2) make any other determination;

that the commissioner considers appropriate.

As added by P.L.1-1996, SEC.20.

13-30-3-11

Sec. 11. An order of the commissioner under this chapter may do any of the following:

(1) Include a direction to cease and desist from violations of the following:

(A) Environmental management laws.

(B) Air pollution control laws.
(C) Water pollution control laws.
(D) A rule adopted by the board.
(E) A rule adopted by the underground storage tank financial assurance board created by IC 13-23-11-1.
(2) Impose monetary penalties in accordance with the following:
(A) Environmental management laws.
(B) Air pollution control laws.
(C) Water pollution control laws.
(3) Mandate corrective action, including corrective action to be taken beyond the boundaries of the area owned or controlled by the person to whom the order is directed, to alleviate the violation.
(4) Revoke a permit or condition or modify the terms of a permit.
As added by P.L.1-1996, SEC.20. Amended by P.L.133-2012, SEC.159.

13-30-3-12

Sec. 12. If an order of the commissioner allows time during which to correct a violation, the order may provide for the posting of a performance bond with surety or security acceptable to the department to assure the correction of the violation within the time prescribed in the order.
As added by P.L.1-1996, SEC.20.

13-30-3-13

Sec. 13. (a) Except as provided in subsection (c), an enforcement action may not be taken under this chapter for a violation of IC 13-30-2-1(5) against a landowner on whose land garbage or other solid waste, except hazardous waste, has been illegally dumped without the landowner's consent unless the commissioner has made a diligent and good faith effort to identify, locate, and take enforcement action against a person who appears likely to have committed or caused the illegal dumping.
(b) A landowner described in subsection (a) who in good faith provides information to the commissioner concerning:
(1) a name;
(2) an address; or
(3) any other evidence of a responsible person's identity found in garbage or other solid waste dumped on the landowner's land;
is not liable to a person for an action taken by the commissioner against the person as a result of the information provided the landowner.
(c) The commissioner may include the owner of land on which a violation of IC 13-30-2-1(5) has apparently occurred as a party in any enforcement action against a person who allegedly committed the violation of IC 13-30-2-1(5) so that the commissioner may order the landowner to allow the alleged violator access to the land to remove and dispose of the solid waste allegedly dumped on the land in violation of IC 13-30-2-1(5).
(d) A landowner on whose land garbage or other solid waste has been illegally dumped without the landowner's consent may, in addition to any other legal or equitable remedy available to the landowner, recover from the person responsible for the illegal dumping:
(1) reasonable expenses incurred by the landowner in disposing of the garbage or other solid waste; and
(2) reasonable attorney's fees.
As added by P.L.1-1996, SEC.20.

Chapter 4. Civil Penalties

13-30-4

13-30-4-1

Sec. 1. (a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who violates:
(1) any provision of:
(A) environmental management laws;
(B) air pollution control laws;

(C) water pollution control laws;
(D) IC 13-18-14-1;
(E) a rule or standard adopted by the board; or
(F) a rule or standard adopted by the underground storage tank financial assurance board created by IC 13-23-11-1; or
(2) any determination, permit, or order made or issued by the commissioner under:
(A) environmental management laws or IC 13-7 (before its repeal);
(B) air pollution control laws or IC 13-1-1 (before its repeal); or
(C) water pollution control laws or IC 13-1-3 (before its repeal);
is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day of any violation.
(b) The department may:
(1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and
(2) request in the action that the person be enjoined from continuing the violation.
As added by P.L.1-1996, SEC.20. Amended by P.L.133-2012, SEC.160.

13-30-4-2

Sec. 2. (a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who:
(1) is named in or directed by an emergency order under IC 13-14-10-1; and
(2) violates the order;
is liable for an additional civil penalty not to exceed five hundred dollars ($500) per hour of violation.
(b) The additional civil penalty described in subsection (a) shall be assessed in an action brought by the commissioner in any court with jurisdiction.
As added by P.L.1-1996, SEC.20.

13-30-4-3

Sec. 3. (a) The department may waive up to one hundred percent (100%) of a civil penalty imposed on a business for a minor violation of:
(1) a requirement of environmental management laws;
(2) a rule adopted by a board; or
(3) any determination, permit, or order made or issued by the commissioner.
(b) The department may not waive any part of a civil penalty under this section if the violation:
(1) endangers or causes damage to public health or the environment;
(2) is intentional, willful, or criminal;
(3) is of a requirement for which the department has previously issued a notice or warning of violation, for this or a prior violation, to the business required to correct the violation; or
(4) is not corrected within ninety (90) days after the date the business required to correct the violation notifies the department of the violation under subsection (c). The department may extend the ninety (90) day period for not more than an additional ninety (90) days.
(c) To seek a waiver of a civil penalty under this section, the business required to correct the violation must submit to the department a written report of the violation for which a waiver is sought. The report must be submitted to the department before an inspection by the department that discloses the violation or the issuance of a notice or warning of violation.
(d) The boards may adopt rules to implement this section.
As added by P.L.1-1996, SEC.20. Amended by P.L.123-1996, SEC.15.

13-30-4-4

Sec. 4. To determine eligibility for a waiver under section 3 of this chapter, a business required to correct a violation may contact the technical and compliance assistance program established under IC 13-28-3. The confidentiality provision in IC 13-28-3-4 applies to the contact.
As added by P.L.1-1996, SEC.20.

14-9-3-1

Sec. 1. The following bureaus are created within the department:

(1) The bureau of water and resource regulation.
(2) The bureau of lands and cultural resources.
(3) The bureau of mine reclamation.
(4) The bureau of law enforcement and administration.
As added by P.L.1-1995, SEC.2.

14-9-4-1

Sec. 1. The following divisions are established within the department:
(1) Accounting.
(2) Administrative support services.
(3) Budget.
(4) Engineering.
(5) Entomology and plant pathology.
(6) Fish and wildlife.
(7) Forestry.
(8) Historic preservation and archeology.
(9) Human resources.
(10) Internal audit.
(11) Land acquisition.
(12) Law enforcement.
(13) Management information systems.
(14) Nature preserves.
(15) Oil and gas.
(16) Outdoor recreation.
(17) Public information and education.
(18) Reclamation.
(19) Reservoir management.
(20) Safety and training.
(21) State parks.
(22) Water.
(23) State land office.
As added by P.L.1-1995, SEC.2. Amended by P.L.1-2006, SEC.209; P.L.167-2011, SEC.12; P.L.151-2012, SEC.8.

14-9-6-1

Sec. 1. An advisory council is established to serve both of the following:
(1) The bureau of water and resource regulation.
(2) The bureau of lands and cultural resources.
As added by P.L.1-1995, SEC.2. Amended by P.L.95-2006, SEC.1.

14-15-2-7

Sec. 7. (a) As used in this section, "sewage" means human body wastes.

(b) A person may not keep, maintain, or operate upon public water a boat that is equipped with a water closet or toilet unless the water closet or toilet is equipped with a holding tank with the capacity to store wastes for subsequent disposal at:
(1) an approved shoreside facility or incinerator; or
(2) a treatment system approved by the department of environmental management according to rules adopted by the solid waste management board or the water pollution control board.

(c) A person may not dispose of sewage accumulated in a holding tank or any other container on a watercraft in a manner that the sewage reaches or may reach public waters, except through a sewage disposal facility approved by the department of environmental management according to rules adopted by:
(1) the solid waste management board; or
(2) the water pollution control board.
As added by P.L.1-1995, SEC.8.

14-15-2-8

Sec. 8. (a) As used in this section, "litter" means bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, plastic, or similar refuse.

(b) In the operation or use of watercraft, a person may not throw, dump, place, deposit, or cause or permit to be thrown, dumped, placed, or deposited:

(1) any litter, filth, or putrid or unwholesome substance; or

(2) the contents of a water closet or toilet, catch basin, or grease trap;

in or upon public water or the banks of public water.

As added by P.L.1-1995, SEC.8.

14-19-1-1

Sec. 1. The department shall do the following:

(1) Have the custody of and maintain the parks, preserves, forests, reservoirs, and memorials owned by the state.

(2) Adopt the necessary rules under IC 4-22-2 to secure enforcement of this title, which must include provisions for the use of motorized carts during the hours specified in IC 9-21-7-2(a)(1) at state parks and recreation areas by an individual who is the holder of a driver's license and who:

(A) is at least sixty-five (65) years of age; or

(B) has a disability as defined by the federal Social Security Administration guidelines (42 U.S.C. 416).

(3) Prepare, print, post, or distribute printed matter relating to the state parks and preserves.

(4) Subject to the approval of the governor, purchase land for parks or preserves and scenic and historic places. For the purpose of acquiring land for parks or preserves and scenic and historic places, the commission may exercise the power of eminent domain in the manner provided in IC 14-17-3.

(5) Accept in the name of the state by gift or devise the fee or other estate in land or scenic or historic places.

(6) Employ, with the approval of the authorities having control of a state penal institution, the convicts committed to a penal institution for the purpose of producing or planting trees, clearing, improving, repairing, draining, or developing land purchased or acquired by the state for parks or preserves or as scenic or historic places.

(7) Have the custody of all abstracts of title, papers, contracts, or related memoranda except original deeds to the state, for land purchased or received for parks or preserves or for scenic or historic purposes under this section.

(8) Cooperate with:

(A) the department of environmental management;

(B) other state agencies; and

(C) local units of government;

to protect the water and land of Indiana from pollution.

(9) Have general charge of the navigable water of Indiana.

As added by P.L.1-1995, SEC.12. Amended by P.L.225-2005, SEC.15.

14-22-2-6

Sec. 6. (a) The director shall adopt rules under IC 4-22-2 to do the following:

(1) Establish, open, close, lengthen, suspend, or shorten seasons.

(2) Establish bag, sex, and size limits.

(3) Establish limitations on the numbers of hunters and fishermen.

(4) Establish the methods, means, and time of:

(A) taking, chasing, transporting, and selling; or

(B) attempting to take, transport, or sell;

wild animals or exotic mammals, with or without dogs, in Indiana or in a designated part of Indiana.

(5) Establish other necessary rules to do the following:

(A) Administer this chapter.

(B) Properly manage wild animals or exotic mammals in a designated water or land area of Indiana.

(6) Set aside and designate land or water or parts of the land or water owned, controlled, or under contract or acquired by the state for conservation purposes as a public hunting and fishing ground under the restrictions,

conditions, and limitations that are determined to be appropriate.

(b) Rules:

(1) may be adopted only after thorough investigation; and

(2) must be based upon data relative to the following:

(A) The welfare of the wild animal.

(B) The relationship of the wild animal to other animals.

(C) The welfare of the people.

(c) Whenever the director determines that it is necessary to adopt rules, the director shall comply with the following:

(1) Rules must clearly describe and set forth any applicable changes.

(2) The director shall make or cause to be made a periodic review of the rules.

(3) A copy of each rule, as long as the rule remains in force and effect, shall be included and printed in each official compilation of the Indiana fish and wildlife law.

(d) The director may modify or suspend a rule for a time not to exceed one (1) year under IC 4-22-2-37.1.

As added by P.L.1-1995, SEC.15.

14-22-9-6

Sec. 6. All offal or filth of any kind accruing from the catching, curing, cleaning, or shipping of fish in or near the water of Lake Michigan shall be burned, buried, or otherwise disposed of in a sanitary manner that:

(1) does not pollute the water; and

(2) is not or does not become detrimental to public health or comfort.

As added by P.L.1-1995, SEC.15.

14-22-9-9

Sec. 9. (a) This section does not apply to a downstream water release from an existing municipal or fire protection impoundment that has not impounded sufficient water for release.

(b) A person may not stretch, place, or set an obstruction, other than a dam, across a waterway of Indiana or boundary waters of the state that prevents fish from ascending or descending a waterway.

(c) A person who owns, operates, or controls a dam:

(1) whose impounded water is withdrawn for municipal, industrial, electrical, agricultural, mining, or any other use; and

(2) across a waterway of Indiana or boundary water of Indiana whose watershed is greater than fifty (50) square miles;

may be required to incorporate into the structure sufficient water storage head to maintain during periods of minimum stream flow a downstream discharge equal to the inflow into the impoundment created by the dam and to maintain a sufficient head of water above the dam to support fish life. A person described in this subsection shall maintain during periods of minimum stream flow a downstream discharge equal to the inflow into the impoundment created by the dam.

(d) An owner of a dam across a waterway of Indiana or boundary water of Indiana whose watershed is greater than fifty (50) square miles may be required to construct and maintain the following:

(1) Fish ladders on the dam sufficient to allow the fish below the dam to pass over the dam into the water above the dam.

(2) A passageway around and over the dam sufficient to allow the upstream and downstream hand-carrying of small boats for the purpose of navigation.

The fish ladders or boat passage shall be constructed in the manner and of the materials that are prescribed by the director.

(e) The department shall enforce and administer this section.

(f) A person who violates this section commits a Class C infraction. Each day that a violation continues constitutes a separate offense.

(g) The remedy afforded by this section does not deprive an aggrieved person from seeking redress by any other remedy:

(1) provided by statute; or

(2) under law.

As added by P.L.1-1995, SEC.15.

14-22-10-6

Sec. 6. (a) A person who, whether or not the person has been issued a certificate of approval, license, permit, or other document of approval authorized by this article or any other Indiana law, discharges, sprays, or releases waste materials, chemicals, or other substances:

(1) either accidentally, negligently, or willfully;

(2) in any quantity, concentration, or manner onto or in any water of Indiana, the boundary waters of the state, or onto or in public or private land; and

(3) so that wild animals are killed as a result;

is responsible for the kill.

(b) The director shall, in the name of the state, recover damages from the person. Upon receipt of the estimates of the damages caused, the director shall notify the attorney general.

(c) The attorney general shall notify the persons responsible for the destruction of wild animals in question and may effect a settlement that the attorney general and the director consider proper and reasonable. If a settlement is not reached within a reasonable time, the attorney general shall bring a civil action to recover the damage in an appropriate court in the county in which the discharge of material responsible for the death of wild animals took place.

(d) The proceeds of a recovery shall be used to replace, as far as and as promptly as possible, in whatever manner the director considers proper, the wild animal population or habitat in the waters or lands in question. If the improvement of the wild animal population or habitat in question is not practicable, the proceeds shall be deposited into the fish and wildlife fund.

As added by P.L.1-1995, SEC.15.

14-22-30-1

Sec. 1. A person may not use, set, or discharge dynamite or other explosives in any of the waters of this state without having a permit from the director.

As added by P.L.1-1995, SEC.15.

Chapter 1. Water Rights; Surface Water

14-25-1

14-25-1-1

Sec. 1. The general welfare of the people of Indiana requires that:

(1) surface water resources of Indiana be put to beneficial uses to the fullest extent;

(2) the use of water for nonbeneficial uses be prevented; and

(3) public and private money for the promotion and expansion of the beneficial uses of surface water resources be invested to the end that the best interests and welfare of the people of Indiana will be served.

As added by P.L.1-1995, SEC.18.

14-25-1-2

Sec. 2. (a) Water in a natural stream, natural lake, or another natural body of water in Indiana that may be applied to a useful and beneficial purpose is declared to be:

(1) a natural resource and public water of Indiana; and

(2) subject to control and regulation for the public welfare as determined by the general assembly.

(b) Diffused surface water flowing vagrantly over the surface of the ground is not considered to be public water. The owner of the land on which the water falls, pools, or flows has the right to use the water.

As added by P.L.1-1995, SEC.18.

14-25-1-3

Sec. 3. (a) The owner of land contiguous to or encompassing a public watercourse may use water from the public watercourse in the quantity necessary to satisfy the owner's needs for domestic purposes, including the following:

(1) Water for household purposes.

(2) Drinking water for livestock, poultry, and domestic animals.

(b) The use of water for domestic purposes has priority and is superior to all other uses.

As added by P.L.1-1995, SEC.18.

14-25-1-4

Sec. 4. (a) This section applies to land contiguous to or encompassing a public watercourse.

(b) The:

(1) owner or group of owners of the land; or

(2) person, firm, limited liability company, corporation, unit of government, or association for irrigation or other purposes owning the land;

may impound the water behind a dam in the natural stream bed or on the owner's land or by pumping or diverting the water from a stream or lake to a reservoir when the flow in the stream or the level of the lake exceeds existing reasonable uses at the time of the impoundment.

(c) An obstruction placed across a natural stream must include an outlet facility for release of water that the owner is not entitled to use under this chapter. The owner shall operate the outlet in accordance with this section.

(d) Action by an owner or a group of owners under this section must be approved by the commission before the action is taken.

As added by P.L.1-1995, SEC.18.

14-25-1-5

Sec. 5. (a) A public utility, a person, a firm, a limited liability company, a corporation, a unit of government, or an association for irrigation or other purposes that creates additional stream volumes by releases from impoundments built and financed by the entity for the entity's purpose may use the increased flowage at all times. The amount of increased flowage shall be determined by well recognized engineering computations.

(b) Riparian owners do not have rights in increased flowage beyond normal stream flow.

As added by P.L.1-1995, SEC.18.

14-25-1-6

Sec. 6. (a) The standard units for the measurement of the flow of water are a cubic foot per second and a gallon per minute.

(b) The standard units for the measurement of stored water are an acre-foot and a gallon.

(c) The standards and methods for the measurement of the volume of water flow that are either used or approved by the United States Geological Survey in cooperation with the various departments of the state and federal governments shall be accepted as prima facie reliable.

As added by P.L.1-1995, SEC.18.

14-25-1-7

Sec. 7. (a) Upon approval of the commission and subject to subsection (b), any person, whether or not the owner of land contiguous to or encompassing a watercourse, may divert the flood water of a watercourse for any useful purpose, including the purpose of storage.

(b) A diversion under this section may not cause injury to landowners or the users of water in the watershed of the watercourse from which the flood flow is diverted.

(c) This section does not limit:

(1) any rights granted under section 4 of this chapter or under IC 13-2-1-3(2) (before its repeal); or

(2) any other legal right existing on March 12, 1959, to divert and store water.

As added by P.L.1-1995, SEC.18.

14-25-1-8

Sec. 8. Whenever a dispute arises between the users of surface water in a watershed area, any party to the dispute may request that the commission mediate the dispute using the mediation provisions under IC 4-21.5-3.5.

As added by P.L.1-1995, SEC.18. Amended by P.L.151-2012, SEC.30.

14-25-1-9

Sec. 9. A person who uses ground water or surface water shall, when requested by the commission, report to the commission the volume of water used by the person in a specific period. The commission may, in the commission's rules, prescribe the method of making the reports.

As added by P.L.1-1995, SEC.18.

14-25-1-10

Sec. 10. The policy that surface waters of Indiana are declared to be public waters and subject to regulation by the general assembly is the accepted policy of the state. Users of surface waters who:

(1) institute withdrawal of water for artificial uses from a natural stream, natural lake, or other natural body of water; or

(2) increase artificial uses;

are subject to regulation of the uses or increased uses that are enacted into law by the general assembly.
As added by P.L.1-1995, SEC.18.

14-25-1-11

Sec. 11. (a) The general assembly finds that a diversion of water out of the basin, unless conducted under the Great Lakes—St. Lawrence River Basin Water Resources Compact, will impair or destroy the Great Lakes. The general assembly further finds that the regulation of a diversion of water from the basin is consistent with the mandate of the Preamble to and Article 14, Section 1 of the Constitution of the State of Indiana, the United States Constitution, and the federal legislation according to which Indiana was granted statehood.

(b) Water may not be diverted outside the basin from that part of the basin within Indiana unless the diversion is:

(1) approved by the governor of each Great Lakes state under 42 U.S.C. 1962d-20 (Water Resources Development Act); or

(2) conducted:

(A) after the effective date of; and

(B) in accordance with the requirements of;

the Great Lakes—St. Lawrence River Basin Water Resources Compact.

(c) The commission shall adopt rules necessary to implement this section.
As added by P.L.1-1995, SEC.18. Amended by P.L.71-2004, SEC.2; P.L.4-2008, SEC.3.

Chapter 2. Minimum Stream Flow and Water Sale Contracts

14-25-2

14-25-2-1

Sec. 1. (a) Except as provided in section 8 of this chapter, the commission may provide certain minimum quantities of stream flow or sell water on a unit pricing basis for water supply purposes from the water supply storage in reservoir impoundments or parts of the impoundments that are financed by the state. The water may be made available for direct withdrawal from the reservoir impoundment or released from the reservoir impoundment to create increased flowage beyond normal stream flow for use by the contracting party or purchaser at a downstream point. The withdrawals or releases may not exceed the storage allocated to water supply purposes in the authorizing legislation for water supply or multiple purpose reservoir projects.

(b) This section does not abrogate, limit, or affect in any manner prior or future sales of water from reservoirs constructed for or by the department in which adequate water for incidental water supply purposes is available.
As added by P.L.1-1995, SEC.18.

14-25-2-2

Sec. 2. (a) Except as provided in section 8 of this chapter and subject to section 2.5 of this chapter, the commission may contract with a person for the provision of certain minimum quantities of stream flow or for the sale of water on a unit pricing basis. A contract for the provision of minimum stream flows or for the sale of water on a unit pricing basis:

(1) must be executed by the commission; and

(2) is subject to approval by the following:

(A) The attorney general.

(B) The governor.

(C) The person desiring the use.

(b) A contract entered into under this chapter may not cover a period of more than fifty (50) years.

(c) Before the submission of the contract to the governor for approval, the commission shall submit a copy of the

contract to the department. The department shall, within twenty (20) days of receipt, do the following:

(1) Prepare a memorandum relative to the effect that the contract might have on recreational facilities.

(2) Submit the memorandum to the governor for the governor's consideration.

As added by P.L.1-1995, SEC.18. Amended by P.L.231-2007, SEC.1.

14-25-2-2.5

Sec. 2.5. (a) As used in this chapter, "water utility" means:

(1) a public utility (as defined in IC 8-1-2-1(a));

(2) a municipally owned utility (as defined in IC 8-1-2-1(h));

(3) a not-for-profit utility (as defined in IC 8-1-2-125(a));

(4) a cooperatively owned corporation;

(5) a conservancy district established under IC 14-33; or

(6) a regional water district established under IC 13-26;

that provides water service to the public.

(b) A person that seeks to contract with the commission for the provision of certain minimum quantities of stream flow or the sale of water on a unit pricing basis under section 2 of this chapter must submit a request to the commission and the department. The commission shall not make a determination as to whether to enter into a contract with the person making the request until:

(1) the procedures set forth in this section have been followed; and

(2) the commission has reviewed and considered each report submitted to the commission under subsection (i).

(c) Not later than thirty (30) days after receiving a request under subsection (b), the department shall provide, by certified mail, written notice of the request to the following:

(1) Each person with whom the commission holds a contract for:

(A) the provision of certain minimum quantities of stream flow; or

(B) the sale of water on a unit pricing basis;

as of the date of the request.

(2) The executive and legislative body of each:

(A) county;

(B) municipality, if any; and

(C) conservancy district established under IC 14-33, if any;

in which the water sought in the request would be used.

(3) The executive and legislative body of each:

(A) county;

(B) municipality, if any; and

(C) conservancy district established under IC 14-33, if any;

in which the affected reservoir is located.

(d) Not later than seven (7) days after receiving a notice from the department under subsection (c), each person described in subsection (c)(1) shall, by certified mail, provide written notice of the request to each:

(1) water utility; or

(2) other person;

that contracts with the person described in subsection (c)(1) for the purchase of water for resale. Each person to whom notice is mailed under this subsection is in turn responsible for providing written notice by certified mail to each water utility or other person that purchases water from that person for resale. A water utility or another person required to provide notice under this subsection shall mail the required notice not later than seven (7) days after it receives notice of the request from the water utility or other person from whom it purchases water for resale.

(e) At the same time that:

(1) a person described in subsection (c)(1); or

(2) a water utility or another person described in subsection (d);

mails any notice required under subsection (d), it shall also mail to the department, by certified mail, a list of the names and addresses of each water utility or other person to whom it has mailed the notice under subsection (d).

(f) In addition to the mailed notice required under subsection (c), the department shall publish notice of the request, in accordance with IC 5-3-1, in each county:

(1) in which a person described in section (c)(1) is located;

(2) in which the affected reservoir is located;
(3) in which the water sought in the request would be used; and
(4) in which a water utility or other person included in a list received by the department under subsection (e) is located.

Notwithstanding IC 5-3-1-6, in each county in which publication is required under this subsection, notice shall be published in at least one (1) general circulation newspaper in the county. The department may, in its discretion, publish public notices in a qualified publication (as defined in IC 5-3-1-0.7) or additional newspapers to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the department.

(g) A notice required to be mailed or published under this section must:
(1) identify the person making the request;
(2) include a brief description of:
(A) the nature of the pending request; and
(B) the process by which the commission will determine whether to enter into a contract with the person making the request;
(3) set forth the date, time, and location of the public meeting required under subsection (h); and
(4) in the case of a notice that is required to be mailed under subsection (c)(1) or (d), a statement of the recipient's duty to in turn provide notice to any:
(A) water utility; or
(B) other person;
that purchases water for resale from the recipient, in accordance with subsection (d).

(h) The advisory council established by IC 14-9-6-1 shall hold a public meeting in each county in which notice is published under subsection (f). A public meeting required under this subsection must include the following:
(1) A presentation by the department describing:
(A) the nature of the pending request; and
(B) the process by which the commission will determine whether to enter into a contract with the person making the request.
(2) An opportunity for public comment on the pending request.

The advisory council may appoint a hearing officer to assist with a public meeting held under this subsection.

(i) Not later than thirty (30) days after a public meeting is held under subsection (h), the advisory council shall submit to the commission a report summarizing the public meeting.

As added by P.L.231-2007, SEC.2. Amended by P.L.3-2008, SEC.102.

14-25-2-3

Sec. 3. A contract for the sale of water on a unit pricing basis that is entered into under this chapter or under IC 13-2-1-7 (before its repeal) after June 30, 1991, must provide for compensation to the state at the rate of thirty-three dollars ($33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

14-25-2-4

Sec. 4. (a) As used in this section, "fund" refers to the water resources development fund created by this section.

(b) The water resources development fund is created. Money paid to the state under a contract entered into under this chapter shall be deposited in the fund.

(c) The proceeds of the fund do not revert to the state general fund but constitute a revolving fund to be used exclusively for the purposes of this chapter.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from the investments shall be deposited in the fund.

(e) Money in the fund may be used for any of the following purposes:
(1) The development of new reservoirs.
(2) The investigation, development, and improvement of existing reservoirs.
(3) The acquisition of easements or purchase in fee simple of land and property to be used as reservoir sites.
(4) The financing, construction, operation, and maintenance of reservoir impoundments or parts of impoundments for water supply storage and uses, either independently or in cooperation with any person.

(5) The investigation of water resource availability, quality, and water supply needs.
(6) Watershed protection.
(7) River enhancement.
(8) The preparation of a compilation and mapping of all community public water supplies under IC 14-25-7-13(d).
(9) The operation of the division of water.

(f) The department shall administer the fund.

As added by P.L.1-1995, SEC.18. Amended by P.L.184-1995, SEC.1; P.L.186-2003, SEC.68.

14-25-2-5

Sec. 5. The commission shall adopt rules under IC 4-22-2 that are considered necessary for the proper administration of the following:

(1) The water resources development fund.
(2) This chapter.

As added by P.L.1-1995, SEC.18.

14-25-2-6

Sec. 6. The commission may, subject to the approval of the budget agency, employ personnel necessary for the efficient administration of this chapter.

As added by P.L.1-1995, SEC.18.

14-25-2-7

Sec. 7. Except as provided in section 8 of this chapter, a contract for the sale of water on a unit pricing basis that was entered into under this chapter before July 1, 1991, is binding upon the commission. However, notwithstanding the terms of the contract, the rate of compensation for water sold under the contract on a unit pricing basis is thirty-three dollars ($33) per one million (1,000,000) gallons of water.

As added by P.L.1-1995, SEC.18.

14-25-2-8

Sec. 8. The state may not require compensation for water that:

(1) comes from a reservoir impoundment financed by the state; and
(2) is provided to water users in an area in which the outlet of the reservoir impoundment has been the primary source of water for domestic, industrial, and public use for at least fifty (50) years.

As added by P.L.1-1995, SEC.18.

14-25-2-9

Sec. 9. A contract that:

(1) was entered into under IC 13-2-1-7 (before its repeal) before July 1, 1991; and
(2) provides for the sale of water on a unit pricing basis in an area described in section 8 of this chapter;

is binding upon the commission. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area.

As added by P.L.1-1995, SEC.18.

14-25-2-10

Sec. 10. The commission may enter into contracts under this chapter to provide certain minimum quantities of stream flow or to provide water on a measured basis in an area described in section 8 of this chapter. However, the opposite party to the contract is not required to pay compensation to the state for water provided in the area described in section 8 of this chapter.

As added by P.L.1-1995, SEC.18.

14-25-2-11

Sec. 11. (a) As used in this section, "conservancy district" refers to a conservancy district established under IC 14-33 or under IC 13-3-3 (before its repeal) for the purpose of furnishing water supply for domestic, industrial, and public use.

(b) The state may not obtain compensation from a conservancy district under a contract for the sale of water on a

unit pricing basis upon the basis of an estimate of the quantity of water provided to the conservancy district.

(c) The calculation of the compensation owed by a conservancy district under a contract must be based upon either of the following:

(1) The measurement of the quantity of water provided to the conservancy district.

(2) The measurement of the water furnished by the conservancy district to the persons who obtain water from the conservancy district, with a reasonable allowance made for water lost by the conservancy district in the process of obtaining, treating, and furnishing the water.

(d) This section does not affect the obligation of a conservancy district to pay a minimum yearly fee in a certain amount established by a contract.

As added by P.L.1-1995, SEC.18.

Chapter 3. Water Rights; Ground Water

14-25-3

14-25-3-1

Sec. 1. As used in this chapter, "person" means an individual, a firm, a limited liability company, a corporation, an association, or a governmental agency. However, for purposes of sections 6 through 10 of this chapter, the term does not include a public utility privately or publicly owned engaged in supplying or furnishing public utility service to the residents and business institutions of a city, town, or public institution within a restricted use area.

As added by P.L.1-1995, SEC.18.

14-25-3-2

Sec. 2. As used in this chapter, "waste" or "wasted" means any of the following:

(1) Permitting ground water to flow or taking or using ground water in any manner so that the ground water is not put to the full beneficial use.

(2) Transporting ground water from the water's source to the place of use in such a manner that there is an excessive loss in transit.

(3) Permitting or causing the pollution of a fresh water strata through an act that will cause salt water, highly mineralized water, or otherwise contaminated water to enter the strata.

As added by P.L.1-1995, SEC.18.

14-25-3-3

Sec. 3. It is a public policy of the state in the interest of the economy, health, and welfare of Indiana and the citizens of Indiana to conserve and protect the ground water resources of Indiana and for that purpose to provide reasonable regulations for the most beneficial use and disposition of ground water resources.

As added by P.L.1-1995, SEC.18.

14-25-3-4

Sec. 4. (a) The department may by rule or order, when the department has reason to believe it is necessary and in the public interest, designate certain areas of Indiana where the withdrawal of ground waters exceeds or threatens to exceed natural replenishment as restricted use areas. Before the department designates an area as a restricted use area, the department shall do the following:

(1) Have surveys made of the ground water resources of the area.

(2) Determine the safe annual yield of the basin.

(b) The department may do the following:

(1) Cooperate with the agencies of the federal government engaged in making ground water surveys.

(2) Accept and use the findings of other agencies of the federal and state governments as a basis of the department's decisions.

As added by P.L.1-1995, SEC.18.

14-25-3-5

Sec. 5. (a) Whenever the department designates a restricted use area, the department shall approve an order to that effect and adopt a rule under IC 4-22-2.

(b) In addition to the publication of notice provided for in IC 4-22-2, the department shall, for the purposes of

this chapter only, do the following:

(1) Give notice by publication one (1) time each week for three (3) consecutive weeks in all of the newspapers of general circulation in the area to be designated as a restricted use area.

(2) Give ten (10) days written notice to all public utilities privately or publicly owned engaged in furnishing water to residents of the restricted use area.

(3) Give ten (10) days written notice to:

(A) the executive of each city and town;

(B) the president of each county executive in a county that does not have a consolidated city; and

(C) the county executive in a county that has a consolidated city;

in the restricted use area.

(4) Have the notice posted at least ten (10) days before the hearing as follows:

(A) At the door of the courthouse.

(B) At the city or town hall if there is a city or town hall in the restricted use area.

(C) In at least three (3) other public places.

(c) Proof of the notice shall be made at the hearing by the affidavits of the publishers of the newspapers and of the persons who posted and sent the other notices required by this section.

As added by P.L.1-1995, SEC.18.

14-25-3-6

Sec. 6. In a restricted use area, a person may not withdraw or use for any purpose ground water in quantities in excess of one hundred thousand (100,000) gallons per day in addition to the quantity the person is using at the time the order designating the area as a restricted use area becomes effective, unless the person has obtained a permit from the department to withdraw or use a greater quantity.

As added by P.L.1-1995, SEC.18.

14-25-3-7

Sec. 7. A person that:

(1) desires to withdraw or use a quantity greater than one hundred thousand (100,000) gallons per day in addition to the quantity being used at the time of the effective date of an order declaring an area as a restricted use area; or

(2) desires to withdraw or use a quantity greater than one hundred thousand (100,000) gallons per day if the applicant was not a prior user of ground water;

must apply for permission to do so to the department upon a form prescribed by the department.

As added by P.L.1-1995, SEC.18.

14-25-3-8

Sec. 8. In granting or refusing a permit, the department shall consider the following:

(1) The effect the withdrawal of additional ground water from the restricted use area will have on future supplies in the area.

(2) What use is to be made of the water.

(3) How the withdrawal will affect present users of ground water in the area.

(4) Whether the future natural replenishment is likely to become more or less.

(5) Whether future demands for ground water are likely to be greater or less.

(6) How the withdrawal of additional ground water will affect the health and best interests of the public.

As added by P.L.1-1995, SEC.18.

14-25-3-9

Sec. 9. In granting a permit, the department may do the following:

(1) Impose the conditions or stipulations that are necessary to conserve the ground water of the area and prevent waste, exhaustion, or impairment of the ground water.

(2) Require that ground water in a restricted area that is withdrawn and used be returned to the ground through wells, pits, or spreading grounds. If this condition is imposed, the water shall be returned under the rules that the department adopts subject to the approval of the water pollution control board to avoid pollution of underground water.

As added by P.L.1-1995, SEC.18.

14-25-3-10

Sec. 10. A refusal to grant a permit is subject to court review under IC 4-21.5-5.
As added by P.L.1-1995, SEC.18.

14-25-3-11

Sec. 11. (a) All users of ground water in amounts exceeding one hundred thousand (100,000) gallons per day in an area designated by the department as a restricted use area shall file with the department a certified statement of the average daily amount of ground water used before the designation of the area as a restricted use area. The statement:

(1) shall be filed within ninety (90) days after the adoption of an order by the department designating the area as a restricted use area; and

(2) must be on a form furnished by the department upon request.

(b) Failure to file a certified statement as required by subsection (a) invalidates a user's prior claim to the withdrawal and use of ground water exceeding one hundred thousand (100,000) gallons per day without having secured a permit from the department under this chapter.
As added by P.L.1-1995, SEC.18.

14-25-3-12

Sec. 12. In a restricted use area, each well owner or the representatives of the well owner shall file with the department, on forms furnished by the department, a complete record of each new well drilled within the area. The record:

(1) shall be filed within thirty (30) days after the well has been completed and placed in operation; and

(2) must contain the following:

(A) A log of the following:

(i) The well.

(ii) The static water level.

(iii) The yield.

(iv) The drawdown.

(B) Other pertinent information that is required by the department.
As added by P.L.1-1995, SEC.18.

14-25-3-13

Sec. 13. A permit may not be issued to an applicant requesting permission to withdraw and use more than one hundred thousand (100,000) gallons per day of ground water from a designated restricted use area who does not:

(1) have title; or

(2) hold a lease;

to the property from which the water is to be withdrawn.
As added by P.L.1-1995, SEC.18.

14-25-3-14

Sec. 14. The department may require a user of ground water in amounts exceeding one hundred thousand (100,000) gallons per day in designated restricted use areas to install a meter if any of the following conditions exist:

(1) The user is unable to furnish accurate information concerning the amounts of ground water being withdrawn and used.

(2) There is evidence of either of the following:

(A) The user's certified statement is false or inaccurate.

(B) The user is withdrawing and using a larger quantity than has been authorized by the department under this chapter.
As added by P.L.1-1995, SEC.18.

14-25-3-15

Sec. 15. (a) In a restricted use area, the department may require a person found to be committing waste of ground

water to return all or a part of the water to the ground if the following conditions are met:

(1) The water being wasted can safely and practicably be returned to the ground.

(2) Requirements are imposed as proportionately equal as is practicable on all persons committing waste.

(b) The use of ground water for cooling purposes may constitute waste if the water is:

(1) not used more than one (1) time in a cooling, air conditioning, or heating system; and

(2) not put to further beneficial use.

(c) In a restricted use area the department may require the owner of a flowing well:

(1) that exceeds a flow of one thousand five hundred (1,500) gallons per day; and

(2) whose water is being wasted;

to install the controls on the well that are necessary to diminish the daily flow to not more than one thousand five hundred (1,500) gallons.

As added by P.L.1-1995, SEC.18.

14-25-3-16

Sec. 16. (a) As used in this section, "rated capacity of a pump" means the number of gallons of water a pump is capable of discharging in a given time as determined by the manufacturer or by certified pump tests.

(b) In determining the quantity of water being removed from or returned to the ground, the department may use the following:

(1) The rated capacity of the pump used for pumping the water.

(2) The rated capacity of the cooling system.

(3) Data furnished by the well driller or user.

(4) The standards or methods employed by the United States Geological Survey in determining quantities.

(5) Any other accepted method.

As added by P.L.1-1995, SEC.18.

14-25-3-17

Sec. 17. The department may adopt the rules that are necessary to do the following:

(1) Determine within reasonable limits quantities of water being removed from the ground.

(2) Administer any of the other provisions of this chapter.

As added by P.L.1-1995, SEC.18.

14-25-3-18

Sec. 18. A person who violates this chapter commits a Class C infraction. Each day of violation constitutes a separate infraction.

As added by P.L.1-1995, SEC.18.

Chapter 4. Emergency Regulation of Ground Water Rights

14-25-4

14-25-4-1

Sec. 1. As used in this chapter, "construction" means the process of building a building, highway, utility, or another structure. The term includes the following:

(1) The process of assembling materials.

(2) Disassembling and removing a structure.

(3) The preparation of the construction site.

(4) Related work.

As added by P.L.1-1995, SEC.18.

14-25-4-2

Sec. 2. As used in this chapter, "dewatering well" means a temporary water well that:

(1) is used as part of a construction project to remove water from a surface or subsurface area; and

(2) ceases to be used upon completion of the construction project or shortly after completion of the project.

As added by P.L.1-1995, SEC.18.

14-25-4-3

Sec. 3. As used in this chapter, "nonsignificant ground water withdrawal facility" means the ground water withdrawal facility of a person that, in the aggregate, has a withdrawal capability of less than one hundred thousand (100,000) gallons of ground water in one (1) day.
As added by P.L.1-1995, SEC.18.

14-25-4-4

Sec. 4. (a) As used in this chapter and subject to subsection (b), "owner" includes the following:
(1) The owner of an interest in property.
(2) A person in possession of property.
(b) For a temporary dewatering well, "owner" means the person who authorized the construction that necessitated the installation of the dewatering well.
As added by P.L.1-1995, SEC.18.

14-25-4-5

Sec. 5. As used in this chapter, "potable water" means water that at the point of use is acceptable for human consumption under drinking water quality standards adopted by the water pollution control board under IC 13-18-4-1.
As added by P.L.1-1995, SEC.18. Amended by P.L.1-1996, SEC.65.

14-25-4-6

Sec. 6. As used in this chapter, "significant ground water withdrawal facility" means the ground water withdrawal facility of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of ground water in one (1) day.
As added by P.L.1-1995, SEC.18.

14-25-4-7

Sec. 7. (a) As used in this chapter, "water well" means an excavation, however constructed, that is used for the purpose of withdrawing ground water for reasonable beneficial uses.
(b) The term does not include agricultural and urban drainage systems.
As added by P.L.1-1995, SEC.18.

14-25-4-8

Sec. 8. Within twenty-four (24) hours after receiving a written complaint from the owner of a nonsignificant ground water withdrawal facility that a water well on property in the owner's possession has:
(1) failed to furnish the well's normal supply of water; or
(2) failed to furnish potable water;
the director shall cause an onsite investigation to be made.
As added by P.L.1-1995, SEC.18.

14-25-4-9

Sec. 9. If an investigation under section 8 of this chapter discloses:
(1) that the well has:
(A) failed to furnish the well's normal supply of water; or
(B) based upon reasonable evidence of prior potability supplied by the owner, failed to furnish potable water;
(2) that there has been a substantial lowering of the level of ground water in the area that has resulted in the failure of the well to:
(A) furnish the well's normal supply of water; or
(B) furnish potable water if the failure is caused by natural variations in the potability of water in the source aquifer;
(3) that the well and the well's equipment were functioning properly at the time of the failure;
(4) that the failure of the well was caused by the lowering of the ground water level in the area;
(5) that the lowering of the ground water level is such that the ground water level:

(A) exceeds normal seasonal water level fluctuations; and
(B) substantially impairs continued use of the ground water resource in the area; and
(6) that the lowering of the ground water level was caused by at least one (1) significant ground water withdrawal facility;
the director shall, by temporary order, declare a ground water emergency.
As added by P.L.1-1995, SEC.18.

14-25-4-10

Sec. 10. If the director has reasonable evidence that indicates that continued ground water withdrawals from a significant ground water withdrawal facility will exceed the recharge capability of the ground water resource of the area, the director shall, by temporary order, declare a ground water emergency.
As added by P.L.1-1995, SEC.18.

14-25-4-11

Sec. 11. A temporary order under section 9 or 10 of this chapter must include a notice of hearing to be held under IC 4-21.5-4 as soon as practicable after the declaration of the ground water emergency. Following the hearing, the director may continue, amend, or terminate the ground water emergency. The emergency shall be terminated as soon as justified by changed conditions.
As added by P.L.1-1995, SEC.18.

14-25-4-12

Sec. 12. (a) Except as provided in subsection (b), the director may restrict the quantity of ground water that may be extracted from a significant ground water withdrawal facility when the director declares a ground water emergency under section 9 or 10 of this chapter if:
(1) the:
(A) facility is reasonably believed to have caused the failure of the complainant's water well; and
(B) immediate temporary provision of an adequate supply of potable water required under sections 18(1) and 20(a) of this chapter is not carried out; or
(2) there is a reasonable belief that continued ground water withdrawals from the facility will exceed the recharge capability of the ground water resource of the area.
(b) If an operator of a significant ground water withdrawal facility withdraws water by a means other than pumping, the director may temporarily restrict the quantity of ground water that may be extracted only if the provisions of subsection (a)(1) have not been met.
As added by P.L.1-1995, SEC.18.

14-25-4-13

Sec. 13. The commission may adopt rules under IC 4-22-2 to administer this chapter. The rules must be consistent with IC 25-39 and rules adopted under IC 25-39.
As added by P.L.1-1995, SEC.18.

14-25-4-14

Sec. 14. (a) A declaration of a ground water emergency under this chapter is effective when a copy of a declaration is served under IC 4-21.5-3-1 upon a person who owns the significant ground water withdrawal facility that is reasonably believed to have caused the failure of the complainant's water well.
(b) As soon as possible after a declaration of a ground water emergency has been made, copies of the declaration shall be given to the newspapers of general circulation located in the affected county. The notification to newspapers required by this subsection is in addition to the minimum procedural duties required of the department under IC 4-21.5 and does not satisfy service of process by publication under IC 4-21.5-3-1(f).
(c) If the emergency requires action before service can be completed under subsection (a), oral notification in person by a representative of the department and authorized by the director is sufficient until service can be completed. Oral notification is effective for not more than ninety-six (96) hours.
As added by P.L.1-1995, SEC.18. Amended by P.L.32-2011, SEC.8.

14-25-4-15

Sec. 15. This chapter does not:

(1) create a new; or
(2) abridge an existing;
civil right of action.
As added by P.L.1-1995, SEC.18.

14-25-4-16

Sec. 16. (a) A person who violates this chapter commits a Class A infraction.
(b) The commission may, without proof of irreparable injury, maintain an action to enjoin a violation of this chapter.
As added by P.L.1-1995, SEC.18.

14-25-4-17

Sec. 17. The owner of a significant ground water withdrawal facility shall, subject to an order issued under section 20 of this chapter or under IC 13-2-2.5-11 (before its repeal), provide timely and reasonable compensation to persons who own nonsignificant ground water withdrawal facilities if there is failure or substantial impairment of those facilities as set forth in section 8 of this chapter if both of the following conditions exist:
(1) The failure or substantial impairment was caused by the ground water withdrawals of the significant ground water withdrawal facility.
(2) Either:
(A) the affected nonsignificant ground water withdrawal facility was in existence before January 1, 1986; or
(B) if constructed after December 31, 1985, the facility conforms to the rules of the department issued under section 13 of this chapter. Water wells constructed after December 31, 1985, but before the adoption of rules under this chapter must conform to the Recommended Guidelines of the department in Information Bulletin No. 3 published at 9 IR 1242.
As added by P.L.1-1995, SEC.18.

14-25-4-18

Sec. 18. Timely and reasonable compensation under section 17 of this chapter consists of and is limited to the following:
(1) The immediate temporary provision at the prior point of use of an adequate supply of potable water.
(2) Reimbursement of expenses reasonably incurred by the complainant to do the following:
(A) Obtain an immediate temporary provision at the prior point of use of an adequate supply of potable water.
(B) Provide timely and reasonable compensation as provided in subdivision (3)(A) and (3)(B).
(3) Either:
(A) the restoration of the affected nonsignificant ground water withdrawal facility to the facility's former relative capability;
(B) the permanent provision at the point of use of an alternative potable supply of equal quantity; or
(C) the permanent restriction or scheduling of the ground water withdrawals of the significant ground water withdrawal facility so that the affected water well continues to produce:
(i) the well's normal supply of water; or
(ii) the normal supply of potable water if the well normally furnishes potable water.
As added by P.L.1-1995, SEC.18.

14-25-4-19

Sec. 19. The refusal of an owner of an affected nonsignificant ground water withdrawal facility to accept timely and reasonable compensation is sufficient grounds for the department to terminate an order imposed on a responsible significant ground water withdrawal facility. An owner may request a hearing under IC 4-21.5 if the owner does not believe compensation was timely or reasonable.
As added by P.L.1-1995, SEC.18.

14-25-4-20

Sec. 20. (a) Upon the declaration of a ground water emergency under section 9 of this chapter, the director shall,

by temporary order, require the immediate temporary provision at the prior point of use of an adequate supply of potable water. A temporary order under section 9 or 10 of this chapter remains in effect for ninety (90) days unless:

(1) terminated by the director before the expiration of ninety (90) days; or

(2) extended under IC 4-21.5-4-5(b) during the pendency of a proceeding under section 18(2) and 18(3) of this chapter.

(b) The commission shall implement section 18(2) and 18(3) of this chapter by order. Before the commission enters an initial determination of the order, the department shall conduct an investigation and provide affected persons with an informal opportunity to contribute to the investigation. All final orders of the commission shall be issued under IC 4-21.5-3.

As added by P.L.1-1995, SEC.18.

14-25-4-21

Sec. 21. (a) An owner of a new nonsignificant ground water withdrawal facility who desires to receive the protection of this chapter must construct the facility to conform to the rules adopted under section 13 of this chapter.

(b) Before a licensed water well drilling contractor or plumbing contractor drills and equips a ground water withdrawal facility for a person, the contractor must advise the person of the provisions of this chapter.

As added by P.L.1-1995, SEC.18.

Chapter 5. Emergency Regulation of Surface Water Rights

14-25-5

14-25-5-1

Sec. 1. This chapter applies to each freshwater lake that contains at least ten (10) acres at the body of water's normal level.

As added by P.L.1-1995, SEC.18.

14-25-5-2

Sec. 2. As used in this chapter, "financial responsibility bond" means a surety bond, a certificate of deposit, a cashier's check, or a letter of credit.

As added by P.L.1-1995, SEC.18.

14-25-5-3

Sec. 3. (a) As used in this chapter, "freshwater lake" means a body of standing surface water that:

(1) is of natural origin; or

(2) was:

(A) originally constructed to permanently retain water; and

(B) in existence at least five (5) years before the commencement of water withdrawals by a significant water withdrawal facility.

(b) The term does not include Lake Michigan.

As added by P.L.1-1995, SEC.18.

14-25-5-4

Sec. 4. As used in this chapter, "lake owner" means a person in possession of property that includes:

(1) a physical part of; or

(2) a legal interest in;

a freshwater lake.

As added by P.L.1-1995, SEC.18.

14-25-5-5

Sec. 5. As used in this chapter, "significant water withdrawal facility" means a water pumping installation or other equipment of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of water in one (1) day.

As added by P.L.1-1995, SEC.18.

14-25-5-6

Sec. 6. Not later than five (5) days after receiving a written complaint from a lake owner that:

(1) the level of a freshwater lake has been lowered:

(A) significantly below the lake's normal level as legally established under IC 14-26-4 or under IC 13-2-13 (before its repeal); or

(B) if the normal level has not been legally established under IC 14-26-4 or under IC 13-2-13 (before its repeal), significantly below the water line or shoreline as determined by existing water level records or by the action of the water that has marked upon the soil of the bed of the lake a character distinct from that of the bank with respect to vegetation and the nature of the soil; and

(2) the lowering of the lake level is believed to be caused by at least one (1) active significant water withdrawal facility operated within one-half (1/2) mile of the freshwater lake;

the director shall give notice to those persons responsible for the operation of the significant water withdrawal facility believed to have caused lowering of the lake level and cause an onsite investigation to be made.

As added by P.L.1-1995, SEC.18.

14-25-5-7

Sec. 7. (a) If an onsite investigation under section 6 of this chapter discloses that:

(1) the operation of at least one (1) significant water withdrawal facility has caused the freshwater lake to be lowered significantly below a level described in section 6(1) of this chapter; and

(2) the lowering of the lake level is likely to result in significant environmental harm to the freshwater lake or to adjacent property;

the director shall, by temporary order, declare a freshwater lake emergency.

(b) A temporary order may:

(1) restrict the quantity of water that is extracted by the causative significant water withdrawal facility; and

(2) provide for the restoration of the normal water level of the freshwater lake;

as needed to prevent significant environmental harm to the freshwater lake or adjacent property.

(c) A restoration order under subsection (b)(2) may allow the significant water withdrawal facility to discharge water of an acceptable quality into the affected freshwater lake.

As added by P.L.1-1995, SEC.18.

14-25-5-8

Sec. 8. A temporary order under section 7 of this chapter is effective when a copy of the order is served under IC 4-21.5-3-1 upon a person that owns or operates the significant water withdrawal facility.

As added by P.L.1-1995, SEC.18.

14-25-5-9

Sec. 9. If an onsite investigation under section 6 of this chapter discloses that the complaining lake owner has, through improper management or poor maintenance of the lake, caused or contributed to the lowering of the freshwater lake to a level significantly below a level described in section 6(1) of this chapter, the director may:

(1) not issue a temporary order under section 7 of this chapter; or

(2) issue a temporary order under section 7 of this chapter that requires the significant water withdrawal facility to restrict the facility's extraction of water or restore water only to the extent the director determines the lowering of the freshwater lake level is caused by the significant water withdrawal facility.

As added by P.L.1-1995, SEC.18.

14-25-5-10

Sec. 10. (a) Except as provided under subsection (b), the operator of a significant water withdrawal facility may obtain relief from a temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) by filing with the director a financial responsibility bond in an amount not:

(1) less than one thousand dollars ($1,000); or

(2) more than ten thousand dollars ($10,000);

for each acre contained in the freshwater lake. The aggregate amount of financial responsibility bond that may be assessed on the operator of a significant water withdrawal facility may not exceed fifty thousand dollars ($50,000).

(b) The director may not allow a significant water withdrawal facility to file a financial responsibility bond under subsection (a) if the department determines that a freshwater lake or an adjacent property contains an extraordinary or a unique natural resource that is likely to be irreparably damaged as a result of the lowering of the freshwater lake. The burden of proof to establish the presence of an extraordinary or a unique natural resource rests with the department.
As added by P.L.1-1995, SEC.18.

14-25-5-11

Sec. 11. (a) After a bond is filed under section 10 of this chapter, the operator of a significant water withdrawal facility and a complaining lake owner may enter into a written agreement for compensation to the lake owner instead of bond forfeiture.

(b) If:

(1) the operator and lake owner have not entered into an agreement within three (3) years after a temporary order under section 7 of this chapter has been issued; and

(2) the freshwater lake has not returned to normal;

the director shall order the forfeit to the benefit of the lake owner of the part of the bond filed under section 10 of this chapter that is needed to provide compensation under section 10 of this chapter.

(c) If a financial responsibility bond has been filed for the benefit of more than one (1) complaining lake owner, the amount of the bond forfeited under subsection (b) shall be distributed to the affected complaining lake owners on a pro rata basis.

(d) Instead of forfeiting a bond under subsection (b), the operator of a significant water withdrawal facility may pay cash to a lake owner in the amount of the part of the bond forfeited under subsection (b).
As added by P.L.1-1995, SEC.18.

14-25-5-12

Sec. 12. A significant water withdrawal facility and a lake owner may enter into an agreement to compensate the lake owner for the diminution in value of the lake owner's property caused by significant lowering of the lake level. If a significant water withdrawal facility and a lake owner enter into an agreement under this section, the owner of the significant water withdrawal facility is not required to file a financial responsibility bond under section 10 of this chapter.
As added by P.L.1-1995, SEC.18.

14-25-5-13

Sec. 13. (a) A temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) must include a notice of hearing to be held under IC 4-21.5-4 as soon as practicable after the declaration of the freshwater lake emergency. Following the hearing, the director may continue, amend, or terminate the freshwater lake emergency order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal).

(b) If a freshwater lake emergency order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) is terminated after a bond under section 10 of this chapter or under IC 13-2-2.6-13 (before its repeal) has been filed, the termination order must provide for the immediate release of the bond.
As added by P.L.1-1995, SEC.18.

14-25-5-14

Sec. 14. Upon application by the director or a lake owner, the commission may cause a temporary order issued under section 7 of this chapter or under IC 13-2-2.6-10 (before its repeal) to be made a permanent order. A permanent order is subject to IC 4-21.5-3-6.
As added by P.L.1-1995, SEC.18.

14-25-5-15

Sec. 15. (a) A person who violates this chapter commits a Class A infraction.

(b) The commission may, without proof of irreparable injury, maintain an action to enjoin a violation of this chapter.
As added by P.L.1-1995, SEC.18.

Chapter 6. Water Rights; Potable Water

14-25-6

14-25-6-1

Sec. 1. The department may require the owner of a flowing water well to reduce the flow from the well as the department considers advisable to prevent the loss or waste of potable water that is not being put to a beneficial use.
As added by P.L.1-1995, SEC.18.

14-25-6-2

Sec. 2. Except as provided in sections 4 and 5 of this chapter, a permit must be obtained from the department to inject, pump, or otherwise introduce potable ground water into an underground formation that contains nonpotable water. An application for a permit must be made on forms prescribed by the department. The permit shall be issued:

(1) upon receipt of the application, unless the department determines from the application that an investigation is necessary; and

(2) free of charge.

As added by P.L.1-1995, SEC.18.

14-25-6-3

Sec. 3. The department may, after an investigation has been conducted and a hearing has been held, deny permission to an applicant to inject, pump, or otherwise introduce potable ground water into an underground formation that contains nonpotable water if:

(1) the practice would:

(A) constitute a waste of potable ground water; or

(B) threaten to impair or exhaust the supply of the area; and

(2) available nonpotable water could be used instead of potable water.

As added by P.L.1-1995, SEC.18.

14-25-6-4

Sec. 4. A person may inject, pump, or otherwise introduce potable ground water into an underground formation that contains nonpotable water if:

(1) the potable water is obtained from a prolific aquifer adjacent to a permanent flowing stream that is rapidly recharged; and

(2) the operator:

(A) notifies the department on a form prescribed by the department of the use of the prolific aquifer; and

(B) includes on the form a fair approximation of the volume of potable water to be used.

As added by P.L.1-1995, SEC.18.

14-25-6-5

Sec. 5. (a) Subject to subsection (b), a person, firm, or corporation operating a water flood project using potable ground water on March 14, 1957, may do the following:

(1) Continue the flood.

(2) Use the additional potable water that is necessary.

(b) If an emergency arises affecting the water supply for household or farm use, the department may, after notice and hearing, order the person, firm, or corporation to cease the use of the potable ground water.
As added by P.L.1-1995, SEC.18.

14-25-6-6

Sec. 6. A person who violates this chapter commits a Class C infraction. Each day of violation constitutes a separate infraction.
As added by P.L.1-1995, SEC.18.

Chapter 2. Lake Preservation

14-26-2

14-26-2-1

Sec. 1. This chapter does not apply to the following:
(1) Lake Michigan.
(2) Land under the waters of Lake Michigan.
(3) Any part of the land in Indiana that borders on Lake Michigan.
As added by P.L.1-1995, SEC.19.

14-26-2-1.2

Sec. 1.2. As used in this chapter, "acquiescence" means consent without conditions, tacit or passive compliance, or acceptance.
As added by P.L.6-2008, SEC.3.

14-26-2-1.5

Sec. 1.5. As used in this chapter, "lake" means a reasonably permanent body of water that:
(1) existed on March 12, 1947;
(2) is substantially at rest in a depression in the surface of the earth that is naturally created;
(3) is of natural origin or part of a watercourse, including a watercourse that has been dammed; and
(4) covers an area of at least five (5) acres within the shoreline and water line, including bays and coves.
As added by P.L.6-2008, SEC.4.

14-26-2-2

Sec. 2. As used in this chapter, "natural resources" means the water, fish, plant life, and minerals in a public freshwater lake.
As added by P.L.1-1995, SEC.19.

14-26-2-3

Sec. 3. (a) As used in this chapter, "public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner.
(b) The term does not include the following:
(1) Lake Michigan.
(2) A lake lying wholly or in part within the corporate boundaries of any of the three (3) cities having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).
(3) A privately owned body of water:
(A) used for the purpose of; or
(B) created as a result of;
surface coal mining.
As added by P.L.1-1995, SEC.19.

14-26-2-4

Sec. 4. As used in this chapter, "shoreline or water line" means:
(1) if the water level has been legally established, the line formed on the bank or shore by the water surface at the legally established average normal level; or
(2) if the water level has not been legally established, the line formed by the water surface at the average level as determined by:
(A) existing water level records; or
(B) if water level records are not available, the action of the water that has marked upon the soil of the bed of the lake a character distinct from that of the bank with respect to vegetation as well as the nature of the soil.
As added by P.L.1-1995, SEC.19.

14-26-2-5

Sec. 5. (a) As used in this section, "natural scenic beauty" means the natural condition as left by nature without manmade additions or alterations.

(b) As used in this section, "recreational purpose" means the following:

(1) Fishing.

(2) Boating.

(3) Swimming.

(4) The storage of water to maintain water levels.

(5) Any other purpose for which lakes are ordinarily used and adapted.

(c) The:

(1) natural resources and the natural scenic beauty of Indiana are a public right; and

(2) public of Indiana has a vested right in the following:

(A) The preservation, protection, and enjoyment of all the public freshwater lakes of Indiana in their present state.

(B) The use of the public freshwater lakes for recreational purposes.

(d) The state:

(1) has full power and control of all of the public freshwater lakes in Indiana both meandered and unmeandered; and

(2) holds and controls all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.

(e) A person owning land bordering a public freshwater lake does not have the exclusive right to the use of the waters of the lake or any part of the lake.

As added by P.L.1-1995, SEC.19.

14-26-2-6 Repealed

14-26-2-6 (Repealed by P.L.152-2006, SEC.4.)

14-26-2-7

Sec. 7. (a) This section applies to a public freshwater lake, regulated or otherwise, that covers an area of at least ten (10) acres.

(b) A person may not order or recommend the:

(1) construction;

(2) reconstruction;

(3) recleaning; or

(4) repair;

of a ditch, dam, or other project that will affect or is likely to affect a lowering of the water level of the public freshwater lake.

As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.5.

14-26-2-8

Sec. 8. Accretion rights in public freshwater lakes are limited to land from which the waters have receded or may recede from natural causes only. Accretion rights do not accrue to a riparian landowner as a consequence of lowering the public freshwater lake level by any of the following:

(1) Drainage.

(2) Extending the shoreline into the water of the public freshwater lake by filling the public freshwater lake with soil or any other substance.

(3) Extending the shoreline away from the public freshwater lake by excavating, dredging, or channeling through the shoreline.

As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.6.

14-26-2-9 Repealed

14-26-2-9 (Repealed by P.L.152-2006, SEC.4.)

14-26-2-10

Sec. 10. (a) Notwithstanding any other provision of law but subject to section 11 of this chapter, the department may not authorize:

(1) the changing of the level;

(2) the dredging, other than to maintain channels or construct sea walls, beaches, or near-shore access improvements on a lot by lot basis; or

(3) the mining;

of a public freshwater lake without giving notice and the opportunity for a public hearing at the county seat of the county in which the public freshwater lake is located.

(b) The notice must:

(1) generally describe the project for which a permit has been requested to authorize;

(2) state that the public has a right to request that a hearing be held on the proposed project;

(3) state that persons interested in or affected by the proposed project may speak at the hearing; and

(4) be published two (2) times, seven (7) days apart, in two (2) daily newspapers in the county in which the public freshwater lake is located, in the manner prescribed by IC 5-3-1.

(c) If a hearing is requested within ten (10) days after the final publication of the notice, the department shall do the following:

(1) Hold a public hearing in the manner stated in the notice.

(2) Give notice of the date, time, and place of the hearing as prescribed in subsection (b).

(3) Consider the public comments concerning the proposed project before the department makes a decision concerning the proposal.

As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.7.

14-26-2-11

Sec. 11. (a) This section applies to a private lake that lies wholly or in part within any of the three (3) cities having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Sand mining may be conducted at the lake only if approved by resolution of the legislative body of the city after a public hearing.

(c) A sand mining operation at the lake:

(1) is subject to and shall be conducted in accordance with the regulations and permit process of the United States Army Corps of Engineers and the United States Environmental Protection Agency; and

(2) is subject to local supervision and monitoring by the city engineer of the city in which the lake lies.

(d) A person performing the sand mining is liable for any damages directly attributable to the sand mining operation to any real property located within a one (1) mile radius of the lake.

(e) After mining operations are completed, the lake may not be used as a sanitary landfill or as a hazardous waste site.

As added by P.L.1-1995, SEC.19.

14-26-2-12

Sec. 12. (a) The department may not issue a permit for the construction of a channel into a public freshwater lake unless:

(1) the channel follows the path of a stream already in existence; or

(2) the applicant proves that fifty-one percent (51%) of the property owners abutting the shoreline of the public freshwater lake approve of the channel construction.

(b) This section does not prevent the department from issuing a permit to construct small private drainage channels.

As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.8.

14-26-2-13

Sec. 13. As a condition precedent to action by the department, written approval by the department of environmental management must be obtained for the construction of sewage disposal facilities for housing developments of at least five (5) lots if the developments are an integral part of a change in shoreline requested under this chapter.

As added by P.L.1-1995, SEC.19.

14-26-2-14

Sec. 14. (a) This section applies to an off-stream, privately owned pond, lake, reservoir, or other body of water designed and constructed primarily for the reduction or control of pollutants or cooling before discharge of the water into the public water of Indiana.

(b) A body of water subject to this section does not become a body of public water for the purpose of permitting the state to regulate the quality of water.

(c) The state and the citizens of Indiana do not acquire a continuing right or interest in a body of water subject to this section if the owner permits entrance to or recreational use of the body of water by the public.

(d) IC 14-22-10-2 applies to a body of water operated under this section.

(e) This section does not affect the duties of the department to enforce Indiana fish and wildlife laws as the laws apply to public entrance or recreational use of the body of water.

As added by P.L.1-1995, SEC.19.

14-26-2-14.5

Sec. 14.5. (a) For purposes of determining the acquiescence of a riparian owner to allow the public use of a lake, indicators of acquiescence include the following:

(1) Evidence that the general public has used the lake for recreational purposes.

(2) Evidence that the riparian owner did not object to the operation by another person of a privately owned boat rental business, campground, or commercial enterprise that allowed nonriparian owners to gain access throughout the lake.

(3) A record of regulation of previous construction activities on the lake by the department or the department of conservation (before its repeal).

(b) Acquiescence does not exist if a lake has been adjudicated after March 12, 1947, to be a private lake and the department, or the department of conservation (before its repeal), was a party to the adjudication.

As added by P.L.6-2008, SEC.9.

14-26-2-15

Sec. 15. (a) This section applies to impoundments of the Tippecanoe River that are formed by a dam or control structure owned and operated by a public utility for the generation of hydroelectric power. However, this section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure under IC 14-27-7.5.

(b) As used in this section, "alterations to the shoreline" does not include the making of canals or inlets.

(c) As used in this section, "construction" includes the building of a pier.

(d) Notwithstanding any other law, the department may not regulate or interfere with alterations to the shoreline of or construction on the impoundments.

As added by P.L.1-1995, SEC.19. Amended by P.L.186-2003, SEC.70.

14-26-2-16

Sec. 16. (a) As used in this section, "water supply reservoir" means a body of water formed by a dam wholly owned and operated by a municipality or a public utility (as defined in IC 8-1-2-1) for the purpose of providing water utility service to the public. The term does not include the following:

(1) Tributary streams that drain into the body of water.

(2) Wetlands associated with those streams.

(b) Notwithstanding any other law, the department may not regulate the following activities conducted within the one hundred (100) year flood level of a water supply reservoir:

(1) Sediment removal, dredging for the purpose of providing water supply storage, seawall construction, or the maintenance of water intake structures.

(2) Restoration or stabilization of the shoreline.

(c) This section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure under IC 14-27-7.5.

As added by P.L.1-1995, SEC.19. Amended by P.L.186-2003, SEC.71.

14-26-2-17

Sec. 17. (a) Subject to subsection (b), a permit issued under this chapter expires two (2) years after the permit is issued.

(b) The commission may adopt rules under IC 4-22-2 providing that a type of permit specified in the rules expires more than two (2) years after it is issued.

As added by P.L.1-1995, SEC.19. Amended by P.L.25-2009, SEC.1.

14-26-2-18

Sec. 18. The person to whom a permit is issued under this chapter shall do the following:

(1) Post the permit at the site of the activity authorized by the permit.

(2) Keep the permit posted at the site where the activity is authorized until the activity is completed.

As added by P.L.1-1995, SEC.19.

14-26-2-19

Sec. 19. The department may seek relief under IC 14-25.5-4 for the violation of this chapter.

As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.4.

14-26-2-20

Sec. 20. The department may bring an action under IC 14-25.5-4 for damages caused by a person who violates this chapter.

As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.5.

14-26-2-21

Sec. 21. A person who knowingly violates this chapter commits a Class B infraction.

As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.6.

14-26-2-22

Sec. 22. In addition to other penalties prescribed by this chapter or IC 13-2-11.1 (before its repeal), the director may impose a civil penalty under IC 14-25.5-4.

As added by P.L.1-1995, SEC.19. Amended by P.L.24-2001, SEC.3; P.L.71-2004, SEC.7.

14-26-2-23

Sec. 23. (a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:

(1) Over, along, or lakeward of the shoreline or water line of a public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) Construct a wall whose lowest point would be:

(A) below the elevation of the shoreline or water line; and

(B) within ten (10) feet landward of the shoreline or water line, as measured perpendicularly from the shoreline or water line;

of a public freshwater lake.

(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or water line.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the following:

(1) A nonrefundable fee of one hundred dollars ($100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the public freshwater lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the department may consider any factor, including cumulative effects of the proposed activity upon the following:

(1) The shoreline, water line, or bed of the public freshwater lake.

(2) The fish, wildlife, or botanical resources.
(3) The public rights described in section 5 of this chapter.
(4) The management of watercraft operations under IC 14-15.
(5) The interests of a landowner having property rights abutting the public freshwater lake or rights to access the public freshwater lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of a permit issued under this section.

(e) The commission shall adopt rules under IC 4-22-2 to do the following:
(1) Assist in the administration of this chapter.
(2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:
(A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the public freshwater lake or rights to access the public freshwater lake; and
(B) shall exempt any class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.
(3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:
(A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and
(B) a person affected by the determination of the department may seek administrative review by the commission.

(f) After:
(1) a final agency action in a mediation under subsection (e)(3) that makes a determination of a dispute among persons with competing riparian interests; and
(2) the completion of judicial review or the expiration of the opportunity for judicial review;
a party to the dispute may seek enforcement of the determination in a civil proceeding. The remedy provided under this subsection is supplemental to any other legal remedy of the party.

As added by P.L.64-2000, SEC.1. Amended by P.L.152-2006, SEC.3; P.L.6-2008, SEC.10; P.L.25-2009, SEC.2.

14-26-2-24

Sec. 24. (a) Relying on recommendations of the department and the advisory council established by IC 14-9-6-1, the commission shall adopt, under IC 4-22-7-7(a)(5)(A), and maintain a nonrule policy statement that lists the public freshwater lakes in Indiana. For each public freshwater lake the statement must include the following information:
(1) The name of the lake.
(2) The county and specific location within the county where the lake is located.

(b) A person may obtain administrative review from the commission for the listing or nonlisting of a lake as a public freshwater lake through a licensure action, status determination, or enforcement action under IC 4-21.5.

As added by P.L.6-2008, SEC.11.

14-26-2-25

Sec. 25. (a) The owner or owners of the entire shoreline or water line of:
(1) a lake;
(2) a pond; or
(3) another reasonably permanent body of water that is substantially at rest;
may petition the department to declare the body of water a public freshwater lake.

(b) If the department, in writing, grants the petition under subsection (a), the body of water becomes subject to this chapter.

As added by P.L.6-2008, SEC.12.

Chapter 3. Lakes, Rivers, and Streams Preservation Suits; Parties

14-26-3

14-26-3-1

Sec. 1. As used in this chapter, "lake" includes both meandered and unmeandered lakes.
As added by P.L.1-1995, SEC.19.

14-26-3-2

Sec. 2. As used in this chapter, "river" includes both navigable and nonnavigable rivers and streams.
As added by P.L.1-1995, SEC.19.

14-26-3-3

Sec. 3. The department may do the following:

(1) Become a party, either plaintiff or defendant, to any cause or legal action:

(A) that is pending in any court in Indiana; or

(B) that is brought or commenced in any court in Indiana;

affecting the preservation or maintenance of the lakes, rivers, and streams in Indiana.

(2) Commence and prosecute any cause in any court in Indiana for the purpose of preserving and maintaining the waters of the state.

As added by P.L.1-1995, SEC.19.

14-26-3-4

Sec. 4. A court acting under Indiana law shall recognize the right of the department to become a party to any action involving the preservation and maintenance of lakes, rivers, and streams for the purposes set out in this chapter.
As added by P.L.1-1995, SEC.19.

14-26-3-5

Sec. 5. For the purposes and in the manner provided in this chapter, the department may become a party to any drainage proceeding in any court acting under Indiana law, to prosecute or defend any cause that in the opinion of the officers of the department will injuriously affect the water levels of a lake, river, or stream in Indiana.
As added by P.L.1-1995, SEC.19.

14-26-3-6

Sec. 6. In the interest of public health and convenience, the department is a party in interest in the matters set out in this chapter. Nonbenefit or the nonownership of land affected by a cause may not be pleaded in any court acting under Indiana law as a bar to the right of the department to appear, commence, prosecute, or defend in the cause.
As added by P.L.1-1995, SEC.19.

Chapter 4. Lakes; Average Normal Water Level

14-26-4

14-26-4-1

Sec. 1. As used in this chapter, "average normal water level" of a lake means the level between high water that occurs as a result of excessive precipitation and low water that occurs during protracted dry periods that will do the following:

(1) Provide the most benefit to the public.

(2) Best protect the public health, welfare, and safety.

(3) Best preserve the natural resources of Indiana.

As added by P.L.1-1995, SEC.19.

14-26-4-2

Sec. 2. The department may do the following:

(1) Have established, by appropriate legal action, the average normal water level or area of all natural and artificial lakes of Indiana.

(2) Construct or sponsor and supervise the construction of dams, spillways, and control works necessary to

maintain the average normal water level.
As added by P.L.1-1995, SEC.19.

14-26-4-3

Sec. 3. A concise report containing a description of the lake and location, together with all data necessary to reveal and fix:

(1) the average normal water level or area of the lake; and

(2) the highest elevation to which the water has risen during the prior ten (10) years;

shall be prepared and signed by an officer of the department.
As added by P.L.1-1995, SEC.19.

14-26-4-4

Sec. 4. The average normal water level shall be determined by means such as the following:

(1) Old surveys.

(2) Testimony of old inhabitants.

(3) The extent to which drainage and other artificial causes have increased or decreased the natural ground water of the area and affected the water levels of the lake.

(4) Water level measurements made by the following:

(A) The United States Geological Survey.

(B) The department.

(C) Other agencies.

(D) Individuals.

(5) Any other pertinent surrounding facts or circumstances.

As added by P.L.1-1995, SEC.19.

14-26-4-5

Sec. 5. The department shall file the report with the following:

(1) The commission.

(2) The clerk of the circuit court with jurisdiction in the county in which the greatest area of the lake is situated.

As added by P.L.1-1995, SEC.19.

14-26-4-6

Sec. 6. The clerk of the circuit court shall do the following:

(1) Immediately docket the report as a cause of action pending in the circuit court of the county.

(2) Cause notice to be published for two (2) consecutive weeks in two (2) newspapers of general circulation in each county in which the lake is situated. The notice must briefly describe the nature of the report and fix a day for the hearing of the report.

As added by P.L.1-1995, SEC.19.

14-26-4-7

Sec. 7. The court shall, on the day fixed in the notice or on a later day to be fixed by the court, hear all of the evidence submitted respecting the matter submitted by the following:

(1) The department.

(2) Any other agency of government.

(3) Any affected landowners.

As added by P.L.1-1995, SEC.19.

14-26-4-8

Sec. 8. (a) After the hearing, the court shall do the following:

(1) Make findings of fact.

(2) Give an appropriate judgment establishing the level and area of the lake.

(b) If the judgment is favorable to the moving party, a description of:

(1) a monument;

(2) the location of the monument; and

(3) all data furnished by the report;
shall be made a part of the court's findings and judgment by reference.
As added by P.L.1-1995, SEC.19.

14-26-4-9

Sec. 9. (a) If the judgment is favorable to the moving party, the findings and judgment of the court properly certified by the clerk of the court shall be recorded in a lake level record to be kept in the recorder's office of each county having land draining into the lake. Each county in which is situated a lake other than a private lake shall provide record books for this purpose. The county recorders may make the recordings by pasting or otherwise securely attaching the report containing all descriptive material in the record, which shall be properly indexed and paged.

(b) The clerk and the county recorder may not make or enter of record a charge for their services.

(c) Certified copies of the record of the judgment of the court as kept in the office of the clerk of the circuit court and of the records recorded in the office of the county recorder shall be received in evidence in any court in Indiana as conclusive evidence of all matters contained in the records.

(d) The department shall make and keep a similar record as a part of the public records of the state.
As added by P.L.1-1995, SEC.19.

14-26-4-10

Sec. 10. Within one (1) year after the court has established the average normal water level or area, the department shall construct a suitable permanent monument as prescribed in the findings of the court on the shore of the lake. The monument must contain the following:

(1) The name of the lake.
(2) The average water normal level.
(3) The size if established.
(4) The highest level to which the lake has risen during the ten (10) years preceding the time of the filing of the complaint.

As added by P.L.1-1995, SEC.19.

14-26-4-11

Sec. 11. The requirements and procedure prescribed by this chapter for reports, notice, court procedure, and record apply to all dams, spillways, and control works provided for in this chapter.
As added by P.L.1-1995, SEC.19.

14-26-4-12

Sec. 12. The department may do the following:

(1) Accept contributions or grants-in-aid from:
  (A) an individual;
  (B) a group of individuals; or
  (C) county, state, or federal agencies;
to finance the construction of dams, spillways, or control works to maintain the average normal water level of a lake.
(2) Sponsor the building of dams, spillways, or control works to maintain the average normal water level of a lake.
(3) Sponsor the building of dams, spillways, or control works by:
  (A) an individual;
  (B) a group of individuals; or
  (C) county, state, or federal agencies.
The department shall supervise the construction.

As added by P.L.1-1995, SEC.19.

Chapter 5. Lowering of Ten Acre Lakes

14-26-5

14-26-5-1

Sec. 1. This chapter applies to freshwater lakes having an area of at least ten (10) acres.
As added by P.L.1-1995, SEC.19.

14-26-5-2

Sec. 2. As used in this chapter, "normal water level of a lake" means:

(1) the water level of the lake established by law; or

(2) if the water level has not been established, the level where the presence and action of the water has been so constant as to give to the bed of the lake a character distinct from that of the surrounding land with regard to vegetation and the nature of the soil.

As added by P.L.1-1995, SEC.19.

14-26-5-3

Sec. 3. (a) This section does not apply to a ditch or drain if:

(1) water from the ditch or drain empties into a lake before activities referred to in subsection (b) begin;

(2) water from the ditch or drain continues to empty into the lake at the same location after the activities are completed; and

(3) the activities are conducted using best management practices for soil and erosion control.

(b) A person may not:

(1) locate, make, dig, dredge, construct, reconstruct, repair, or reclean; or

(2) order or recommend the location, establishment, construction, reconstruction, repair, or recleaning of;

a ditch or drain having a bottom depth lower than the normal water level of a lake within one-half (1/2) mile of the lake without a permit from the department.
As added by P.L.1-1995, SEC.19. Amended by P.L.28-2007, SEC.1.

14-26-5-4

Sec. 4. A request for a permit may be made by any person interested in the proposed work by filing with the department the following:

(1) A brief statement and description of the work.

(2) Plans and specifications for the work.

(3) An investigation fee of twenty-five dollars ($25).

As added by P.L.1-1995, SEC.19.

14-26-5-5

Sec. 5. The department shall promptly consider a request by making an investigation of the land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.
As added by P.L.1-1995, SEC.19.

14-26-5-6

Sec. 6. If the department finds that the proposed work will not:

(1) endanger:

(A) the legally established water level of a lake; or

(B) the normal water level of a lake whose water level has not been legally established; or

(2) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources;

the department shall promptly grant the request and issue a permit to the person requesting the permit.
As added by P.L.1-1995, SEC.19.

14-26-5-7

Sec. 7. If the department finds that the proposed work could be done provided certain safeguards are included in the proposed work, the department shall designate the safeguards that will in the department's opinion protect the lake.
As added by P.L.1-1995, SEC.19.

14-26-5-7.4

Sec. 7.4. If a request for a permit is submitted under this chapter by or for a county drainage board for a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27, the department shall approve or refuse the request within one hundred fifty (150) calendar days after the request is deemed complete by the department. A request held more than one hundred fifty (150) calendar days by the department without being either approved or refused shall be considered approved.
As added by P.L.180-1995, SEC.2.

14-26-5-7.6

Sec. 7.6. (a) If the department refuses to issue a permit after an investigation under section 5 of this chapter, the department shall promptly cause a public notice to be given by one (1) publication in a newspaper of general circulation published in the county in which the lake or any part of the lake is located. The notice must state that, on the date set forth in the notice, which may not be less than ten (10) days after the publication, at a designated place in the county, the department will hold a hearing on the request, and any interested person appearing at the hearing will have the right to be heard. The notice must contain a brief description of the proposed work and a statement of the department's reasons for refusing to issue a permit and of the safeguards, if any, that the department considers necessary to protect the water level of the lake. The hearing shall be held by the director of the department or by the director's designee. A hearing held under this subsection is a nonevidentiary hearing. The rules of evidence and IC 4-21.5 do not apply to the hearing.

(b) If the request of a county drainage board for a permit for a project for the reconstruction and maintenance of a regulated drain under IC 36-9-27 is refused, the department shall publish the public notice required by subsection (a) within sixty (60) days after the permit is refused.
As added by P.L.180-1995, SEC.3.

14-26-5-8

Sec. 8. A permit issued under this chapter expires two (2) years after the permit is issued.
As added by P.L.1-1995, SEC.19.

14-26-5-9

Sec. 9. The person to whom a permit is issued under this chapter shall do the following:

(1) Post the permit at the site of the activity authorized by the permit.

(2) Keep the permit posted at the site where the activity is authorized until the activity is completed.

As added by P.L.1-1995, SEC.19.

14-26-5-10

Sec. 10. (a) Except as provided in subsection (b), a person, firm, limited liability company, or corporation that is adversely affected by a decision of the department may appeal the decision by filing a complaint in the circuit or superior court of the county in which the lake or a part of the lake is situated.

(b) If the proposed work is the work petitioned for in a pending drainage proceeding, the complaint:

(1) must be filed in the court in which the drainage proceeding is pending; and

(2) shall be heard and determined as part of the drainage proceeding.

As added by P.L.1-1995, SEC.19.

14-26-5-11

Sec. 11. A complaint must do the following:

(1) State the interest of the person filing the appeal, whether the person is:

(A) proposing to construct, reconstruct, repair, or reclean a ditch or drain on the person's own land; or

(B) a petitioner or other party or public officer in a pending drainage proceeding.

(2) Set forth the plans and specifications of the proposed work.

(3) State the action taken by the department in granting or withholding approval.

(4) State the objections and causes of appeal from the decision of the department.

As added by P.L.1-1995, SEC.19.

14-26-5-12

Sec. 12. A complaint must be filed in the court within thirty (30) days from the date of the decision of the department by causing summons to be issued and served upon the director as summons are served in other civil

cases.
As added by P.L.1-1995, SEC.19.

14-26-5-13

Sec. 13. Any person, firm, limited liability company, or corporation interested in or affected by the proposed work may intervene in the proceedings before the court.
As added by P.L.1-1995, SEC.19.

14-26-5-14

Sec. 14. The court shall hear de novo all evidence relevant to the issues determined by the department.
As added by P.L.1-1995, SEC.19.

14-26-5-15

Sec. 15. An appeal may be had from the finding and judgment of the court as provided by law in other civil cases.
As added by P.L.1-1995, SEC.19.

14-26-5-16

Sec. 16. A person, firm, limited liability company, or corporation that violates or threatens to violate this chapter is subject to an injunction upon a complaint filed by any of the following:

(1) Any person whose land or interest in land may be damaged by the violation.
(2) The department.

As added by P.L.1-1995, SEC.19.

14-26-5-17

Sec. 17. A person who knowingly violates section 3 of this chapter commits a Class B infraction.
As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.8.

Chapter 6. Lowering of Twenty Acre Lakes

14-26-6

14-26-6-1

Sec. 1. This chapter applies to lakes having an area greater than twenty (20) acres.
As added by P.L.1-1995, SEC.19.

14-26-6-2

Sec. 2. This chapter does not apply to any of the following:

(1) An artificial lake that is created or used in or in connection with the following:
  (A) Supplying a city or town with water.
  (B) The generation of electric energy.
  (C) The storage of water for a use described in clause (A) or (B).
(2) The waters of Lake Michigan.
(3) A lake owned or controlled by the department.
(4) The waters of an artificial lake in a town located in a county having a population of more than forty-seven thousand five hundred (47,500) but less than forty-eight thousand (48,000).

As added by P.L.1-1995, SEC.19. Amended by P.L.170-2002, SEC.94; P.L.119-2012, SEC.120.

14-26-6-3

Sec. 3. A person who knowingly lowers the water level of a lake more than twelve (12) inches below the high water mark established by the dam or other artificial device creating the lake commits a Class B infraction.
As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.9.

Chapter 7. Lakes; Restrictions on Ditches and Drains

14-26-7

14-26-7-1

Sec. 1. This chapter applies to the following:

(1) The construction of new ditches and drains.

(2) Alterations, changes, or other improvements to existing ditches and drains.

As added by P.L.1-1995, SEC.19.

14-26-7-2

Sec. 2. A:

(1) person may not locate, make, dig, dredge, or in any manner construct; and

(2) court, county executive, body of viewers, or drainage commissioners may not order or recommend the location, establishment, or construction of;

a ditch or drain cutting into, through, or upon the line of a freshwater lake unless a dam has been provided for and constructed to adequately protect the water level of each lake likely to be affected.

As added by P.L.1-1995, SEC.19.

14-26-7-3

Sec. 3. A person may not locate, dig, make, dredge, or in any way construct a ditch or drain having a bottom depth lower than the level of a freshwater lake as established by law within one-half (1/2) mile of any point on the line of the lake unless a dam has been provided for and constructed to adequately protect the water level of each lake likely to be affected.

As added by P.L.1-1995, SEC.19.

14-26-7-4

Sec. 4. A dam required by this chapter shall be constructed:

(1) before any work on the proposed drainage; and

(2) according to plans and specifications furnished or approved by the engineering division.

As added by P.L.1-1995, SEC.19.

14-26-7-5

Sec. 5. A person may not:

(1) cut into or around;

(2) attempt to cut into or around;

(3) interfere with; or

(4) attempt to interfere with, change, or destroy;

a dam, bank, or levee constructed under Indiana law for the purpose of maintaining the water level of a freshwater lake at the established level.

As added by P.L.1-1995, SEC.19.

14-26-7-6

Sec. 6. A person may not:

(1) cut into or through;

(2) attempt to cut into or through;

(3) interfere with; or

(4) attempt to interfere with;

the banks or shores of a freshwater lake or any part of the lake in such a way as to lower or tend to lower the water of the lake.

As added by P.L.1-1995, SEC.19.

14-26-7-7

Sec. 7. Subject to IC 14-26-8 and IC 36-9-27, a person, court, county executive, body of viewers, or drainage board may not do any of the following:

(1) Interfere with, change, alter, or attempt to interfere with, change, or alter a bank, dam, spillway, or outlet of a freshwater lake.

(2) Dig, dredge, or in any way lower or attempt to lower an outlet or part of an outlet to a freshwater lake at

any point in the outlet within three-fourths (3/4) mile of the lake.
As added by P.L.1-1995, SEC.19.

14-26-7-8

Sec. 8. A person who recklessly violates this chapter commits a Class A misdemeanor.
As added by P.L.1-1995, SEC.19.

Chapter 8. Lakes; Changes in Levels

14-26-8

14-26-8-1

Sec. 1. This chapter applies to lakes having an area of at least ten (10) acres.
As added by P.L.1-1995, SEC.19.

14-26-8-2

Sec. 2. As used in this chapter, "shoreline or water line" means the line that is formed around a lake by the intersection of the water in the lake with the adjoining land when the surface elevation of the lake is:

(1) normal;
(2) at the average level; or
(3) at the average normal level established by law.

As added by P.L.1-1995, SEC.19.

14-26-8-3

Sec. 3. (a) If:

(1) at least twenty percent (20%) of the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of a lake;
(2) the department; or
(3) the board of commissioners of a county in which a lake is located;

desire to stabilize, raise, or establish and maintain the level of the lake by means of a control dam or other structure, diverting water into or away from the lake, pumping water into or out of the lake, or other means, the landowners, department, or county commissioners may apply either separately or jointly for the construction, reconstruction, alteration, and rehabilitation of a control dam or other structure, the construction of pumping stations, the construction, reconstruction, repair, or recleaning of outlet or inlet ditches, or other means by filing a petition with the circuit or superior court of the county in which the greater or greatest area of the lake lies.

(b) A petition must be filed in duplicate with the clerk of the court.

(c) If the petition is approved by the court, attorney's fees become a part of the total costs of the project. If the petition is dismissed, the petitioners shall pay the attorney's fees.
As added by P.L.1-1995, SEC.19.

14-26-8-4

Sec. 4. A petition must do the following:

(1) State the name of the lake.
(2) State the lake's location by section, township, range, and county.
(3) State the lake's approximate surface area in acres.
(4) Describe the nature of the work desired, whether it is:
    (A) the construction, reconstruction, alteration, or rehabilitation of a control dam;
    (B) the construction of a pumping station or a diversion ditch;
    (C) the construction, reconstruction, repair, or recleaning of an outlet ditch;
    (D) a combination of any number of purposes permitted by this subdivision; or
    (E) another purpose.
(5) Allege that the work is practicable and of public need.
(6) State the level at which it is desired to maintain or stabilize the lake. The level must be stated with reference to at least one (1) of the following:
    (A) Sea level datum if ascertainable.

(B) A lawfully established staff gauge installed in the lake from which the desired water level can be readily observed by an interested or affected party.

(7) If the lake lies in more than one (1) county, show the approximate surface area of the lake in acres that lies in each county.

(8) If the lake or any part of the lake lies within a city or town, state the approximate surface area of the lake that lies within the city or town.

As added by P.L.1-1995, SEC.19.

14-26-8-5

Sec. 5. If the lake lies in at least two (2) counties, the surveyor of the county in which the greater or greatest area of the lake lies shall prepare the plans and specifications and the report required by this chapter.

As added by P.L.1-1995, SEC.19.

14-26-8-6

Sec. 6. If the petition is initiated by the owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake, the petition must be accompanied by a bond with good and sufficient freehold sureties to be approved by the clerk of the circuit or superior court. The bond must be:

(1) payable to the state; and

(2) conditioned to pay all costs if the court denies the petition.

As added by P.L.1-1995, SEC.19.

14-26-8-7

Sec. 7. (a) Within ten (10) days after the filing of a petition, the clerk shall docket the petition as a cause of action pending in the circuit or superior court. The clerk shall cause notice to be given at least thirty (30) days before the date set for the hearing as follows:

(1) By publication one (1) time each week for two (2) consecutive weeks in not less than two (2) newspapers of general circulation published in each county in which the lake is located. If there are not two (2) newspapers of general circulation published in a county, notice shall be published in one (1) newspaper of general circulation published in the county.

(2) By posting a written or printed notice at the door of the courthouse in each county in which the lake lies.

(3) By sending written notice to the following:

(A) The county surveyor and county commissioners of each county affected.

(B) The department.

(b) The notice must do the following:

(1) Briefly describe the location and nature of the proposed work contained in the petition.

(2) Fix a day for the hearing on the petition.

As added by P.L.1-1995, SEC.19.

14-26-8-8

Sec. 8. Before the date set for the hearing, the names of the viewers of the proposed work described in the petition shall be determined as follows:

(1) The president of the board of commissioners of each county affected shall submit in writing to the clerk of the court in which the petition is filed the name of a member of the board of commissioners of the county who will be a viewer.

(2) The director shall submit to the clerk the name of a representative of the department who will serve as a viewer.

(3) The surveyor of each county affected shall serve as a viewer.

As added by P.L.1-1995, SEC.19.

14-26-8-9

Sec. 9. On the day set for the hearing on the form of a petition, the court shall appoint two (2) viewers who shall, with the viewers designated under section 8 of this chapter, pass upon the project as set out. The two (2) viewers appointed by the court:

(1) must be reputable freeholders;

(2) may not be qualified to sign the petitions;
(3) may not be related to an affected landowner; and
(4) must be residents of a county in which the lake lies.
As added by P.L.1-1995, SEC.19.

14-26-8-10

Sec. 10. If a petition is filed alone by owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake, a member of the board of county commissioners may not serve as a viewer.
As added by P.L.1-1995, SEC.19.

14-26-8-11

Sec. 11. The following have ten (10) days, exclusive of Sundays, from the date of the hearing on the form of a petition to file with the court a remonstrance or an objection to the merits of the petition, notice, or eligibility of any of the viewers:
(1) A person named in the petition.
(2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.
(3) The department.
(4) The board of commissioners of a county in which the lake lies.
As added by P.L.1-1995, SEC.19.

14-26-8-12

Sec. 12. After the ten (10) days prescribed by section 11 of this chapter have elapsed, the court shall consider each remonstrance or objection, if any. If the court finds the petition defective, the court shall dismiss the petition unless the petition is amended within a time fixed by the court.
As added by P.L.1-1995, SEC.19.

14-26-8-13

Sec. 13. If at least one (1) of the viewers is disqualified, the court shall, within ten (10) days of the date of disqualification, appoint an individual having the qualifications required by this chapter to replace the disqualified viewer as follows:
(1) If the surveyor is disqualified, the court may appoint a qualified registered engineer to replace the disqualified surveyor.
(2) If a county commissioner is disqualified, the court shall appoint another county commissioner from the same county to replace the disqualified commissioner.
(3) If the representative of the department is disqualified, the court shall appoint a new representative from the department selected from a list of two (2) representatives recommended by the director.
As added by P.L.1-1995, SEC.19.

14-26-8-14

Sec. 14. The following have ten (10) days, exclusive of Sundays, to file a written objection to the new viewers:
(1) A person named in the petition.
(2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.
(3) The department.
(4) The county in which the lake lies if a joint petition is filed.
As added by P.L.1-1995, SEC.19.

14-26-8-15

Sec. 15. After the ten (10) days prescribed by section 14 of this chapter have elapsed, the court shall consider each objection to the viewers. If the court disqualifies a viewer who was appointed to replace a previously disqualified viewer, the court shall make another appointment and continue under the same procedure until there is no further disqualification of viewers.
As added by P.L.1-1995, SEC.19.

14-26-8-16

Sec. 16. If within ten (10) days, exclusive of Sundays, following the date of the hearing of the petition, at least

fifty-one percent (51%) of the landowners abutting or within four hundred forty (440) yards of the shoreline or water line of the lake remonstrate in writing against the proposed project described in the petition, the petition shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.
As added by P.L.1-1995, SEC.19.

14-26-8-17

Sec. 17. (a) If:
(1) a remonstrance has not been filed within ten (10) days of the date of the hearing; and
(2) the court considers the petition sufficient;
the court shall make an order referring the petition to the viewers.
(b) An objection to the petition or the acting of the viewers not made within the ten (10) days is considered waived.
(c) In the order referring the matter to the viewers, the court shall fix a time when the viewers shall meet and make a report. The clerk shall deliver to the viewers a duplicate copy of the petition and the order.
(d) A viewer who cannot meet on the date specified by the court may notify the court in writing, and the court shall set another date for the viewers to meet. If it is not possible for all of the viewers to meet on the new day specified by the court, a majority of the viewers may meet and view the proposed project.
As added by P.L.1-1995, SEC.19.

14-26-8-18

Sec. 18. The viewers shall do the following:
(1) Make a personal inspection of the proposed project described in the petition.
(2) Consider whether the project is practicable and is of public need.
(3) File a report within ten (10) days from the time of the inspection. The opinion of the majority prevails.
As added by P.L.1-1995, SEC.19.

14-26-8-19

Sec. 19. If the viewers find that the proposed work is not practicable and of public need:
(1) the viewers shall make a written report of the findings to the court; and
(2) the court shall dismiss the petition at the cost of the petitioners who own land abutting or within one-fourth (1/4) mile of the water or shoreline of the lake.
As added by P.L.1-1995, SEC.19.

14-26-8-20

Sec. 20. If the viewers find that the proposed work is practicable and of public need:
(1) the viewers shall make a written report of the finding to the court; and
(2) the court shall do the following:
(A) Direct the surveyor of the county in which the greatest area of the lake lies to prepare plans and specifications for the proposed project.
(B) Set a date for the surveyor to file the surveyor's preliminary report with the court.
As added by P.L.1-1995, SEC.19.

14-26-8-21

Sec. 21. (a) The surveyor's preliminary report must include the following:
(1) Plans and specifications.
(2) Cost estimates.
(3) Damages.
(4) Assessments.
(5) Other information that is considered necessary and proper.
(b) The department may on request of the surveyor prepare the plans and specifications.
(c) The surveyor in preparing plans and specifications may, upon the recommendation of the department, vary from the general plan described in the petition if necessary to carry out the purpose of the petition, subject to final approval by the court.

As added by P.L.1-1995, SEC.19.

14-26-8-22

Sec. 22. (a) The county surveyor shall estimate the cost of the project and assess the benefits or damages to all affected landowners, each county in which the lake lies, and the department if:

(1) the petition is a joint petition between the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake and the county or the department; or

(2) the petition has been filed separately or jointly by the department or the county.

(b) If the petition was filed only by the landowners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake, the county and the department may not be assessed.

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.12.

14-26-8-23

Sec. 23. The assessing of benefits or damages is to be made:

(1) on each separate tract of land to be affected;

(2) to easements held by railways or other corporations; and

(3) to cities, towns, and other public or private corporations;

including any land or water right or easement injuriously or beneficially affected.

As added by P.L.1-1995, SEC.19.

14-26-8-24

Sec. 24. (a) The cost of the improvement asked for in the petition shall be paid as follows:

(1) If the petition is filed separately by the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of the lake, proportionately to the benefits received by the owners.

(2) If the petition is filed jointly by the owners of land abutting upon the lake and the department or the commissioners of each county in which the lake lies or separately by the department or the commissioners of each county in which the lake lies, as follows:

(A) Twenty-five percent (25%) of the cost of the improvement shall be paid by the property owners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.

(B) Twenty-five percent (25%) of the cost shall be paid by the county.

(C) Fifty percent (50%) of the cost shall be paid by the department.

(b) The county surveyor shall apportion the cost of the project accordingly in the surveyor's report and notices of assessments and damages shall be sent to all affected parties as prescribed in section 25 of this chapter.

(c) If the lake lies in at least two (2) counties, the cost to be paid by each county must be proportionate to the area of the lake that lies in each county. For the purpose of determining the area of the lake that lies in each county, the professional surveyor may use aerial photographs made by the United States Department of Agriculture.

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.13.

14-26-8-25

Sec. 25. (a) The court shall set a date:

(1) not less than thirty (30); or

(2) more than forty (40);

days after the surveyor's preliminary report has been filed for the surveyor's hearing on the report.

(b) The surveyor shall, within five (5) days after the date for the hearing is set, notify by registered mail, return receipt requested, all owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake. The return receipts are prima facie evidence of notice. The notice must give a brief description of the following:

(1) The project.

(2) The project's location.

(3) A description of the owners' land that is assessed or damaged, if any.

(4) The amount of assessment or damages, if any.

(5) The date and place of the hearing.

(c) If the residence of a landowner cannot be ascertained or if a mailed notice is returned undelivered, the surveyor shall publish notice to all persons in this category by one (1) publication:

(1) in a newspaper of general circulation published and printed in the county in which the lake lies; or
(2) if a paper is not published in the county, in a newspaper in an adjoining county;
at least ten (10) days before the date fixed for the hearing.

(d) The mailed and published notices must notify the owners that all remonstrances and claims for compensation or damages must be filed in writing with the clerk on or before the day of the surveyor's hearing.

(e) The clerk shall notify the surveyor of the receipt of remonstrances or claims on or before the day of the surveyor's hearing.

(f) The surveyor shall file the following:
(1) Proof of publication of the published notice in the form of a publisher's affidavit.
(2) Proof of the mailed notice by return receipts.

As added by P.L.1-1995, SEC.19.

14-26-8-26

Sec. 26. (a) On the day fixed by the court for the hearing on the report the surveyor shall do the following:
(1) Be present at the place designated in the notice.
(2) Hear all objections made to damages and assessments.

(b) The surveyor may adjourn the hearing as necessary or to any other suitable or available room in the courthouse of the county that is considered necessary until all objections are heard. All persons interested shall take notice of an adjournment without further notice.

(c) All objections to the damages and assessments must be verified and in writing.

(d) After hearing all objections that are offered to the damages and assessments, the surveyor shall confirm or change the damages and assessments as justice requires. If the damages and assessments are changed, the surveyor shall show the changed amount assessed and the date the change was made.

(e) Upon concluding the hearing the surveyor shall make a final report to the court.

As added by P.L.1-1995, SEC.19.

14-26-8-27

Sec. 27. (a) The following entities have ten (10) days from the date the surveyor's final report is filed with the court to remonstrate against the final report:
(1) An owner of land affected by the work as proposed in the petition or in the surveyor's final report.
(2) The commissioners of a county in which the lake lies.
(3) The department.

(b) A remonstrance must be in writing, must be filed with the court, and may be for any of the following causes:
(1) That the report of the surveyor is not according to law.
(2) That the proposed work as reported by the surveyor will not be sufficient to accomplish the purpose set out in the petition.
(3) That the amount of the assessment is exorbitant.
(4) That the amount of the assessment is too much as compared with other land assessed, specifying the other land.
(5) That the amount of the assessment of others is too low, specifying the others.
(6) That the amount of the damages is inadequate.
(7) That the owner's land will be damaged and the owner has not been given damages.
(8) That the owner's land has been assessed for benefits and the owner's land will not be benefited or will be damaged if the proposed work is accomplished.
(9) That the assessment against a county or the department is greater than the public benefit to be received.
(10) That the proposed project is not practicable and of public need or utility.

As added by P.L.1-1995, SEC.19.

14-26-8-28

Sec. 28. If after a hearing the court decides that any of the causes of remonstrance described in section 27 of this chapter is true, the court may do either of the following:
(1) Direct the surveyor to amend and perfect the report.
(2) Set aside the report and refer the matter back to the surveyor for a new report.

As added by P.L.1-1995, SEC.19.

14-26-8-29

Sec. 29. (a) In making an order for a new report, the court shall fix the time when the surveyor shall report.

(b) When a new report is made and filed, a person whose land is reported as affected in the report may remonstrate within the same time and for the same causes that are allowed to remonstrate against the first report. However, a second remonstrance may only concern new matters contained in the second or amended report.

As added by P.L.1-1995, SEC.19.

14-26-8-30

Sec. 30. The court shall try all questions of facts arising on a petition, report, or remonstrance without a jury.

As added by P.L.1-1995, SEC.19.

14-26-8-31

Sec. 31. (a) If a remonstrance is sustained by the court, the court may modify and equalize the assessments, as justice requires, by doing the following:

(1) Diminishing the assessments on some tracts and increasing the assessments on other tracts.

(2) Giving or withholding damages.

(b) For purposes of this section each person whose land is:

(1) reported as affected; or

(2) stated in the petition as affected;

is considered to be in court by virtue of the notices originally given to the parties on the pendency of the petition.

(c) If:

(1) the land described in the petition as affected by the proposed work; and

(2) the surveyor has reported the land as neither benefited nor damaged;

the court may, if the facts and justice warrant, make assessments against the land.

(d) The assessments as changed, modified, equalized, or made are valid.

As added by P.L.1-1995, SEC.19.

14-26-8-32

Sec. 32. If the finding and judgment of the court is against each remonstrance:

(1) the assessments made by the surveyor shall be confirmed; and

(2) the order confirming is final and conclusive.

As added by P.L.1-1995, SEC.19.

14-26-8-33

Sec. 33. If the finding and judgment of the court is in support of a remonstrance, the proceedings shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.

As added by P.L.1-1995, SEC.19.

14-26-8-34

Sec. 34. If after the ten (10) days allowed for remonstrances there is no appeal or remonstrance, the court shall do the following:

(1) Make an order declaring the proposed work established and approving assessments as made by the surveyor or as equalized and modified as provided in section 31 of this chapter.

(2) Assign the duty of carrying out the order to the county surveyor.

As added by P.L.1-1995, SEC.19.

14-26-8-35

Sec. 35. The order of the court approving and confirming the assessments and declaring the proposed work established is final and conclusive, unless an appeal is taken. An appeal may be taken from the final judgment of the circuit or superior court to the supreme court or court of appeals as in other civil cases.

As added by P.L.1-1995, SEC.19.

14-26-8-36

Sec. 36. (a) The county surveyor shall proceed to have the improvement constructed as provided by section 32 or 34 of this chapter. The county surveyor shall keep in the surveyor's office copies of the plans and specifications, which shall be open for the inspection of any landowner interested or any contractor who may be a prospective bidder on the work.

(b) The county surveyor shall give notice in a newspaper of general circulation printed and published in the following:

(1) Each county in which the lake lies.

(2) Each county where land assessed as benefited is situated.

(c) The notice must state that on a certain day and date, which may not be less than fifteen (15) days from the date of the publication, the surveyor will do the following:

(1) Receive sealed bids for the furnishing of all material and labor necessary for the construction of the work.

(2) Let the contract to the lowest and best bidder or reject all bids and re-advertise for new bids.

(d) The surveyor may:

(1) let the work as a whole; or

(2) subdivide the work into at least two (2) sections and let the work in separate contracts that will, in the surveyor's best judgment, most speedily and economically accomplish the completion of the work.

As added by P.L.1-1995, SEC.19.

14-26-8-37

Sec. 37. A person who has successfully bid for the whole or a part of the work shall, when the work is awarded to the person, do the following:

(1) Enter into a contract with the surveyor to perform the work.

(2) Give bond that:

(A) must be approved by the court;

(B) is payable to the state; and

(C) is in a proper penalty for the performance of the contract;

that the person will pay all damages occasioned by nonfulfillment of the contract. The damages may be recovered in a court with jurisdiction.

As added by P.L.1-1995, SEC.19.

14-26-8-38

Sec. 38. If a person who is assessed is damaged by reason of the default and failure of the contractor to complete the work within the limit, the contractor in default is liable on the bond to the person damaged to the full extent of the damages. The damages may be recovered in a court with jurisdiction in a suit or an action on the bond by the state on the relation of the person damaged for the use of the person or party injured.

As added by P.L.1-1995, SEC.19.

14-26-8-39

Sec. 39. The surveyor may bring suit on the bond in a court with jurisdiction to recover any increased cost, expense, or damage of or to the work because of the failure of the contractor.

As added by P.L.1-1995, SEC.19.

14-26-8-40

Sec. 40. The aggregate liability of the surety on a bond for all liabilities may not exceed the penalty of the bond.

As added by P.L.1-1995, SEC.19.

14-26-8-41

Sec. 41. A contract may not be let until the court approves the contract.

As added by P.L.1-1995, SEC.19.

14-26-8-42

Sec. 42. When the contractor has finished the contractor's work, the surveyor shall make a final report to the court showing that the work has been completed and accepted.

As added by P.L.1-1995, SEC.19.

14-26-8-43

Sec. 43. (a) If the surveyor is unable to let a contract and construct the proposed improvement for the estimated cost of construction, the surveyor shall report the fact to the court.

(b) The court shall immediately order a new assessment of benefits and damages if requested in writing by at least two-thirds (2/3) of the original petitioners.

(c) If the order for a new assessment is made:

(1) the procedure provided for following the making of the original assessment shall be followed with respect to the new assessment and subsequent actions; and

(2) the landowners have the same right to remonstrate and appeal as is provided for original assessments.

As added by P.L.1-1995, SEC.19.

14-26-8-44

Sec. 44. The costs and expenses of an improvement petitioned for under this chapter shall be out of the county general fund or the general lake improvement fund as described in this chapter, except the part of the cost to be paid by the department. The costs and expenses include the following:

(1) The contract price for the work.

(2) The traveling expenses of the surveyor.

(3) The expenses of the viewers.

(4) Court costs.

(5) Notices.

(6) Advertising.

(7) Attorney's fees.

As added by P.L.1-1995, SEC.19.

14-26-8-45

Sec. 45. (a) If the surveyor or the surveyor's deputy uses a car owned by the surveyor or the deputy or a hired conveyance in carrying out the improvement petitioned for under this chapter, the surveyor or deputy may include traveling expenses incident to the work at an amount for mileage at a rate determined by the county fiscal body.

(b) The surveyor and the surveyor's deputy:

(1) are not entitled to receive compensation for services in addition to the statutory salary except for expenses as provided in section 44 of this chapter; and

(2) are not required to give any additional bond other than the official bond.

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.19.

14-26-8-46

Sec. 46. The viewers, other than the surveyors, the county commissioners, and the representative of the department, are entitled to the following:

(1) Six dollars ($6) a day for expenses incurred in viewing the proposed improvement.

(2) An amount for mileage at a rate determined by the county fiscal body.

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.20.

14-26-8-47

Sec. 47. (a) Except as provided in subsections (b) and (c), the attorney's fees paid may not exceed four percent (4%) of the estimated cost of construction.

(b) If an appeal is taken or other extra proceedings are conducted, the court may allow a reasonable additional amount for the extra legal services actually provided.

(c) If:

(1) the aggregate cost is less than one thousand five hundred dollars ($1,500); and

(2) the petition is filed separately by the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake;

the court shall fix a reasonable amount instead of the four percent (4%) for the petitioners' attorney's fees.

As added by P.L.1-1995, SEC.19.

14-26-8-48

Sec. 48. (a) A payment may not be made for work done under this chapter until a verified bill has been:
(1) presented to the surveyor;
(2) approved by the surveyor;
(3) filed with the auditor; and
(4) allowed by the commissioners.
(b) A partial payment may not be made to a contractor that exceeds seventy-five percent (75%) of the cost of the improvement.
(c) Full payment may not be made until:
(1) sixty-one (61) days after the completion and acceptance of the work; and
(2) after the contractor has filed with the surveyor an affidavit that all bills for labor, other service, or materials that have been used in the construction of or incorporated in the work have been paid in full.
As added by P.L.1-1995, SEC.19.

14-26-8-49

Sec. 49. (a) The board of county commissioners of each county may establish a general lake improvement fund. The fund shall be used to pay for the construction of dams and other works to raise, stabilize, or maintain lake levels under this chapter. The fund includes the following:
(1) Taxes levied or collected for lake improvement purposes.
(2) The proceeds of bonds issued and sold for lake improvement purposes.
(3) Assessments for benefits to property under this chapter.
(4) Other money that is provided by law to be paid into the fund.
(b) If the board of county commissioners considers it inadvisable to establish a general lake improvement fund, payments for projects under this chapter shall be paid into and shall be paid from the county general fund.
As added by P.L.1-1995, SEC.19.

14-26-8-50

Sec. 50. The fiscal body of a county concerned in work authorized in this chapter may, upon request of the board of county commissioners, approve the levy and collection of a tax upon all real property in the county to raise money to carry out this chapter.
As added by P.L.1-1995, SEC.19.

14-26-8-51

Sec. 51. (a) The county surveyor in charge of a project established under this chapter shall, within ten (10) days after letting the contract for construction, carefully compute the entire cost of the improvement, including the following:
(1) Incidental costs, expenses, and damages.
(2) Attorney's fees as allowed by the court.
(b) The county surveyor shall apportion the costs and expenses to the tracts of land assessed in proportion to the total assessment against the respective parcels of land benefited by the construction of the work. The apportionment to the respective tracts or parcels of land may not exceed the benefits assessed against the tracts or parcels, respectively.
(c) The county surveyor shall certify the assessments, apportionments, and time to make payments to the county auditor. If the improvement affects the landowners in more than one (1) county, the county surveyor shall certify the assessments, apportionments, and time to make payments to the auditor of each other county affected.
As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.14.

14-26-8-52

Sec. 52. The auditor of each county affected shall give notice by publication in a newspaper published in the county, not less than thirty (30) days before the day for payment of assessments, of the following:
(1) That the assessment sheet has been prepared and placed in the hands of the county treasurer for collection.
(2) The time and manner in which the assessments are required to be paid.
(3) That a person affected who desires to pay the assessment to discharge the person's land from all liability to the assessment on or before the day named in the order may do so.
As added by P.L.1-1995, SEC.19.

14-26-8-53

Sec. 53. (a) The auditor shall then extend the assessments upon a special duplicate:

(1) to be provided for the auditor at the expense of the county;

(2) to be known as the lake duplicate; and

(3) for recording all assessments under this chapter in the county.

(b) Except as provided in subsection (c), in extending the assessments upon the duplicates, the auditor shall, in the first instance, extend the assessments for the full period of payment of all assessments, as fixed by the surveyor.

(c) Assessments of less than twenty-five dollars ($25) shall be paid within one (1) year.

(d) The auditor shall calculate and add to each successive installment interest at the rate of six percent (6%) per year until the date fixed for payment.

As added by P.L.1-1995, SEC.19.

14-26-8-54

Sec. 54. (a) The provisions of this chapter permitting the payment of assessments in installments do not apply to assessments of less than twenty-five dollars ($25).

(b) If:

(1) one (1) landowner owns more than one (1) tract of land; and

(2) an assessment of less than twenty-five dollars ($25) is made against at least one (1) of the tracts of land;

all assessments less than twenty-five dollars ($25) shall be paid within one (1) year.

As added by P.L.1-1995, SEC.19.

14-26-8-55

Sec. 55. An assessment constitutes a lien upon the tracts or parcels of land and shall be collected at the same time and in the same manner as taxes are collected. After collection the assessments shall be deposited in the lake improvement fund or the county general fund.

As added by P.L.1-1995, SEC.19.

14-26-8-56

Sec. 56. (a) If an assessment, an installment, or a part of an assessment or installment is not paid when due, the failure to pay results in the same penalties as for the nonpayment of taxes. The land shall be placed upon the list of land to be sold at tax sale, and the land shall be sold at tax sale at the same time and in the same manner as provided under IC 6-1.1-24. The same penalties apply and the same rights are acquired upon purchase at these sales as in other tax sales, including the execution and delivery of tax deeds and the rights and remedies provided in cases of property sold at tax sale.

(b) Personal property or real property other than that assessed may not be sold for the failure to pay an assessment or installment.

As added by P.L.1-1995, SEC.19.

14-26-8-57

Sec. 57. (a) If:

(1) a municipal corporation or other public corporation fails to pay an assessment for benefits or for property the municipal or other public corporation owns; and

(2) there is not a provision for selling the property at tax sale;

the municipal or other public corporation is considered to have elected to pay in installments at the same time and in the same manner as provided in other cases. The assessments shall be included in the respective lists, and the municipal or other public corporation shall pay the installments to the county treasurer in the same manner as provided in other cases.

(b) A municipal or other public corporation that fails to pay an installment is liable for the nonpayment. The auditor shall enforce collection by bringing an action in the name of the state of Indiana, on the relation of the county treasurer in behalf of the county for the installment that is due and unpaid, together with penalties. The recovery is without relief from valuation and appraisement laws and includes reasonable attorney's fees for collecting the installment.

As added by P.L.1-1995, SEC.19.

14-26-8-58

Sec. 58. (a) The amount of an assessment as made or approved and confirmed by the court is a lien upon the land assessed from the time the assessment is approved and confirmed. The lien follows all other improvement liens upon the affected real property in order of priority as to date of attachment.

(b) The county surveyor charged with the construction of the work shall keep in the county surveyor's office a complete copy of the assessments that may, upon demand, be examined by any interested person.

(c) An owner of land assessed for benefits who desires to transfer the property free and clear of the lien for the assessment may deposit with the county treasurer the full amount of the benefits assessed against the tract or parcel of land. When the professional surveyor has made the final computation to the county auditor, the treasurer shall pay to the person paying the assessment the surplus, if any, over the actual assessment. Whenever the owner of a tract or parcel of land has paid to the treasurer and the treasurer's books show the payment, the lien for the assessment on the tract or parcel of land is automatically canceled.

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.15.

14-26-8-59

Sec. 59. (a) Each subcontractor, laborer, and other person who performs labor or another service or furnishes material that is used in the construction of or incorporated in work under this chapter, including board for laborers and all fuel, oil, and grease used in the operation of machinery used in the construction work, has a lien upon the fund raised for the payment of the work. The lien attaches if written notice is filed with the surveyor:

(1) within sixty (60) days of furnishing the labor or material; and

(2) that states the amount due and describes the article furnished.

(b) After the receipt of notice under subsection (a), the surveyor shall withhold payment to the contractor for the work in an amount sufficient to satisfy the lien until the amount is adjusted and paid.

(c) If a contractor and a person claiming a lien disagree on the amount or validity of the lien, the court ordering the construction of the work shall, upon motion of the surveyor, contractor, or person claiming the lien, determine the amount to be paid. The surveyor may pay the amount determined, and on payment the surveyor is released from all liability concerning the payment.

(d) If the surveyor fails to comply with this section, the surveyor is liable on the surveyor's bond for the amount improperly paid over to the contractor.

As added by P.L.1-1995, SEC.19.

14-26-8-60

Sec. 60. (a) If a surveyor fails to perform any work required of the surveyor by this chapter, after ten (10) days written notice to the surveyor by any interested person the surveyor is liable with the surveyor's sureties on the surveyor's official bond:

(1) for all damages caused by the failure to perform the duty, including reasonable attorney's fees; and

(2) to the person damaged.

(b) An action on the bond of the surveyor for failure to perform a duty must be brought in the name of the state on the relation of:

(1) the county auditor; or

(2) the person injured.

As added by P.L.1-1995, SEC.19.

14-26-8-61

Sec. 61. (a) If a petition is filed under IC 36-9-27 for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends into or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake, the petition may ask that:

(1) the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of each lake likely to be affected;

(2) each county in which the lake lies; and

(3) the department;

participate in the cost of constructing a dam or structure, diversion ditches, pumping stations, or other appurtenances necessary to protect and preserve the water level of the lake.

(b) If a request is made in a petition under subsection (a), the court having jurisdiction of the drainage proceedings shall appoint additional viewers as prescribed in this chapter to represent the county and the department. The viewers shall file a separate report on whether a dam, other structure, diversion ditch, pumping station, or other appurtenance is practicable and of public need.

(c) If the report of the viewers is in the affirmative, the county surveyor for the drainage project shall include in the report plans and specifications for the improvement and apportion assessments and damages in the same manner as prescribed in this chapter governing raising or maintaining lake levels.

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.16.

14-26-8-62

Sec. 62. (a) If a petition is filed under section 61 of this chapter for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends to or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake and the petition does not request the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected:

(1) twenty percent (20%) of the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake;

(2) a county in which the lake lies; or

(3) the department;

may file a petition addressed to the court having jurisdiction any time before the court order granting the petition for the drainage project to include a dam, other structure, diversion ditch, pumping station, or other appurtenance necessary to protect and preserve the water level of the lake.

(b) Upon receipt of a petition filed under subsection (a), the court shall set a date for a hearing. On that date the court shall hear all evidence submitted regarding the practicability and public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected.

(c) If the court rules that the additional construction is necessary, the same procedure shall be followed for inclusion as if the additional construction were included in the petition for the drainage work.

(d) If the court rules adversely on the practicability or public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance, an appeal may be taken from the final judgment of the circuit or superior court to the supreme court or the court of appeals within thirty (30) days.

As added by P.L.1-1995, SEC.19.

14-26-8-63

Sec. 63. If:

(1) the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance in connection with the preservation or stabilization of a lake is petitioned for under section 62 of this chapter in connection with a drainage proceeding; and

(2) in the county surveyor's opinion, the improvement to the lake will:

(A) be beneficial to any person affected by the drainage project; or

(B) in any way provide better drainage than if the water level of the lake is left uncontrolled or undisturbed;

the county surveyor for the drainage project may assess a part of the cost of the improvement that would normally be paid by those persons who own land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake to any person affected by the drainage project.

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.17.

14-26-8-64

Sec. 64. (a) The county surveyor shall do the following:

(1) Certify the elevation of a lake level established under this chapter, including the bench mark used for the point of beginning.

(2) Record the elevation of the lake level and the bench mark in the office of the county recorder in each county in which the lake lies.

(b) The elevation of a lake level established under this chapter must refer to at least one (1) of the following:

(1) The United States Coast and Geodetic Survey, first, second, and third order levels.
(2) The United States Geological Survey, third order levels.
As added by P.L.1-1995, SEC.19.

Chapter 1. Duties of Department

14-27-1

14-27-1-1

Sec. 1. The department shall do the following:
(1) Investigate, compile, and disseminate information and make recommendations relative to the drainage and reclamation of land.
(2) Make surveys and reconnaissance and prepare the maps, charts, statistical tables, and other documents and appurtenances that are considered necessary to enable landowners, public officials, or other persons interested in or charged by law with the duty of promoting and securing the drainage and reclamation of land to proceed more intelligently with their work.
(3) Recommend and secure the enforcement of laws for the drainage and reclamation of the swamp, overflowed, and nonarable land of Indiana.
(4) Ascertain, determine, designate, and define natural drainage and reclamation areas. When requested, place at the disposal of the public officials charged by law with the establishment and execution of the work the information that will enable the public officials, when providing for the drainage or reclamation of a component part of the natural drainage or reclamation areas, to proceed with the work so that the component systems, when established and completed, form a scientifically integrated system whereby the entire natural drainage or reclamation area is most economically and scientifically drained or reclaimed.
(5) Prepare computations of the probable maximum quantity of water likely to be collected from a drainage or reclamation area or district and discharged by a ditch or system of ditches or drains, together with the probable maximum capacity of the outlet by which the water is to make its escape.
(6) Prepare computations of the probable maximum quantity of water likely to be restrained or impounded by a levee or dike or a system of levees or dikes, together with the location and the probable maximum height and strength of the proposed dikes or levees by which the water is to be restrained and impounded.
(7) Make the computations prepared under subdivisions (5) and (6) available, on request, to and placed at the disposal of a public official or other person authorized by law to locate, establish, or construct ditches, drains, levees, or dikes for the purpose of enabling the person to locate, establish, and construct the ditches, drains, levees, or dikes so that land other than land assessed for benefits and wherever located is not subjected to inundation, overflow, or unnecessary or unnatural hazard or inconvenience.
As added by P.L.1-1995, SEC.20.

14-27-1-2

Sec. 2. Within five (5) days after:
(1) an order has been made by a circuit or superior court, board of commissioners, or county auditor referring a petition for drainage or for the establishment and construction of a levee or dike to the:
(A) drainage or levee commissioners;
(B) county surveyor; or
(C) joint board of drainage commissioners for interstate drains; and
(2) the election and organization of the board of directors of an incorporated levee or dike association under Indiana law for the location, establishment, or construction of ditches, drains, levees, or dikes;
the clerk of the circuit court, the county auditor, or the clerk of the board of directors of the incorporated levee or dike association shall notify the department by registered letter of the making of the order or the election and organization of the board of directors.
As added by P.L.1-1995, SEC.20.

14-27-1-3

Sec. 3. The letter required by section 2 of this chapter must state the following:
(1) The names and addresses of the drainage or levee commissioners or the members of the board of directors.

(2) The date and place of meeting of the commissioners or board of directors to make personal inspection of the land described in the petition or likely to be affected by the proposed work of drainage or levee or dike construction.
(3) The date fixed by the court or board of county commissioners or otherwise upon which the preliminary or final report of the drainage or levee commissioners or board of directors is to be submitted.
As added by P.L.1-1995, SEC.20.

14-27-1-4

Sec. 4. Upon the receipt of notice under section 2 of this chapter or at any time thereafter, the department may obtain, collate, and interpret the data, statistics, or other information relative to the proposed ditch, drain, levee, or dike that in the discretion of the department is considered necessary to enable the department to fully and satisfactorily perform the duties required by this chapter. The data, statistics, or other information may be obtained by the department or an agent of the department either in person or by a suitable questionnaire prepared by the department and submitted to:
(1) the clerk of the circuit court or the auditor of the county having jurisdiction of the case; or
(2) the drainage or levee commissioners or board of directors or superintendent of construction.
As added by P.L.1-1995, SEC.20.

14-27-1-5

Sec. 5. The department may, upon the receipt of a request in writing from:
(1) the circuit or superior court or the board of county commissioners having jurisdiction of the case;
(2) the drainage or levee commissioners;
(3) the board of directors of an incorporated levee or dike association;
(4) the superintendent of construction; or
(5) a petitioner or a landowner who may be affected by an assessment or damages incident to the establishment and construction of the proposed work;
direct the state engineer or an authorized agent or person connected with the division of engineering to act as a technical advisor.
As added by P.L.1-1995, SEC.20.

14-27-1-6

Sec. 6. The department may direct the technical advisor designated under section 5 of this chapter to do any of the following:
(1) Accompany the drainage or levee commissioners, the joint board of drainage commissioners, or the board of directors of an incorporated levee or dike association and assist and advise them while making personal inspection of the land likely to be affected by the proposed work to determine the best and cheapest method of drainage or of constructing the proposed levee or dike, including the termini, route, location, character, and dimensions of the main drain or levee, as well as any arms, branches, or laterals, considering future contingencies as well as present needs, and cooperate with them in the determination of all other matters that the commissioners or board of directors are lawfully required to perform and on which they may request the person's assistance or advice.
(2) Sit in an advisory capacity during the hearing of the preliminary or final report of the drainage or levee commissioners or board of directors by the court or county executive until the proceedings have been dismissed or an order has been issued declaring the proposed work established.
(3) Cooperate with the superintendent of construction, commissioner, or other person charged with the execution of the work in the determination of all matters on which the person's advice or assistance is requested.
As added by P.L.1-1995, SEC.20.

Chapter 2. Levees; Miscellaneous Provisions

14-27-2

14-27-2-1

Sec. 1. A person, an officer, a corporation, a limited liability company, or an association authorized by law to maintain, protect, or repair a levee constructed under Indiana law may purchase for the use of the levee the real property that is necessary, in the opinion of the person, officer, corporation, limited liability company, or association, to protect, maintain, or repair the levee. If the person, officer, corporation, limited liability company, or association is unable to agree with the owner of the real property, the person, officer, corporation, limited liability company, or association may proceed to acquire the real property by condemnation in the same manner and with the same effect as provided by law for the condemnation of real property for railroad purposes.
As added by P.L.1-1995, SEC.20.

14-27-2-2

Sec. 2. A person who knowingly rides or drives upon or over a levee constructed under law, except for the purpose of:

(1) passing over the levee:

(A) at a public or private crossing; or

(B) upon a part of a public highway; or

(2) inspection or repair;

commits a Class B infraction.
As added by P.L.1-1995, SEC.20. Amended by P.L.71-2004, SEC.10.

Chapter 3. Control of Levees

14-27-3

14-27-3-1

Sec. 1. (a) The superintendent of construction of the work shall do the following:

(1) Keep an account of all money collected and paid out by the superintendent in relation to the work.

(2) Take vouchers for all money paid out.

(3) Keep an account of time spent on the superintendent's duties. If the superintendent is engaged in at least two (2) works on the same day, the superintendent shall divide the day among the works in proportion to the time devoted to each.

(4) At least one (1) time every six (6) months, make under oath to the court a full report of all matters relating to the work. The court shall allow the superintendent an amount not exceeding four dollars ($4) per day for the time actually and necessarily spent by the superintendent on the work.

(b) The superintendent is under the direction of the court. If the superintendent fails to obey the orders of the court, the superintendent:

(1) forfeits all compensation due the superintendent;

(2) shall be treated summarily as for contempt; and

(3) may be removed by the court.

(c) An action may also be brought upon the superintendent's bond, in the name of the state of Indiana, for a failure of duty, and the amount recovered shall be applied to payment of the expenses of the construction.

(d) The court may at any time discharge the superintendent and appoint another superintendent.
As added by P.L.1-1995, SEC.20.

14-27-3-2

Sec. 2. (a) All laborers and other persons who perform a service or furnish materials in the construction of the work under this chapter have a lien upon the fund raised for the construction of the work. Upon notice in writing filed with the county treasurer of the amount due and what the amount is for, the treasurer shall withhold payment to the contractor on any warrant drawn in the contractor's favor in an amount sufficient to satisfy the lien, until the amount is adjusted.

(b) If the contractor and the person claiming the lien disagree on the amount or validity of the lien, the court shall, on motion of the superintendent, contractor, or person claiming the lien, determine the matter.

(c) On failure to comply with this section, the superintendent is liable on the superintendent's bond for any amount improperly paid over to the contractor.
As added by P.L.1-1995, SEC.20.

14-27-3-3

Sec. 3. If money remains after the payment of the cost of the construction of the work and expenses connected with the work, the money shall be distributed, pro rata, according to the amount paid by the owners of the land and the corporations assessed for the work.
As added by P.L.1-1995, SEC.20.

14-27-3-4

Sec. 4. The collection of assessments is not defeated by reason of a defect in the proceeding occurring before the judgment of the court approving and confirming the assessment of benefits and damages and ordering the work established if the court had jurisdiction. The judgment is conclusive that all prior proceedings were regular and according to law. A person may not, at any stage of the proceedings, take advantage of an error, a defect, or an informality that does not directly affect the person. If the court releases a person of liability or modifies the person's assessment, the act of the court does not affect the rights or liabilities of any other person.
As added by P.L.1-1995, SEC.20.

14-27-3-5

Sec. 5. (a) If it appears that the assessment of benefits is insufficient to complete the work and pay expenses in connection with the work, the superintendent of construction may file a petition asking the court for an additional assessment. Five (5) days notice of the filing of the petition shall be given to each person assessed for the work or to the attorney of record of the person. The notice shall be given and served in the same manner as the notice of filing of the original petition.

(b) On or before the expiration of the five (5) days notice, an interested person may file an answer or objection to the petition.

(c) The court may:

(1) after:

(A) the expiration of the time; or

(B) hearing the answer or objection if an answer or objection is filed; and

(2) if satisfied of the necessity;

make an additional assessment on all land originally assessed as benefited and in proportion to the original assessment. The additional assessments, or as much of the additional assessments that are necessary, are first liens upon the land against which the additional assessments are assessed and shall be collected as provided for the original assessments.
As added by P.L.1-1995, SEC.20.

14-27-3-6

Sec. 6. (a) The superintendent of construction or a person interested in the work may also file with the court a supplemental petition showing that land not assessed for benefits or damages is affected by the work whether or not the land is described in the petition or in either report of the commissioners. Notice of the supplemental petition shall be given as provided for filing the original petition.

(b) The court shall refer the supplemental petition to the commissioners to report on the supplemental petition. All proceedings may be had and orders and decrees made, including the construction of additional arms or branches, as if the supplemental petition were an original petition. However, the proceedings on the supplemental petition do not affect the original petition unless the court, for good cause, orders the petitions consolidated. An order to consolidate the petitions, however, may not delay the original work.
As added by P.L.1-1995, SEC.20.

14-27-3-7

Sec. 7. (a) The committee placed in charge of the levee may perform maintenance and make all necessary repairs to the levee that are necessary to keep the levee in original condition. However, the committee shall perform the maintenance of and repairs to the levee that are necessary to maintain federal certification of the levee. The committee shall notify the county executive not later than ten (10) days after a change in the status of a levee that no longer meets the requirements necessary to maintain federal certification. If it becomes necessary for the safety of the levee to change the line and location of the levee at any point in making the repairs, the committee may make

the change. However, the committee may not change or relocate the general line or location of the levee.

(b) The committee shall do the following:

(1) Keep a record of the committee's proceedings.

(2) Note in the record all expenses incurred in making the repairs.

(3) File with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due each person.

(c) The auditor shall draw a warrant on the county treasurer in favor of each person for the amount due the person. The amounts shall be paid out of the county revenue but reimbursed to the county.

(d) Notwithstanding any other law, the cost and expenses of performing maintenance on a levee under subsection (a) shall be apportioned and assessed in the same manner as repair costs and expenses to a levee.

As added by P.L.1-1995, SEC.20. Amended by P.L.108-2013, SEC.1.

14-27-3-8

Sec. 8. (a) To raise the necessary money to reimburse the county, the committee in charge of a levee shall apportion and assess the costs upon the land and corporations to be benefited by the repairs in proportion to the benefits not more than ninety (90) days after filing the statement of costs and expenses for repairs under section 7(b)(3) of this chapter. The costs may not exceed the benefits. However, if the repairs have been made necessary by the act or negligence of:

(1) the owner or occupant of land; or

(2) an employee or agent of the owner or occupant;

the cost of the repairs shall be assessed against that land alone.

(b) If a committee in charge of a levee:

(1) before July 1, 2013, has filed the statement of costs and expenses for repairs under section 7(b)(3) of this chapter; and

(2) has not:

(A) reimbursed the county for the costs and expenses for repairs to the levee; or

(B) apportioned and assessed the costs upon the land and corporations benefited by the repairs as required in subsection (a);

the committee in charge of a levee shall, before September 29, 2013, apportion and assess the costs upon the land and corporations benefited by the repairs as required by subsection (a).

As added by P.L.1-1995, SEC.20. Amended by P.L.108-2013, SEC.2.

14-27-3-8.5

Sec. 8.5. (a) The county council and county executive shall each appoint an individual to serve as a voting member of the committee in charge of a levee.

(b) A member of a committee in charge of a levee appointed under this section serves at the pleasure of the appointing authority.

As added by P.L.108-2013, SEC.3.

14-27-3-9

Sec. 9. (a) The committee shall, within five (5) days after making an assessment, post written notices as follows:

(1) In three (3) public places in the township where the land assessed is situated, near to the work done.

(2) One (1) at the door of the courthouse of each county in which the land is situated.

(b) The committee shall note in the record in the committee's office the time and place of posting of each notice.

As added by P.L.1-1995, SEC.20.

14-27-3-10

Sec. 10. (a) A person assessed may appeal the assessment to the circuit or superior court of the county in which the proceedings for the construction of the work were held by filing with the clerk of the court, within ten (10) days after the date of posting the notices, an appeal bond:

(1) payable to the committee in the amount of two (2) times the assessment;

(2) with surety to the approval of the clerk; and

(3) conditioned that the person will prosecute the appeal and pay all costs that are adjudged against the person.

(b) The clerk shall issue a summons for the committee served by the sheriff.

(c) The committee shall file with the clerk the following:
(1) A copy of the record of the assessment for the repairs.
(2) The notice of the assessment.
(3) A statement showing when and where the notices were posted.
(d) Other pleadings are not necessary.
As added by P.L.1-1995, SEC.20.

14-27-3-11

Sec. 11. (a) The appeal shall be tried by the court without a jury. A change of venue from the judge but not from the county is allowed. The only questions tried are the following:
(1) Whether the repairs are necessary.
(2) What is the cost of the repairs.
(3) Whether the appellant's land is benefited by the repairs.
(4) If the appellant's land is benefited, what part of the costs should be assessed against the land of the appellant.
(b) The decision of the court may not be appealed.
As added by P.L.1-1995, SEC.20.

14-27-3-12

Sec. 12. (a) If the court reduces the assessment against the land of the appellant at least twenty percent (20%), all the costs of the appeal shall be added to the assessment and shall be assessed upon the tracts of land in the same proportion as the original assessment.
(b) If the court does not reduce the assessment of the appellant at least twenty percent (20%), the appellant must pay all costs of the appeal.
(c) If more than one (1) person appeals, the cases shall be consolidated and tried together and the costs apportioned as justice requires.
As added by P.L.1-1995, SEC.20.

14-27-3-13

Sec. 13. (a) The:
(1) clerk of the court, when an appeal is disposed of; or
(2) committee, if an appeal is not taken;
shall make a certified copy of the assessment as confirmed by the court in an appeal or as made originally if an appeal is not taken. The clerk or committee shall file the certified copy with the auditor of the county in which the proceedings are held.
(b) The auditor shall place the assessments against each tract of land upon the next succeeding tax duplicate. The assessment is a lien from the time of posting the original notices of the assessments and shall be collected as other state and county taxes are collected.
(c) All statutes regulating:
(1) the payment and collection of state and county taxes;
(2) the assessment of penalties and interest; and
(3) the sale of property for delinquent taxes;
apply to the payment and collection of assessments that are placed upon the tax duplicates under this section.
As added by P.L.1-1995, SEC.20.

14-27-3-14

Sec. 14. (a) The committee in charge of a levee may preserve and protect the levee, including a strip of land ten (10) feet in width on the inside of the levee.
(b) If the committee determines that the preservation of the levee or a part of the levee requires that the levee should be fenced, the committee may have suitable fences erected along the levee.
(c) The committee may also do the following:
(1) Adopt the means necessary to keep the levee free from sprouts, grass, weeds, briers, and other growth.
(2) Sow grass seed on the levee.
(3) Use the means necessary to protect the levee from varmints or burrowing animals.

As added by P.L.1-1995, SEC.20.

14-27-3-15

Sec. 15. If requested by a petition signed by a majority of the owners of land protected by the levee, the committee in charge of a levee may do the following:

(1) Make additions to the levee by increasing the height or width of the levee.

(2) Protect against the encroachment of a stream and take all necessary steps to protect and prevent the washing and cutting away of the banks of the stream by the construction of a suitable work that will prevent the washing or cutting of the banks.

As added by P.L.1-1995, SEC.20.

14-27-3-16

Sec. 16. If requested in writing by a majority of interested landowners, the committee in charge of a levee may pump out or remove from land protected by the levee water that collects and remains standing on the land and that does not have a means of outlet. For this purpose the committee may purchase pumps or adopt other suitable means for the removal of the water.

As added by P.L.1-1995, SEC.20.

14-27-3-17

Sec. 17. All of the provisions of sections 7 through 13 of this chapter concerning:

(1) the payment of the cost of repairs of levees;

(2) the making of assessments for the cost;

(3) the right of appeal from the assessments; and

(4) the manner of collecting the assessments;

apply to work done under sections 14, 15, and 16 of this chapter.

As added by P.L.1-1995, SEC.20.

14-27-3-18

Sec. 18. Notwithstanding the percent of benefit assessment determined by a levee committee under Acts 1907, c.223, s.8 1/2, as added by Acts 1941, c.159, s.1, as amended, and as preserved from repeal under certain circumstances by section 19 of this chapter, the minimum annual amount to be imposed for levee purposes upon a tract of land benefited by the levee may not be less than five dollars ($5).

As added by P.L.1-1995, SEC.20.

14-27-3-19

Sec. 19. A levee district or association that was created under a statute that was repealed by IC 19-3-2-106 (recodified as IC 13-2-19.5-9 before its repeal, and later recodified as this section):

(1) is not affected by the repeal; and

(2) may continue to exist as if the statute had not been repealed.

As added by P.L.1-1995, SEC.20.

Chapter 4. Levee Associations; Merged

14-27-4

14-27-4-1

Sec. 1. This chapter applies to a levee association or corporation that meets the following conditions:

(1) The levee association or corporation was a levee association originally organized under Acts 1913, c.165, that:

(A) accepted the provisions of:

(i) IC 23-7-1 (before its repeal on September 2, 1971);

(ii) IC 23-7-1.1 (before its repeal on August 1, 1991); or

(iii) IC 23-17; and

(B) merged with a levee association originally organized under IC 23-7-1.

(2) The surviving corporation or association of the merger has in the articles of merger restated the provisions

of the corporation's or association's articles to do the following:

(A) Include among the corporation's or association's purposes the construction, extension, changing, improvement, maintenance, or repair of a levee, dike, breakwater, dam, sewer, ditch, drain, diversion channel, creek, water course, pumping station, syphon, flood gate, waste gate, or a combination of more than one (1) of these objects or in any work determined to be necessary for or to be an aid to the protection, drainage, reclamation, or improvement of wet or overflowed land subject to overflow.

(B) Use all statutes relating to levees, ditches, and drains.

(3) At least one (1) of the following has occurred:

(A) The levee association has entered into a commitment with a state or federal authority or agency for the construction of a levee or for the planning of a levee.

(B) Federal or state money has been appropriated or expended in feasibility studies or for preconstruction planning before March 10, 1967, as a consequence of the commitment.

As added by P.L.1-1995, SEC.20.

14-27-4-2

Sec. 2. A surviving corporation:

(1) may continue and possesses all the rights, powers, duties, and privileges of any law repealed by IC 19-3-2-106 (repealed April 1, 1980); and

(2) is not affected by the repeal.

As added by P.L.1-1995, SEC.20.

14-27-4-3

Sec. 3. A surviving corporation has all the specific rights, powers, privileges, and obligations conferred on levee associations organized under Acts 1913, c.165, as amended.

As added by P.L.1-1995, SEC.20.

Chapter 5. Levee Associations; Federal Loans

14-27-5

14-27-5-1

Sec. 1. This chapter applies to the following:

(1) A levee association incorporated before March 10, 1967, under Acts 1913, c.165, or a successor of the association.

(2) An association existing before March 10, 1967, under IC 23-7-1 (repealed September 2, 1971) for the purpose of using a statute:

(A) concerning levees, ditches, and improvements relating to levees or ditches; and

(B) repealed by IC 19-3-2-106 (repealed April 1, 1980).

(3) A levee association complying with IC 14-27-4.

As added by P.L.1-1995, SEC.20.

14-27-5-2

Sec. 2. The board of directors of an association described in section 1 of this chapter may apply to the federal Farmers Home Administration, the United States Department of Housing and Urban Development, or any other agency of the federal government authorized by federal law to make loans for works of improvement for a long term or short term loan to cover the association's expenses in connection with the construction of a levee or ditch and any other required or related improvements, including the following expenses:

(1) General, legal, and administrative expenses.

(2) The acquisition of land rights.

(3) Costs of engineering.

(4) Other costs of necessary construction and maintaining and operating the works of improvement authorized by applicable governmental authority.

As added by P.L.1-1995, SEC.20.

14-27-5-3

Sec. 3. A loan may be:

(1) evidenced by one (1) installment note or by a series of notes; and

(2) secured by the collection of a special assessment levied as provided in section 11 of this chapter.

As added by P.L.1-1995, SEC.20.

14-27-5-4

Sec. 4. The following are subject to the agreement of the board of directors and the federal agency and applicable federal law:

(1) The time repayment of a loan must begin.

(2) The term within which the loan is repaid.

(3) The amount of interest.

(4) The time of making payments of interest.

(5) The interval at which interest shall be paid.

As added by P.L.1-1995, SEC.20.

14-27-5-5

Sec. 5. Before making financial commitments described in this chapter with a federal agency, the board of directors must file a petition for approval of the proposed action in the circuit court of the county in which the most land affected by the construction or improvements lies. The petition must state the following for the proposed loan:

(1) The purpose.

(2) The amount.

(3) The terms.

As added by P.L.1-1995, SEC.20.

14-27-5-6

Sec. 6. The court shall do the following:

(1) Set a date for a hearing.

(2) Allow at least twenty-one (21) days for an interested person to file objections.

(3) Order notice for the hearing that the court considers necessary. However, publication must at least be made in each of the counties containing land within the affected area in accordance with IC 5-3-1. The notice must set forth in summary form the contents of the petition.

As added by P.L.1-1995, SEC.20.

14-27-5-7

Sec. 7. If at the hearing the court finds that:

(1) the loan as proposed in the petition is necessary for the accomplishment of the purposes set forth in this chapter; and

(2) the terms and conditions are reasonable and probably are as beneficial to accomplish the purposes as would be obtainable in private competitive financial markets;

the court shall approve the petition and authorize the board of directors to enter into the loan agreement.

As added by P.L.1-1995, SEC.20.

14-27-5-8

Sec. 8. Upon approval by the court, the board of directors may levy the special assessments necessary for the repayment of the loan.

As added by P.L.1-1995, SEC.20.

14-27-5-9

Sec. 9. The board of directors may secure part or all of the money necessary for the project under this chapter. The board of directors may make the loan for any of the board's needs to cover the expenses for which the loan is sought and maintaining and operating the works of improvement that have been authorized by applicable governmental authority. The loan may also be used to refinance a prior loan whose proceeds have been used for any of the purposes described in section 2 of this chapter.

As added by P.L.1-1995, SEC.20.

14-27-5-10

Sec. 10. If the board of directors:

(1) decides not to enter into a loan agreement with a federal agency by installment note or series of notes; and

(2) instead prepares a bond issue, in whole or in part;

the board of directors may offer the bond issue for sale to a federal agency without a public offering or the securing of competitive bids on the bond offering.

As added by P.L.1-1995, SEC.20.

14-27-5-11

Sec. 11. A loan made under this chapter or under IC 13-2-29-1 (before its repeal) shall be repaid by levy of the special assessment authorized on the real property within the proposed project. The assessment against the landowners must be in the proportion that the benefits assessed against each tract of real property bear to the total benefits assessed as shown by the report of the appraisers appointed by the board of commissioners of the county under Acts 1913, c. 165, s. 16. Statutes regulating:

(1) the payment and collection of state and county taxes;

(2) the placing of assessments on the tax rolls and the recording of the assessments;

(3) the validity of the assessments;

(4) the assessment of penalties and interest; and

(5) the sale of property for delinquent taxes;

apply to the assessments.

As added by P.L.1-1995, SEC.20.

Chapter 6. Levee Authority in Vanderburgh County

14-27-6

14-27-6-1

Sec. 1. This chapter applies to the following:

(1) A city having a population of more than one hundred ten thousand (110,000) but less than one hundred fifty thousand (150,000).

(2) The county in which a city described in subdivision (1) exists.

As added by P.L.1-1995, SEC.20. Amended by P.L.119-2012, SEC.121.

14-27-6-2

Sec. 2. As used in this chapter, "board" refers to the board of the levee authority.

As added by P.L.1-1995, SEC.20.

14-27-6-3

Sec. 3. As used in this chapter, "gate" means any opening in a levee that can be closed mechanically to prevent the flow of water through the levee.

As added by P.L.1-1995, SEC.20.

14-27-6-4

Sec. 4. As used in this chapter, "levee" means any wall built along a stream to keep the stream from overflowing the banks.

As added by P.L.1-1995, SEC.20.

14-27-6-5

Sec. 5. As used in this chapter, "pumping station" means any place equipped with pumps for the purpose of lifting water over a levee wall and into the stream.

As added by P.L.1-1995, SEC.20.

14-27-6-6

Sec. 6. The:

(1) city fiscal body; or
(2) city fiscal body and the county fiscal body;
may adopt an ordinance to establish a levee authority for the purpose of acquiring land, rights-of-way, and easements on which the board or the United States Army Corps of Engineers can construct, improve, equip, maintain, control, lease, and regulate levees to hold back flood waters either within or without the district. The authority has jurisdiction over a district coterminous with the jurisdictional boundaries of the fiscal body adopting the ordinance.
As added by P.L.1-1995, SEC.20.

14-27-6-7

Sec. 7. The board shall exercise the executive and legislative powers of the authority as provided by this chapter.
As added by P.L.1-1995, SEC.20.

14-27-6-8

Sec. 8. (a) The board consists of three (3) members as follows:
(1) Two (2) members shall be appointed by the city executive.
(2) One (1) member shall be appointed by the board of commissioners of the county if the fiscal body of the county adopted an ordinance under section 6 of this chapter or under IC 13-2-31-2 (before its repeal).
(b) Not more than two (2) members of the board may be members of the same political party.
As added by P.L.1-1995, SEC.20.

14-27-6-9

Sec. 9. To be eligible to be appointed as a member of the board, an individual must meet the following conditions:
(1) Be at least eighteen (18) years of age.
(2) Be a resident householder of the city if appointed by the city executive.
(3) Be a resident of the county.
As added by P.L.1-1995, SEC.20.

14-27-6-10

Sec. 10. As soon as possible after the adoption of an ordinance for the creation of a levee authority, the members of the board shall be appointed as provided in section 8 of this chapter. The members shall meet on the day of the first meeting of the board and organize as the board.
As added by P.L.1-1995, SEC.20.

14-27-6-11

Sec. 11. (a) Except as provided in subsection (b), the first members of the board shall be appointed as follows:
(1) One (1) member for the term of one (1) year.
(2) One (1) member for the term of two (2) years.
(3) One (1) member for the term of three (3) years.
(b) If the board consists of members appointed from both the city and the county:
(1) the city executive shall appoint members for original terms of one (1) and two (2) years; and
(2) the board of commissioners of the county shall appoint a member for a term of three (3) years.
As added by P.L.1-1995, SEC.20.

14-27-6-12

Sec. 12. Upon the expiration of a term, the city executive or board of commissioners of the county shall appoint a member to fill the vacancy.
As added by P.L.1-1995, SEC.20.

14-27-6-13

Sec. 13. If a vacancy occurs on the board by resignation or otherwise, except for the expiration of a term, the city executive or board of commissioners of the county shall appoint a member for the remainder of the term.
As added by P.L.1-1995, SEC.20.

14-27-6-14

Sec. 14. (a) Except as otherwise provided in this chapter, a member of the board serves for a term of three (3) years:

(1) beginning at noon on the day of the first meeting of the board; and

(2) continuing until a successor has qualified for the office.

(b) A member of the board is eligible for reappointment to successive terms.

(c) A member of the board may be impeached under the procedure provided for the impeachment of county officers.

As added by P.L.1-1995, SEC.20.

14-27-6-15

Sec. 15. (a) A member of the board is ineligible to hold an appointive office or employment for the authority.

(b) A member of the board may not be or become personally interested in a contract with or claim against the authority.

As added by P.L.1-1995, SEC.20.

14-27-6-16

Sec. 16. The members of the board are entitled to a minimum compensation of six hundred dollars ($600) each year.

As added by P.L.1-1995, SEC.20.

14-27-6-17

Sec. 17. The board shall, at the board's first regular meeting to be conducted on the first July 1 or January 1 following appointment of the members and annually thereafter, elect the following officers:

(1) One (1) of the members as president.

(2) Another of the members as vice president, who shall perform the duties of the president during the absence or disability of the president.

As added by P.L.1-1995, SEC.20.

14-27-6-18

Sec. 18. The board shall have a suitable office where the board's maps, plans, documents, records, and accounts shall be kept, subject to public inspection at all reasonable times.

As added by P.L.1-1995, SEC.20.

14-27-6-19

Sec. 19. (a) The board shall by rule provide for regular meetings to be held not less than at semimonthly intervals throughout the year. The board shall keep meetings open to the public.

(b) The board shall convene a special meeting when a special meeting is called. The chairman or a majority of the members of the board may call a special meeting. The board shall do the following:

(1) Establish by rule a procedure for calling special meetings.

(2) Give notice of a special meeting that is open to the public by publication one (1) time, not less than twenty-four (24) hours before the time of the meeting, in each of two (2) daily newspapers of general circulation in the district.

As added by P.L.1-1995, SEC.20.

14-27-6-20

Sec. 20. A majority of the members of the board constitutes a quorum for a meeting. The board may act officially by an affirmative vote of a majority of the members present at the meeting at which the action is taken.

As added by P.L.1-1995, SEC.20.

14-27-6-21

Sec. 21. The board shall have a written record of the board's proceedings kept. The record must be available for public inspection in the office of the board. The board shall record in the record the affirmative and negative vote on the passage of each item of business.

As added by P.L.1-1995, SEC.20.

14-27-6-22

Sec. 22. The board shall adopt a system of rules of procedure under which the board's meetings are to be held. The board may suspend the rules of procedure by unanimous vote of the members of the board who are present at the meeting. The board may not suspend the rules of procedure beyond the duration of the meeting at which the suspension of rules occurs.
As added by P.L.1-1995, SEC.20.

14-27-6-23

Sec. 23. The board may supervise the board's internal affairs in the same manner as other municipal legislative and administrative bodies.
As added by P.L.1-1995, SEC.20.

14-27-6-24

Sec. 24. (a) A member of the board may introduce a proposed draft of an ordinance at a meeting of the board. A person who introduces a proposed draft of an ordinance shall provide at the time of introduction a written copy of the proposed draft.

(b) The board shall assign to each proposed draft of an ordinance a distinguishing number and the date when introduced.
As added by P.L.1-1995, SEC.20.

14-27-6-25

Sec. 25. (a) Not:

(1) more than seven (7) days after the introduction of a proposed draft of an ordinance; and

(2) less than seven (7) days before the final passage of a proposed draft of an ordinance;

the board shall publish a notice that the proposed ordinance is pending final action by the board. The notice shall be published one (1) time in each of two (2) daily newspapers that have a general circulation in the district. Notice of an ordinance establishing a budget must be in accordance with the general law relating to budgets of cities.

(b) The board shall do the following:

(1) Include in the notice the following:

(A) Reference to the subject matter of the proposed ordinance.

(B) The time and place a hearing will be held on the proposed ordinance.

(C) A statement that the proposed draft of an ordinance is available for public inspection at the office of the board.

(2) Not later than the date of notice of the introduction of a proposed ordinance, place five (5) copies of the proposed draft on file in the office of the board for public inspection.

(c) The board may include in one (1) notice a reference to the subject matter of each draft of an ordinance that is pending and for which notice has not already been given.

(d) An ordinance is not invalid because the reference to the subject matter of the draft of an ordinance was inadequate if the reference was sufficient to advise the public of the general subject matter of the proposed ordinance.
As added by P.L.1-1995, SEC.20.

14-27-6-26

Sec. 26. At a meeting for which notice has been given as required by section 25 of this chapter, the board may:

(1) take final action on the proposed ordinance; or

(2) postpone final consideration to a designated meeting in the future without giving additional notice.

As added by P.L.1-1995, SEC.20.

14-27-6-27

Sec. 27. The board may adopt a draft of an ordinance only at a meeting that is open to the public. Before adopting an ordinance, the board shall give opportunity to a person present at the meeting to give testimony, evidence, or argument for or against the proposed ordinance in person or by counsel under rules that the board adopts concerning the number of persons who may be heard and time limits.

As added by P.L.1-1995, SEC.20.

14-27-6-28

Sec. 28. Whenever the board adopts an ordinance, the board shall at the same meeting designate the effective date of the ordinance. If the board fails to designate the effective date of the ordinance in the record of the proceedings of the board, the ordinance takes effect fourteen (14) days after passage.
As added by P.L.1-1995, SEC.20.

14-27-6-29

Sec. 29. (a) The board shall have copies of each ordinance made available to the public.

(b) The board may provide for the printing of any of the ordinances of the authority in pamphlet form or in bound volumes. The board may:

(1) distribute the pamphlets or volumes without charge; or

(2) charge the cost of printing and distribution.

As added by P.L.1-1995, SEC.20.

14-27-6-30

Sec. 30. The board may perform all acts necessary or reasonably incident to carrying out the purposes of this chapter, including the following powers:

(1) To sue and be sued collectively by the board's name "_____ Levee Authority", with service of process being had on the president of the board. However, costs may not be taxed against the board or any of the board's members in an action.

(2) To have exclusive jurisdiction within the district.

(3) To adopt ordinances to protect all property owned or managed by the board.

(4) To adopt an annual budget and levy taxes not to exceed two and sixty-seven hundredths cents ($0.0267) on each one hundred dollars ($100) of assessed property in accordance with this chapter.

(5) To incur indebtedness in the name of the authority in accordance with this chapter.

(6) To:

(A) acquire real, personal, or mixed property by deed, purchase, lease, condemnation, or otherwise; and

(B) dispose of the property;

for flood control purposes.

(7) To do the following:

(A) Receive gifts, donations, bequests, and public trusts.

(B) Agree to accompanying conditions and terms and bind the authority to carry out the terms and conditions.

(8) To determine matters of policy regarding internal organization and operating procedures not specifically provided for otherwise.

(9) In addition to all other powers conferred by this chapter and IC 14-27-3, to do the following:

(A) Cooperate with an officer or agency of the federal government in the performance of any of the work authorized by this chapter.

(B) Accept labor, material, or financial assistance.

(C) Do all things not inconsistent with this chapter necessary to satisfy the requirements of the federal authorities for the purpose of obtaining aid from the federal government.

(10) To purchase supplies, materials, and equipment to carry out the duties and functions of the board in accordance with procedures adopted by the board and in accordance with general law.

(11) To employ personnel as necessary to carry out the duties, functions, and powers of the board.

(12) To sell surplus or unneeded property in accordance with procedures prescribed by the board.

(13) To adopt administrative rules to do the following:

(A) Carry out the board's powers and duties.

(B) Govern the duties of the board's officers, employees, and personnel.

(C) Govern the internal management of the affairs of the board.

The board shall publish all rules adopted by the board for at least ten (10) days in a newspaper of general circulation printed in the district.

(14) To fix the salaries or compensation of the officers and employees of the authority, except as otherwise

provided by this chapter.
(15) To carry out the purposes and objects of the authority.
(16) To adopt and use a seal.
(17) To:
(A) acquire land, easements, and rights-of-way; and
(B) establish, construct, improve, equip, maintain, control, lease, and regulate levees and the land owned adjacent to the levees, either within or outside the district;
for flood prevention purposes. However, if at the time of the creation of the levee authority a political subdivision owns or controls a levee, upon the qualification of the members of the board the exclusive control, management, and authority over each levee owned or controlled by a political subdivision shall be transferred to the board without the passage of an ordinance. The board of public works of the political subdivision or other persons having possession or control of a levee shall immediately deliver to the board all personal property and records, books, maps, and other papers and documents relating to the levee.
(18) To:
(A) elect a secretary from the board's membership; or
(B) employ a secretary;
and fix the compensation of the secretary.
(19) To do the following:
(A) Employ superintendents, managers, engineers, surveyors, attorneys, clerks, guards, mechanics, laborers, and all other employees the board considers expedient. All employees shall be selected and appointed irrespective of political affiliations.
(B) Prescribe and assign the duties and authority of the employees.
(C) Fix the compensation to be paid to the persons employed by the board in accordance with appropriations made by the city fiscal body.
(D) Require a bond on any officer or employee of the authority in the amount, upon the terms and conditions, and with surety to the approval of the board.
(20) To adopt rules not in conflict with:
(A) Indiana law;
(B) the ordinances of the city; or
(C) the laws or regulations of the United States and the United States Corps of Army Engineers;
regulating the construction, maintenance, and control of the board's levees and other property under the board's control.
(21) To establish the board's own detail or department of police or to hire guards to execute the orders and enforce the rules of the board.
(22) To permit the federal government to do the following:
(A) Construct or repair, on land or rights-of-way owned by the authority, levees, dikes, breakwaters, pumping stations, syphons, and flood gates.
(B) Construct or repair sewers, ditches, drains, diversion channels, and watercourses if necessary in the actual construction, repair, and maintenance of a levee and along land or rights-of-way owned by the authority.
(23) To do the following:
(A) Construct, maintain, and repair levees, dikes, breakwaters, pumping stations, and flood gates.
(B) Construct or repair sewers, ditches, drains, diversion channels, and watercourses if necessary in the actual construction, repair, and maintenance of a levee.
(24) To sell machinery, equipment, or material under the control of the board that the board determines is not required for levee purposes. The proceeds derived from the sale shall be deposited with the treasurer of the authority.
(25) To negotiate and execute:
(A) contracts of sale or purchase;
(B) leases;
(C) contracts for personal services, materials, supplies, or equipment; or
(D) any other transaction, business or otherwise;
relating to a levee under the board's control and operation. However, if the board determines to sell part or all

of levee land, buildings, or improvements owned by the authority, the sale must be in accordance with statute. If personal property under the control of the board valued in excess of five hundred dollars ($500) is to be sold, the board shall sell to the highest and best bidder after due publication of notice of the sale.

(26) To contract with other political subdivisions and state agencies under IC 36-1-7 for:

(A) the provision of services;

(B) the rental or use of equipment or facilities; or

(C) the joint purchase and use of equipment or facilities;

considered proper by the contracting parties for use in the operation, maintenance, or construction of a levee operated under this chapter.

As added by P.L.1-1995, SEC.20. Amended by P.L.6-1997, SEC.158.

14-27-6-31

Sec. 31. (a) Except as provided in subsection (b), in the letting of a contract for the repair or equipment of a levee under the control of the board, the board shall, when:

(1) adopting plans;

(2) giving notice; and

(3) receiving bids;

comply with statutes.

(b) If:

(1) an emergency arises involving the safety of human life due to accident or act of God; and

(2) the board declares the emergency;

the board may purchase necessary equipment and appliances without advertising for bids.

As added by P.L.1-1995, SEC.20.

14-27-6-32

Sec. 32. The board may take action the board considers proper to do the following:

(1) Recover damages for the following:

(A) The breach of an agreement, express or implied, relating to or growing out of the operation, control, leasing, management, or improvement of the property under the board's control.

(B) The penalties for the violation of an ordinance or a rule of the board.

(C) Injury to the personal or real property under the board's control.

(2) Recover possession of property under the board's control.

As added by P.L.1-1995, SEC.20.

14-27-6-33

Sec. 33. (a) The board may do the following:

(1) Exercise the power of eminent domain for the purpose of carrying out this chapter.

(2) Award damages to landowners for real property and property rights appropriated and taken.

(b) If the board cannot agree with the owner, lessee, or occupant of real property selected by the board for the purpose set forth in this chapter, the board may proceed to procure the condemnation of the property as provided in this chapter.

(c) If not in conflict or inconsistent with this chapter, the board may also proceed under IC 32-24. IC 32-24 applies to levees under this chapter as far as IC 32-24 is not in conflict or inconsistent with this chapter.

As added by P.L.1-1995, SEC.20. Amended by P.L.2-2002, SEC.60.

14-27-6-34

Sec. 34. (a) This section applies to land or the surface of the ground on, over, and across which it is necessary or advisable to construct a levee as provided in this chapter that:

(1) is already in use for any other public purpose; or

(2) has been condemned or appropriated for a use authorized by statute and is being used for that purpose by the corporation appropriating the land or surface of the ground.

(b) The public use or prior condemnation does not bar the right of the board to condemn the use of the ground for levee purposes.

(c) The use by the board does not permanently prevent the use of the land or the surface of the ground:

(1) for the prior public use; or
(2) by the corporation previously condemning or appropriating the land or surface of the ground.
(d) In a proceeding prosecuted by the board to condemn the use of land or the surface of ground for purposes permitted by this chapter, the board must show that the board's use will not permanently or seriously interfere with:
(1) the continued public use of the land or surface of ground; or
(2) the corporation previously condemning the land or surface or the corporation's successors.
However, in a proceeding the board may require and enforce the removal or the burying beneath the surface of the ground of wires, cables, power lines, or other structures within a restricted zone established as provided in this chapter.
As added by P.L.1-1995, SEC.20.

14-27-6-35

Sec. 35. (a) In a proceeding prosecuted by the board to condemn or appropriate:
(1) land;
(2) the use of land; or
(3) a right in land;
for purposes permitted by this chapter, the board and all owners and holders of property or rights in property sought to be taken are governed by and have the same rights concerning procedure, notices, hearings, assessments of benefits and awards, and payments of benefits and awards that are prescribed by law for the appropriation and condemnation of real property.
(b) The property owners have the same powers and rights to:
(1) remonstrate; and
(2) appeal;
to the circuit or superior courts with jurisdiction in the county in which the district is located that are provided by law for the appropriation and condemnation of real property.
(c) An appeal:
(1) only affects the amount of the assessment of awards of the person appealing; and
(2) shall be taken in conformity with the laws relating to appeals. However, the payment of all damages awarded for land, property, or interests or rights in property appropriated under this chapter shall be paid entirely out of money under the control of the board.
As added by P.L.1-1995, SEC.20.

14-27-6-36

Sec. 36. (a) Notwithstanding this or any other statute, the city or district may take possession of property to be acquired at any time after the filing of the petition describing the property in condemnation proceedings.
(b) The city or district may abandon the condemnation of property if possession of the property has not been taken.
(c) The board may acquire and use land reasonably necessary for the purposes of this chapter. However:
(1) the board may not acquire or use land that is still being used and is absolutely necessary for the purposes for which the land was previously condemned; and
(2) this chapter does not permit the acquisition or use by the board of land previously acquired by condemnation that is being used for the purpose for which the land was acquired if the use by the board would impair or interfere with the necessary use of the land by the owner of the land.
As added by P.L.1-1995, SEC.20.

14-27-6-37

Sec. 37. Within sixty (60) days after land or interests in land is acquired or taken under this chapter, the board shall file and cause to be recorded in the recorder's office of the county in which the land is situated the following, which a majority of the board shall sign:
(1) A description of the land or interest in land sufficiently accurate for identification.
(2) A statement of the purpose for which the land or interest in land is required or taken.
As added by P.L.1-1995, SEC.20.

14-27-6-38

Sec. 38. (a) The board may issue general obligation bonds of the authority for the purpose of procuring money to pay the cost of:

(1) acquiring real property or rights-of-way; or

(2) constructing, enlarging, improving, remodeling, repairing, or equipping levees, gates, and pumping stations and sewers, ditches, and drains in connection with that construction or maintenance or other facilities; for use as or in connection with or for administrative purposes of the levee.

(b) The board must authorize the issuance of bonds by ordinance providing for the following:

(1) The amount, terms, and tenor of the bonds.

(2) The time and character of notice.

(3) The mode of selling the bonds.

(c) The bonds:

(1) may bear interest at any rate;

(2) are payable in not more than twenty-five (25) years after the date of issuance; and

(3) shall be:

(A) executed in the name of the authority by the president of the board; and

(B) attested by the secretary and treasurer who shall affix to each of the bonds the official seal of the authority.

(d) The interest coupons attached to the bonds may be executed by placing on the coupons the facsimile signature of the president of the board.

As added by P.L.1-1995, SEC.20.

14-27-6-39

Sec. 39. (a) The levee superintendent shall manage and supervise the preparation, advertisement, and sale of the bonds, subject to the authorizing ordinance. Before the sale of the bonds, the superintendent shall have notice of the sale published one (1) time each week for two (2) consecutive weeks in two (2) newspapers of general circulation published in the district. The notice must state the following:

(1) The time and place where bids will be received.

(2) The amount and maturity dates of the issue.

(3) The maximum interest rate.

(4) The terms and conditions of sale and delivery of the bonds.

(b) The bonds shall be sold to the highest and best bidder. After the bonds have been properly sold and executed, the superintendent shall do the following:

(1) Deliver the bonds to the treasurer of the authority and take a receipt for the bonds.

(2) Certify to the treasurer the amount that the purchaser is to pay for the bonds, together with the name and address of the purchaser.

(c) On payment of the purchase price the treasurer shall deliver the bonds to the purchaser, and the treasurer and superintendent shall report their actions to the board.

As added by P.L.1-1995, SEC.20.

14-27-6-40

Sec. 40. The provisions of IC 5-1 and IC 6-1.1-20 relating to the following apply to proceedings under this chapter:

(1) The filing of a petition requesting the issuance of bonds and giving notice of the petition.

(2) The giving of notice of determination to issue bonds.

(3) The giving of notice of hearing on the appropriation of the proceeds of bonds and the right of taxpayers to appeal and be heard on the proposed appropriation.

(4) The approval of the appropriation by the department of local government finance.

(5) The right of:

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

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

(6) The sale of bonds at public sale for not less than the par value.

As added by P.L.1-1995, SEC.20. Amended by P.L.90-2002, SEC.371; P.L.219-2007, SEC.98; P.L.146-2008,

SEC.425.

14-27-6-41

Sec. 41. (a) All bonds issued under this chapter or under IC 13-2-31 (before its repeal) are the direct general obligations of the authority issuing the bonds and are payable out of unlimited ad valorem taxes that shall be levied and collected on all the taxable property within the district. All officials and bodies involved with the levying of taxes for the district shall ensure that sufficient levies are made to meet the principal and interest on the bonds at the time fixed for payment without regard to any other statute.

(b) The bonds issued under this chapter or under IC 13-2-31 (before its repeal) are exempt from taxation for all purposes.

As added by P.L.1-1995, SEC.20. Amended by P.L.192-2002(ss), SEC.157.

14-27-6-42

Sec. 42. (a) The board may authorize and make temporary loans in anticipation of the collection of taxes in the district actually levied and in course of collection for the fiscal year in which the loans are made.

(b) The board must authorize the loans by ordinance and shall evidence the loans by warrants in the form provided by the authorizing ordinance. The warrants must state the following:

(1) The total amount of the issue.

(2) The denomination of the warrant.

(3) The time and place payable.

(4) The rate of interest.

(5) The revenues in anticipation of which the warrants are issued and out of which the warrants are payable.

(6) A reference to the ordinance authorizing the warrants and the date of passage of the ordinance.

(c) The ordinance authorizing the temporary loans must appropriate and pledge sufficient of the current revenues in anticipation of which the warrants are issued and out of which the warrants are payable to the payment of the warrants. The warrants evidencing the temporary loans shall be executed, sold, and delivered in the same manner as are bonds of the authority.

As added by P.L.1-1995, SEC.20.

14-27-6-43

Sec. 43. (a) The board shall appoint a person to act as treasurer of the authority. The treasurer shall give bond in the amount and with the condition that the board prescribes and with surety to the approval of the board. The treasurer shall be appointed to serve for a term of one (1) year unless removed for cause.

(b) All money payable to the authority shall be paid to the treasurer, and the treasurer shall deposit the money in accordance with the statutes relating to the deposit of public money by municipal corporations. The treasurer shall keep an accurate account of the following:

(1) All appropriations made and all taxes levied by the authority.

(2) All money owing or due to the authority.

(3) All money received and disbursed.

(c) The treasurer shall preserve all vouchers for payments and disbursements made.

(d) The treasurer shall issue all warrants for the payment of money from the money of the district, but a warrant may not be issued for the payment of a claim until the claim has been allowed in accordance with the procedure prescribed by the board. The president shall countersign all warrants. Whenever the treasurer is called upon to issue a warrant, the treasurer may do the following:

(1) Require evidence that the amount claimed is justly due and in conformity with law.

(2) For that purpose:

(A) summon before the treasurer an officer, agent, or employee of the authority or other person; and

(B) examine the individual concerning the warrant on oath or affirmation that the treasurer may administer.

As added by P.L.1-1995, SEC.20.

14-27-6-44

Sec. 44. The treasurer shall submit to the board annually, and more often if required by the board, a report of the accounts exhibiting the following:

(1) The revenues, receipts, and disbursements.

(2) The sources from which the revenues and money are derived.
(3) The manner in which the money has been disbursed.
As added by P.L.1-1995, SEC.20.

14-27-6-45

Sec. 45. The treasurer shall submit annually, and more often if required by the board, the records of accounts to a certified public accountant or firm of certified public accountants designated or selected by the board for audit. The accountant or firm shall prepare and submit a certified report of the records of accounts to the board exhibiting the following:
(1) The revenues, receipts, and disbursements.
(2) The sources from which the revenues and money are derived.
(3) The manner in which the money has been disbursed.
As added by P.L.1-1995, SEC.20.

14-27-6-46

Sec. 46. (a) The board shall do the following:
(1) Annually prepare a budget for the operation and capital expenditures of the authority.
(2) Calculate the tax levy necessary to provide money for the operating expenditures necessary to carry out the powers, duties, and functions of the authority together with any capital expenditures that are included in the annual budget.
(b) The budget shall be prepared and submitted at the same time and in the same manner as provided by the statutes relating to the preparation of budgets by cities. The budget is subject to the same review by the county tax adjustment board and the department of local government finance as under the statutes relating to budgets of cities.
(c) The budgets and the tax levies are subject to review and modification by the fiscal body of a city and county within the district in the same manner as the budgets and tax levies of the executive departments of the city.
As added by P.L.1-1995, SEC.20. Amended by P.L.90-2002, SEC.372.

14-27-6-47

Sec. 47. The county treasurer shall assess and collect the tax levy as finally approved by the department of local government finance as other taxes are levied and collected. The county treasurer shall remit all taxes so collected to the treasurer of the authority.
As added by P.L.1-1995, SEC.20. Amended by P.L.90-2002, SEC.373.

14-27-6-48

Sec. 48. (a) The board may provide a cumulative building fund in compliance with IC 6-1.1-41 to provide for the erection of:
(1) levees, gates, and pumping stations; or
(2) other facilities or the addition to or improvement of the facilities on the levees;
needed to carry out this chapter.
(b) In compliance with IC 6-1.1-41, the board may levy a property tax not to exceed sixty-seven hundredths of one cent ($0.0067) on each one hundred dollars ($100) of taxable property within the district. As the tax is collected, the tax may be invested in negotiable United States bonds or other securities that the federal government has the direct obligation to pay.
(c) Any money of the cumulative building fund not invested in government obligations shall be withdrawn from the cumulative building fund in the same manner as money is regularly withdrawn from a general fund but without further or additional appropriation.
As added by P.L.1-1995, SEC.20. Amended by P.L.17-1995, SEC.13; P.L.6-1997, SEC.159.

14-27-6-49

Sec. 49. The board shall act as a board of finance under the statutes relating to the deposit of public money by municipal corporations.
As added by P.L.1-1995, SEC.20.

14-27-6-50

Sec. 50. The acquiring, establishment, construction, improvement, equipment, maintenance, control, and

operation of levees under this chapter are declared to be:

(1) a governmental function of general public necessity and benefit; and

(2) for the use and general welfare of all the people of Indiana as well as of the people residing in the district.

As added by P.L.1-1995, SEC.20.

14-27-6-51

Sec. 51. All expenses incurred by the board necessary to be paid before the collection of taxes levied under this chapter shall be met and paid in the following manner:

(1) The board shall periodically certify items of expense to the controller of the city directing the controller to pay the amounts. The controller shall draw a warrant that shall be paid out of the general money of the city not appropriated without special appropriation being made by the city fiscal body or approval of any other body.

(2) If there is not unappropriated general money of the city, the controller shall recommend to the city fiscal body the temporary transfer from other money of the city of a sufficient amount to meet the items of expense or the making of a temporary loan for this purpose. The city fiscal body shall immediately make the transfer or authorize the temporary loan in the same manner that other transfers and temporary loans are made by the city. The amount advanced by the city may not exceed fifty thousand dollars ($50,000), and the fund of the city from which the advancement is made shall be fully reimbursed and repaid by the authority out of the first proceeds of the taxes levied under this chapter. Money advanced by the city may not be used in the acquisition of real property.

As added by P.L.1-1995, SEC.20.

14-27-6-52

Sec. 52. A person who recklessly violates this chapter commits a Class B misdemeanor.

As added by P.L.1-1995, SEC.20.

Chapter 7. Dams, Dikes, and Levees; Regulation

14-27-7

14-27-7-1

Sec. 1. As used in this chapter, "owner" means an individual, a firm, a partnership, a copartnership, a lessee, an association, a corporation, an executor, an administrator, a trustee, the state, an agency of the state, a municipal corporation, a political subdivision of the state, a legal entity, a drainage district, a levee district, a conservancy district, any other district established by law, or any other person who has a right, a title, or an interest in or to the property upon which the levee, dike, or floodwall and appurtenant works is located.

As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.6.

14-27-7-2

Sec. 2. The owner of a levee, dike, or floodwall and appurtenant works shall maintain and keep the structures and appurtenant works in the state of repair and operating condition required by the following:

(1) The exercise of prudence.

(2) Due regard for life or property.

(3) The application of sound and accepted engineering principles.

As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.7.

14-27-7-3

Sec. 3. The department:

(1) has, on behalf of the state, jurisdiction and supervision over the maintenance and repair of levees, dikes, floodwalls, and appurtenant works in, on, or along the rivers and streams of Indiana;

(2) shall exercise care to see that the dikes, floodwalls, levees, and appurtenances are maintained in a good and sufficient state of repair and operating condition to fully perform the intended purpose;

(3) may adopt rules under IC 4-22-2 for maintenance and operation that are necessary for the purposes of this chapter; and

(4) may vary the standards for maintenance and operation, giving due consideration to the following:

(A) The type and location of the dike, floodwall, levee, or appurtenance.

(B) The hazards to which the dike, floodwall, levee, or appurtenance is or may be exposed.
(C) The peril to life or property if the dike, floodwall, levee, or appurtenance fails to perform the structure's function.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.8.

14-27-7-4

Sec. 4. (a) The department shall make an engineering inspection of all levees, dikes, and floodwalls and appurtenant works:
(1) at least one (1) time every three (3) years or at more frequent intervals if the exigencies of the case require; or
(2) upon the written request of an affected person or agency.
(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).
(c) This chapter does not apply to the following:
(1) A levee, dike, or floodwall that meets both of the following conditions:
(A) Is under a single private ownership.
(B) Provides protection only to land or other property under the single private ownership.
(2) A dike, floodwall, or levee that is regulated under the federal Mine Safety and Health Act of 1977, unless the dike, floodwall, or levee is proposed to be retained as a permanent structure after bond release.
As added by P.L.1-1995, SEC.20. Amended by P.L.75-1998, SEC.4; P.L.148-2002, SEC.9.

14-27-7-5

Sec. 5. If the department finds that a dike, floodwall, levee, or appurtenance is:
(1) not sufficiently strong;
(2) not maintained in a good and sufficient state of repair or operating condition; or
(3) unsafe and dangerous to life or property;
the department shall issue a notice of violation to the owner of the dike, floodwall, levee, or appurtenance under IC 14-25.5-2.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.10; P.L.71-2004, SEC.11.

14-27-7-6

Sec. 6. (a) If at any time the condition of a levee, a dike, a floodwall, or an appurtenance becomes so dangerous to the safety of life and property that, in the opinion of the department there is not sufficient time for the issuance and enforcement of a notice of violation for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal of the dike, floodwall, levee, or appurtenance in the manner provided in this chapter, the department may immediately take the measures that are essential to provide emergency protection to life and property.
(b) The department may recover the cost of the emergency measures from the owner by appropriate legal action.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.11.

14-27-7-7

Sec. 7. An owner who knowingly fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time limit set forth in the notice of violation of the department under:
(1) section 5 of this chapter; or
(2) IC 13-2-20-4 (before its repeal);
commits a Class B infraction. Every day of failure constitutes a separate infraction.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.12; P.L.71-2004, SEC.12.

14-27-7-8

Sec. 8. The department and the department's agents, engineers, and other employees may, for the purposes of determining the department's jurisdiction and performing the engineering inspections provided in section 4 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a levee, dike, or floodwall and appurtenant works shall do the following:
(1) Cooperate with the department and the department's agents, engineers, and other employees in the conduct

of the inspections.
(2) Facilitate access to the dike, floodwall, levee, or appurtenance.
(3) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the dike, floodwall, levee, or appurtenance.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.13.

14-27-7-9

Sec. 9. This chapter does not create a liability for damages against the department or the department's officers, agents, and employees caused by or arising out of any of the following:
(1) The construction, maintenance, operation, or failure of a levee, dike, or floodwall and appurtenant works.
(2) The issuance and enforcement of a notice of violation or a rule issued by the department to carry out the department's duties.
As added by P.L.1-1995, SEC.20. Amended by P.L.148-2002, SEC.14.

Chapter 7.5. Regulation of Dams

14-27-7.5

14-27-7.5-1

Sec. 1. This chapter does not apply to the following:
(1) A structure that meets the following conditions:
(A) Is built for the sole purpose of erosion control, watering livestock, recreation, or providing a haven or refuge for fish or wildlife.
(B) Has a drainage area above the dam of not more than one (1) square mile.
(C) Does not exceed twenty (20) feet in height.
(D) Does not impound a volume of more than one hundred (100) acre-feet of water.
(2) A structure that is regulated under the federal Mine Safety and Health Act of 1977, unless the structure is proposed to be retained as a permanent structure after bond release.
As added by P.L.148-2002, SEC.15.

14-27-7.5-2

Sec. 2. As used in this chapter, "hazard classification" means a rating assigned to a structure by the department based on the potential consequences resulting from the uncontrolled release of its contents due to a failure or misoperation of the structure.
As added by P.L.148-2002, SEC.15.

14-27-7.5-3

Sec. 3. As used in this chapter, "height" means the vertical dimension of a structure as measured from the lowest point in the natural streambed or watercourse under the centerline of the structure to the top of the structure.
As added by P.L.148-2002, SEC.15.

14-27-7.5-4

Sec. 4. As used in this chapter, "owner" means an individual, a firm, a partnership, a copartnership, a lessee, an association, a corporation, an executor, an administrator, a trustee, the state, an agency of the state, a municipal corporation, a political subdivision of the state, a legal entity, a drainage district, a levee district, a conservancy district, any other district established by law, or any other person who has a right, a title, or an interest in or to the property upon which the structure is located.
As added by P.L.148-2002, SEC.15.

14-27-7.5-5

Sec. 5. As used in this chapter, "structure" means a dam and its appurtenant works.
As added by P.L.148-2002, SEC.15.

14-27-7.5-6

Sec. 6. As used in this chapter, "volume" means the amount of water that is impounded by a structure:

(1) at or below the elevation of the top of the structure; or
(2) at or below the maximum design flood pool elevation;
whichever is lower.
As added by P.L.148-2002, SEC.15.

14-27-7.5-7

Sec. 7. (a) The owner of a structure shall maintain and keep the structure in the state of repair and operating condition required by the following:
(1) The exercise of prudence.
(2) Due regard for life and property.
(3) The application of sound and accepted technical principles.
(b) The owner of a structure shall notify the department in writing of the sale or other transfer of ownership of the structure. The notice must include the name and address of the new owner of the structure.
As added by P.L.148-2002, SEC.15. Amended by P.L.71-2004, SEC.13.

14-27-7.5-8

Sec. 8. (a) The department:
(1) has, on behalf of the state, jurisdiction and supervision over the maintenance and repair of structures in, on, or along the rivers, streams, and lakes of Indiana;
(2) shall exercise care to see that the structures are maintained in a good and sufficient state of repair and operating condition to fully perform the intended purpose;
(3) shall grant permits for the construction and operation of structures in, on, or along the rivers, streams, and lakes of Indiana;
(4) may adopt rules under IC 4-22-2 for permitting, maintenance, and operation that are necessary for the purposes of this chapter; and
(5) may vary the standards for permits, maintenance, and operation, giving due consideration to the following:
(A) The type and location of the structure.
(B) The hazards to which the structure is or may be exposed.
(C) The peril to life or property if the structure fails to perform the structure's function.
(b) The department shall establish by rule the criteria for assigning a hazard classification to a structure that is based on the potential consequences resulting from the uncontrolled release of the structure's contents due to a failure of the structure. The hazard classification system must include the following classes of structures:
(1) High hazard: A structure the failure of which may cause the loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads.
(2) Significant hazard: A structure the failure of which may damage isolated homes and highways, or cause the temporary interruption of public utility services.
(3) Low hazard: A structure the failure of which may damage farm buildings, agricultural land, or local roads.
As added by P.L.148-2002, SEC.15.

14-27-7.5-9

Sec. 9. (a) The owner of a high hazard structure shall:
(1) have a professional engineer licensed under IC 25-31 make an engineering inspection of the high hazard structure at least one (1) time every two (2) years;
(2) submit a report of the inspection in a form approved by the department to the department. The report must include at least the following information:
(A) An evaluation of the structure's condition, spillway capacity, operational adequacy, and structural integrity.
(B) A determination of whether deficiencies exist that could lead to the failure of the structure, and recommendations for maintenance, repairs, and alterations to the structure to eliminate deficiencies, including a recommended schedule for necessary upgrades to the structure.
(b) If after an inspection under subsection (a) the licensed professional engineer who conducted the inspection determines that maintenance, repairs, or alterations to a high hazard structure are necessary to remedy deficiencies in the structure, the owner shall perform the recommended maintenance, repairs, or alterations.
(c) The department shall issue a notice of violation under section 11 of this chapter to the owner of a high hazard

structure who fails to:

(1) have the structure inspected under subsection (a);

(2) perform recommended maintenance, repairs, or alterations to the structure under subsection (b); or

(3) biennially submit the inspection report prepared under subsection (a).

(d) The department may make an engineering inspection of a high hazard structure to ensure compliance with this chapter.

As added by P.L.148-2002, SEC.15. Amended by P.L.1-2003, SEC.60; P.L.186-2003, SEC.72.

14-27-7.5-10

Sec. 10. (a) The department shall make an engineering inspection of:

(1) a significant hazard structure at least one (1) time every three (3) years; and

(2) a low hazard structure at least one (1) time every five (5) years;

or at more frequent intervals if the exigencies of the case require.

(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).

(c) The department shall charge the following for engineering inspections:

(1) For a significant hazard structure under subsection (a)(1), a fee of two hundred dollars ($200).

(2) For a low hazard structure under subsection (a)(2), a fee of one hundred dollars ($100).

As added by P.L.148-2002, SEC.15. Amended by P.L.186-2003, SEC.73.

14-27-7.5-11

Sec. 11. If the department finds that a structure is:

(1) not sufficiently strong;

(2) not maintained in a good and sufficient state of repair or operating condition;

(3) not designed to remain safe during infrequent loading events; or

(4) unsafe and dangerous to life and property;

the department may issue a notice of violation under IC 14-25.5-2.

As added by P.L.148-2002, SEC.15. Amended by P.L.71-2004, SEC.14.

14-27-7.5-12

Sec. 12. (a) If at any time the condition of a structure becomes so dangerous to the safety of life and property that, in the opinion of the department, there is not sufficient time for the issuance and enforcement of an order for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal of the structure in the manner provided in this chapter, the department may immediately take the measures that are essential to provide emergency protection to life and property, including the lowering of the water level by releasing water or by a controlled breach of the structure.

(b) The department may recover the cost of the emergency measures from the owner by appropriate legal action.

As added by P.L.148-2002, SEC.15.

14-27-7.5-13

Sec. 13. An owner who knowingly fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time limit set forth in the notice of violation of the department under:

(1) section 11 of this chapter; or

(2) IC 13-2-20-4 (before its repeal);

commits a Class B infraction. Every day of failure constitutes a separate infraction.

As added by P.L.148-2002, SEC.15. Amended by P.L.71-2004, SEC.15.

14-27-7.5-14

Sec. 14. The department and the department's agents, engineers, geologists, and other employees may, for purposes of determining the department's jurisdiction and performing the engineering inspections provided in sections 9 and 10 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a structure shall do the following:

(1) Cooperate with the department and the department's agents, engineers, geologists, and other employees in the conduct of the inspections.

(2) Facilitate access to the structure.
(3) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the structure.

As added by P.L.148-2002, SEC.15. Amended by P.L.186-2003, SEC.74.

14-27-7.5-15

Sec. 15. This chapter does not create a liability for damages against the department or the department's officers, agents, and employees caused by or arising out of any of the following:

(1) The construction, maintenance, operation, or failure of a structure.
(2) The issuance and enforcement of a notice of violation or a rule issued by the department to carry out the department's duties.

As added by P.L.148-2002, SEC.15.

14-27-7.5-16

Sec. 16. (a) A property owner, the owner's representative, or an individual who resides downstream from a structure:

(1) over which the department does not have jurisdiction under this chapter; and
(2) that the property owner, the owner's representative, or the individual believes would cause a loss of life or damage to the person's home, industrial or commercial building, public utility, major highway, or railroad if the structure fails;

may request in writing that the department declare the structure a high hazard structure.

(b) If the department receives a request under subsection (a), the department shall:

(1) investigate the structure and the area downstream from the structure;
(2) notify the owner of the structure that the structure is being investigated;
(3) review written statements and technical documentation from any interested party; and
(4) after considering the available information, determine whether or not the structure is a high hazard structure.

(c) The department shall issue a written notice of the department's determination under subsection (b) to:

(1) the individual who requested the determination; and
(2) the owner of the structure that is the subject of the request.

(d) Either:

(1) the individual who requested a determination; or
(2) the owner of the structure that is the subject of the request;

may request an administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the written determination.

(e) If the department determines that a structure is a high hazard structure under subsection (b), the provisions of this chapter concerning high hazard structures apply to the structure.

As added by P.L.71-2004, SEC.16.

Chapter 7.7. Lease of Williams Dam

14-27-7.7

14-27-7.7-1

Sec. 1. The director may enter into a long term lease of the Williams Dam on the East Fork of the White River in Lawrence County.

As added by P.L.16-2009, SEC.23.

14-27-7.7-2

Sec. 2. A lease executed under this chapter must meet the following requirements:

(1) It must be for the development of hydroelectric power at the Williams Dam Fishing Area.
(2) It must enhance the recreation and fishing potential of the Williams Dam Fishing Area.
(3) The initial term of the lease may not exceed forty (40) years.

As added by P.L.16-2009, SEC.23.

14-27-7.7-3

Sec. 3. A lease executed under this chapter may provide for renewal at the option of the director, with the approval of the governor.
As added by P.L.16-2009, SEC.23.

14-27-7.7-4

Sec. 4. A lease executed under this chapter may include any other limitations or restrictions determined necessary by the director.
As added by P.L.16-2009, SEC.23.

14-27-7.7-5

Sec. 5. Revenue from a lease under this chapter shall be used solely for the division of fish and wildlife.
As added by P.L.16-2009, SEC.23.

Chapter 8. Drainage Districts

14-27-8

14-27-8-1

Sec. 1. This chapter applies if a public ditch or drain is established and constructed under the order of any of the following:
(1) A circuit or superior court.
(2) A county executive.
As added by P.L.1-1995, SEC.20.

14-27-8-2

Sec. 2. As used in this chapter, "district" refers to a drainage maintenance and repair district.
As added by P.L.1-1995, SEC.20.

14-27-8-3

Sec. 3. As used in this chapter, "ditch" or "drain" includes the following:
(1) A main dredge ditch.
(2) The lateral ditches:
(A) tributary to a main ditch; and
(B) constructed as one (1) system of drainage by the use of a dredge machine.
As added by P.L.1-1995, SEC.20.

14-27-8-4

Sec. 4. (a) A petition requesting the establishment of a drainage maintenance and repair district under this chapter may not be filed after June 30, 2001.
(b) Twenty percent (20%) of the owners of the real property assessed for a ditch or drain who:
(1) would benefit by the construction of the ditch or drain; and
(2) own not less than twenty percent (20%) of the land in acreage that is assessed for the ditch or drain;
may file, in the office of the clerk of a circuit or superior court having jurisdiction in the county in which is located the greatest acreage of the land as last assessed with benefits for the construction or reconstruction of the ditch, a petition requesting the establishment of a drainage maintenance and repair district.
As added by P.L.1-1995, SEC.20. Amended by P.L.276-2001, SEC.4.

14-27-8-5

Sec. 5. A petition filed under section 4 of this chapter must do the following:
(1) Describe all the land assessed with benefits for the construction or reconstruction of the ditch or drain.
(2) State a general description of the ditch or drain that the district is proposed to keep in repair and to properly maintain.
(3) State that the maintenance and repair of the ditch or drain is a work of necessity or public utility and can be

best accomplished by the organization of the district.
(4) Include other facts that are important.
As added by P.L.1-1995, SEC.20.

14-27-8-6

Sec. 6. If the proposed district includes a city, town, or part of a city or town, the legislative body of the city or town may, after determining whether the city or town and the owners of land located in the city or town that would be included in the proposed district would benefit by the district, sign the petition. If a petition is signed by the legislative body, the petition shall be treated as if the petition were signed by all owners of land located in the city or town in the proposed district.
As added by P.L.1-1995, SEC.20.

14-27-8-7

Sec. 7. (a) Upon the filing of a petition described in section 4 of this chapter, the clerk of the court shall do the following:
(1) Fix by endorsement upon the petition a day in the next term of the court, not less than twenty (20) days later than the date of the filing of the petition, for the hearing.
(2) Give notice of the filing and hearing at least ten (10) days before the day fixed for the hearing as follows:
(A) By summons, which shall be served by United States mail, return receipt requested.
(B) For owners of land in the city or town, by reading to the legislative body of the city or town or a majority of the members.
(C) By posting notice in five (5) of the most public places within the proposed district.
(D) By posting one (1) notice at the door of the courthouse in the county in which the petition is filed.
(E) For nonresidents of Indiana, by publication one (1) time in a newspaper of general circulation in the county.
(b) When notified under subsection (a), the legislative body shall make every reasonable effort to see that landowners in the city or town included in the proposed district are informed of the proposed district.
As added by P.L.1-1995, SEC.20.

14-27-8-8

Sec. 8. Notice given under section 7 of this chapter must state the following:
(1) The date of the filing.
(2) The time and place of the hearing.
(3) The fact that the petition requests the establishment of a district.
(4) The name and a general description of the dredge ditch or drain for which it is proposed to establish the district.
As added by P.L.1-1995, SEC.20.

14-27-8-9

Sec. 9. (a) If a landowner in the proposed district is not a resident of one (1) of the counties in which the proposed district will lie, the petitioners shall file in the clerk's office with the petition an affidavit that does the following:
(1) Gives the name of every nonresident landowner.
(2) States the landowner's post office address if known.
(3) If the landowner's post office address is not known, states that diligent inquiry has been made to ascertain the address but has not been able to do so.
(b) The clerk shall mail a copy of the notice to every nonresident landowner whose post office address is stated in the affidavit not later than the day on which publication of the notice is made.
As added by P.L.1-1995, SEC.20.

14-27-8-10

Sec. 10. (a) Upon the hearing of a petition filed under section 4 of this chapter, an owner of real property within the proposed district may appear and contest the necessity for or utility of the establishment of the district.
(b) The court shall determine the following:

(1) Whether the petition is signed by twenty percent (20%) of the landowners in the proposed district.
(2) Whether the landowners represent at least twenty percent (20%) of the land in acreage included in the proposed district.

(c) If the court after hearing the evidence finds that a petition has not been signed as required by this chapter, the court shall dismiss the petition at the cost of the petitioners.

(d) If the court finds that:
(1) a petition has been signed by twenty percent (20%) of the owners of land within the proposed district; and
(2) the signers own at least twenty percent (20%) of the land in acreage;
the finding shall be entered of record and is conclusive upon all landowners owning land within the district who have been notified as required by this chapter.

(e) If it further appears to the court that:
(1) the establishment of the proposed district is necessary; or
(2) the district will be useful and a public utility;
the court shall adjudge the district established unless a remonstrance objecting to the establishment has been filed with the clerk of the court.

(f) A remonstrance filed under subsection (e) must contain the names of the following:
(1) Owners of at least two-thirds (2/3) of the acreage described within the proposed district.
(2) Owners of land abutting on at least fifty-one percent (51%) of the length of the ditch.

(g) The court shall give the district a distinguishing name.

As added by P.L.1-1995, SEC.20.

14-27-8-11

Sec. 11. (a) The board of commissioners of the county shall appoint three (3) drainage commissioners to do the following:
(1) Take charge of the maintenance and repair of the dredge ditch or drain within the district.
(2) Perform other duties assigned to the drainage commissioners under this chapter.

(b) A drainage commissioner must have the following qualifications:
(1) Own land in the district.
(2) Reside in the district.
(3) Be an individual of intelligence and good judgment.

(c) If the district is composed of land from more than one (1) county, the board of commissioners of each county may participate in the appointment of the drainage commissioners.

As added by P.L.1-1995, SEC.20.

14-27-8-12

Sec. 12. (a) The initial drainage commissioners serve for terms designated by the board of commissioners of the county as follows:
(1) One (1) drainage commissioner for one (1) year.
(2) One (1) drainage commissioner for two (2) years.
(3) One (1) drainage commissioner for three (3) years.

(b) Upon the expiration of the initial terms, the board of commissioners of the county shall appoint successors for terms of three (3) years.

As added by P.L.1-1995, SEC.20.

14-27-8-13

Sec. 13. Before entering upon the discharge of their duties, the drainage commissioners shall take and subscribe an oath to do the following:
(1) Faithfully and honestly discharge the duties of office without favor or partiality.
(2) Give a true account of their work to the board of county commissioners whenever required to do so by law.

As added by P.L.1-1995, SEC.20.

14-27-8-14

Sec. 14. The drainage commissioners:
(1) shall elect one (1) of the drainage commissioners chairman; and

(2) may elect one (1) of the drainage commissioners secretary.
As added by P.L.1-1995, SEC.20.

14-27-8-15

Sec. 15. A majority of the drainage commissioners constitutes a quorum. A quorum is sufficient in any matter within their duties as drainage commissioners.
As added by P.L.1-1995, SEC.20.

14-27-8-16

Sec. 16. (a) Upon the death or removal from the county of a drainage commissioner, the board of commissioners of the county shall appoint a successor.

(b) A drainage commissioner is subject to removal for cause upon written charges filed against the drainage commissioner in the circuit court.
As added by P.L.1-1995, SEC.20.

14-27-8-17

Sec. 17. (a) A drainage commissioner serves without salary, but is entitled to be paid from the drainage maintenance fund twenty-five dollars ($25) per day, not to exceed five hundred dollars ($500) annually, for every day the drainage commissioner is actively and necessarily employed in the following:

(1) Going over the district for the purpose of inspecting the land and ditch and drains in the district.

(2) Preparing the statement of the annual assessment contemplated.

(b) A drainage commissioner is also entitled to be paid for traveling expense while engaged in the performance of duties under this chapter an amount for mileage equal to that amount per mile paid to state officers and employees.
As added by P.L.1-1995, SEC.20.

14-27-8-18

Sec. 18. (a) The drainage commissioners:

(1) shall at all times keep and maintain the dredge ditch and drain in proper condition; and

(2) may, subject to subsection (b), hire all labor, purchase all material, and do all acts that are necessary and incident to maintaining the ditch and drain.

(b) An obligation may not be made until the assessments are levied.
As added by P.L.1-1995, SEC.20.

14-27-8-19

Sec. 19. (a) The drainage commissioners shall do the following:

(1) Keep a complete record of their proceedings and note in the record all expenses incurred in the maintenance and repair of the ditch and drain.

(2) File with the county auditor an itemized statement showing the costs and expenses of the maintenance, and specifying the amounts due and owing to each person.

(b) The county auditor shall draw a warrant on the county treasurer in favor of each person for the amount due the person. The amount shall be paid out of the drainage maintenance fund created by assessments levied on the land benefited by the maintenance and repair as provided in this chapter.
As added by P.L.1-1995, SEC.20.

14-27-8-20

Sec. 20. To raise the drainage maintenance fund, the drainage commissioners shall meet annually to do the following:

(1) Estimate the amount of money necessary to properly maintain the ditch and drain for the ensuing year.

(2) Determine what percent that amount is of the total of the last assessments made and confirmed by the court in the last proceedings to construct or reconstruct the ditch and drain. The drainage commissioners shall by resolution fix that percent as the assessment rate for the ensuing year, subject to the following:

(A) The assessment rate may not be greater than fifty percent (50%) of the last assessment.

(B) If, in a year there is an unencumbered balance in the drainage maintenance fund equal to or greater than four (4) times the estimated annual cost of the drainage maintenance, the annual assessment shall be

omitted for that year.
As added by P.L.1-1995, SEC.20.

14-27-8-21

Sec. 21. The petitioners for the district shall present an itemized statement of all costs incurred by the petitioners in petitioning for the establishment of the district. If the drainage commissioners find the statement to be true and the expenses to be reasonable, the drainage commissioners shall include the expenses in the first assessment and reimburse the petitioners immediately.
As added by P.L.1-1995, SEC.20.

14-27-8-22

Sec. 22. (a) The drainage commissioners shall, before November 1 of each year, file with the county auditor a certified copy of the resolution fixing the assessment rate.

(b) The county auditor shall do the following:

(1) Prepare an assessment duplicate assessing each tract of land with an amount determined by multiplying the last assessment on the tract of land made and confirmed by the court in the last proceedings to construct or reconstruct the ditch by the assessment rate.

(2) Deliver the assessment duplicate to the county treasurer at the same time the tax duplicates are delivered. However, if the amount to be collected is not greater than fifty cents ($0.50), the county auditor may not deliver the assessment duplicate to the county treasurer to be collected.

(c) The county treasurer shall collect the assessments in the same ways as taxes are collected, except that the whole amount is due and payable and collected at the time of the payment of the spring installment of taxes. All laws concerning the collection of taxes apply to enforce the collection of assessments.
As added by P.L.1-1995, SEC.20.

14-27-8-23

Sec. 23. A balance remaining in the drainage maintenance fund at the end of a year shall be carried forward into the drainage maintenance fund for the ensuing year.
As added by P.L.1-1995, SEC.20.

14-27-8-24

Sec. 24. A district established under this chapter or under IC 13-2-21 (before its repeal) may be dissolved by order of the court that established the district in accordance with:

(1) IC 36-9-27-27; or

(2) section 25 of this chapter.

As added by P.L.1-1995, SEC.20.

14-27-8-25

Sec. 25. (a) The court shall dissolve the district if it is shown that a petition for dissolution contains either of the following:

(1) The names of a majority of the drainage commissioners.

(2) The names of:

(A) the owners of at least two-thirds (2/3) of the acreage described within the district; and

(B) the owners of land abutting on at least fifty-one percent (51%) of the length of the ditch involved.

(b) A petition of dissolution may not be presented to the court until the district has been in existence for one (1) year.

(c) If the petition for dissolution is found by the court to be insufficient, the dissolution proceedings shall be dismissed at the cost of the petitioners for dissolution.
As added by P.L.1-1995, SEC.20.

Chapter 9. Powers of Certain Drainage Corporations

14-27-9

14-27-9-1

Sec. 1. (a) If a nonprofit drainage corporation organized under Acts 1913, c.165 and reorganized under:

(1) IC 23-7-1 (before its repeal on September 2, 1971);

(2) IC 23-7-1.1 (before its repeal on August 1, 1991); or

(3) IC 23-17;

determines that repairs to a project constructed under a statute specified in this subsection are necessary, the board of directors may assess the land originally assessed for an amount not more than twenty-five percent (25%) of the original cost of construction.

(b) The schedule of assessments for repairs shall be posted in the offices of the corporation and printed in a newspaper of general circulation in the county.

As added by P.L.1-1995, SEC.20.

14-27-9-2

Sec. 2. (a) The board shall hear an objection offered by an affected landowner to the assessment for repairs within ten (10) days of the posting under section 1 of this chapter.

(b) An affected landowner may appeal the assessment to the circuit court of the county within ten (10) days after the hearing.

As added by P.L.1-1995, SEC.20.

14-27-9-3

Sec. 3. (a) The board of directors of the corporation shall file a statement of the repair assessments with the county auditor. The assessments are a lien upon filing.

(b) The county auditor shall do the following:

(1) Draw a warrant for the total amount of the repair assessments payable to the treasurer of the corporation.

(2) Place the repair assessments on the tax duplicate of each affected landowner.

As added by P.L.1-1995, SEC.20.

Chapter 1. Flood Control

14-28-1

14-28-1-1

Sec. 1. The following are declared:

(1) The loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. To prevent and limit floods, all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana should be regulated, supervised, and coordinated in design, construction, and operation according to sound and accepted engineering practices so as to best control and minimize the extent of floods and reduce the height and violence of floods.

(2) The channels and that part of the flood plains of rivers and streams that are the floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways.

(3) The water resources of Indiana that have been diminishing should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(4) A master plan or comprehensive plan for the entire state to control floods and to accumulate, preserve, and protect the water resources should be investigated, studied, and prepared, policy and practices should be established, and the necessary works should be constructed and placed in operation.

As added by P.L.1-1995, SEC.21.

14-28-1-1.2

Sec. 1.2. "Boundary river", for purposes of this chapter, means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

As added by P.L.135-1997, SEC.11.

14-28-1-1.3

Sec. 1.3. "Boundary river floodway", for purposes of this chapter, means the floodway (as defined by IC

14-8-2-102) of a boundary river.
As added by P.L.135-1997, SEC.12.

14-28-1-2

Sec. 2. As used in this chapter, "flood control" means the following:

(1) The prevention of floods.

(2) The control, regulation, diversion, or confinement of flood water or flood flow.

(3) The protection from flood water, according to sound and accepted engineering practice and including all things incidental to or connected with the protection, to minimize the following:

(A) The extent of floods.

(B) The death, damage, and destruction caused by floods.

As added by P.L.1-1995, SEC.21.

14-28-1-3

Sec. 3. As used in this chapter, "flood easement" means an easement on property to be inundated or covered by water.
As added by P.L.1-1995, SEC.21.

14-28-1-4

Sec. 4. As used in this chapter, "water resources" means surface and subsurface water.
As added by P.L.1-1995, SEC.21.

14-28-1-5

Sec. 5. The commission shall adopt rules under IC 4-22-2 for the following:

(1) The transaction of commission business.

(2) The administration and exercise of the commission's powers and duties.

As added by P.L.1-1995, SEC.21.

14-28-1-6

Sec. 6. Each county agent, city engineer, county engineer, county surveyor, and state agency shall obtain, provide, and furnish pertinent data and information that is requested by an order of the commission, subject to the approval of the governor.
As added by P.L.1-1995, SEC.21.

14-28-1-7

Sec. 7. The commission may do the following:

(1) Use any state agency in connection with:

(A) the commission's investigation, studies, and preparation of plans; or

(B) the performance of other duties.

(2) Employ the technical experts, engineers, and clerical and other assistants that are necessary.

(3) Through the state purchasing agent purchase the supplies, equipment, instruments, and machinery that the commission considers necessary to perform the commission's duties.

As added by P.L.1-1995, SEC.21.

14-28-1-8

Sec. 8. The commission and the commission's agents, engineers, surveyors, and other employees may enter upon any land or water in Indiana for the purpose of making an investigation, an examination, or a survey provided by this chapter.
As added by P.L.1-1995, SEC.21.

14-28-1-9

Sec. 9. The commission may conduct hearings at which at least one (1) of the commission members shall preside. Each commissioner may administer oaths. The commission may obtain information for the commission's purposes from any person, including issuing subpoenas to require the attendance of witnesses and examining witnesses under oath.

As added by P.L.1-1995, SEC.21.

14-28-1-10

Sec. 10. The title to all land, easements, flood easements, or other interest in land or other property or rights acquired by the commission must be:

(1) approved by the attorney general; and

(2) taken in the name of the state of Indiana.

As added by P.L.1-1995, SEC.21.

14-28-1-11

Sec. 11. (a) The commission may exercise the power of eminent domain. If the commission is unable to agree with the owner for the purchase of:

(1) land;

(2) an easement;

(3) a flood easement;

(4) other interest in land; or

(5) other property or right that in the commission's opinion is necessary for the commission's purposes;

the commission may acquire the property or right by condemnation under IC 32-24.

(b) The commission must adopt an appropriate resolution and deliver the resolution to the attorney general.

(c) The attorney general shall commence and prosecute an action in the name of the state of Indiana on the relation of the commission for the appropriation of the property or right. The title to the property or right acquired vests in the state.

As added by P.L.1-1995, SEC.21. Amended by P.L.2-2002, SEC.61.

14-28-1-12

Sec. 12. The commission has jurisdiction over the public and private waters in Indiana and the adjacent land necessary for flood control purposes or for the prevention of flood damage. The commission shall do the following:

(1) Make a comprehensive study and investigation of all pertinent conditions of the areas in Indiana affected by floods.

(2) Determine the best method and manner of establishing flood control, giving consideration to the following:

(A) The reservoir method.

(B) The channel improvement method.

(C) The levee method.

(D) The flood plain regulation method.

(E) Any other practical method.

(3) Adopt and establish a comprehensive plan or master plan for flood control for all areas of Indiana subject to floods.

(4) Determine the best and most practical method and manner of establishing and constructing the necessary flood control works.

(5) Adopt appropriate measures for the prevention of flood damage.

As added by P.L.1-1995, SEC.21.

14-28-1-13

Sec. 13. (a) The commission may construct flood control works or a part of flood control works. The commission may perform the duties in cooperation with any of the following:

(1) A person.

(2) A state agency.

(3) Other states or an agency of another state.

(4) The United States or any agency of the United States.

(b) The commission shall obtain flood control works as follows:

(1) From and through or by cooperation with the United States Army Corps of Engineers or an agency of the United States.

(2) By cooperation with and action of cities and towns under Indiana law relating to flood control.

(3) By cooperation with and action of landowners in rural areas affected by flood control works under Indiana

law relating to levees.
As added by P.L.1-1995, SEC.21.

14-28-1-14

Sec. 14. The commission shall do the following:

(1) Make surveys and investigations of the water resources of Indiana, giving consideration to the need for and appropriate sources of suitable water supplies for domestic, agricultural, municipal, industrial, power, transportation, recreation, stream pollution, health, and other beneficial purposes.

(2) Make and formulate plans and recommendations for the further development, protection, and preservation of the water resources of Indiana for such purposes.

As added by P.L.1-1995, SEC.21.

14-28-1-15

Sec. 15. (a) The commission shall, in the course of the commission's investigations and surveys of multiple purpose flood control reservoirs, obtain recommendations from the department relative to the comprehensive planning of:

(1) recreational facilities;

(2) hunting and fishing opportunities; and

(3) forest improvements;

in connection with the reservoirs.

(b) The recommendations from the department must be accompanied by supporting data and information, as far as is feasible, including the following:

(1) Plans and policies for the acquisition, development, maintenance, operation, and use of land.

(2) Estimates of costs and benefits.

(3) Proposed sources of money.

(c) The information shall:

(1) be made available to the public; and

(2) be included as an integral part of the reports pertaining to multiple purpose flood control reservoirs that are prepared by the commission.

As added by P.L.1-1995, SEC.21.

14-28-1-16

Sec. 16. The commission shall do the following:

(1) Encourage and promote local initiative and effort in providing flood control and in the development of water resources, subject to the regulation and control provided by law.

(2) Cooperate with, advise, disseminate information to, and assist any person or state agency in matters relating to flood control and the development of water resources, including flood plain regulations or controls.

As added by P.L.1-1995, SEC.21.

14-28-1-17

Sec. 17. The commission may do the following:

(1) Represent and act for and in behalf of the state, subject to the approval of the governor, in all matters of flood control and the water resources of Indiana with the United States and any other state.

(2) Cooperate with, obtain, approve, and accept flood control works from and through the United States Army Corps of Engineers.

(3) Cooperate with and obtain, approve, and accept works or a grant of any character or description from and through an agency of the United States relating to flood control and water resources and administer the expenditures of money in connection with the grant.

As added by P.L.1-1995, SEC.21.

14-28-1-18

Sec. 18. (a) This section applies to real property:

(1) for which the state has the custody, management, possession, or control; and

(2) in which the state has a right, a title, or an interest.

(b) The state may, with the written approval of the governor, give, grant, and convey to any person:
(1) easements;
(2) rights-of-way; and
(3) the right and privilege;
to construct, erect, maintain, operate, and use any works or structures in connection with flood control or water resources on and in the real property.
As added by P.L.1-1995, SEC.21.

14-28-1-19

Sec. 19. Sections 20, 21, 22, 23, 24, and 25 of this chapter do not apply to any of the following:
(1) An abode or a residence constructed on land that meets the following conditions:
(A) Is between the 791.0 mile marker and the 791.5 mile marker on the Ohio River.
(B) Is adjacent to a recreational area.
(C) Has been or may be filled to or above an elevation of three hundred seventy-eight (378) feet above sea level.
(D) Is properly protected by riprap in a manner that minimizes the possibility of erosion by river currents.
(2) An abode or a residence if the following conditions are met:
(A) The abode or residence is rebuilt upon the area of the original foundation and is substantially the same configuration as the former abode or residence.
(B) The abode or residence was unintentionally destroyed by a means other than floodwater.
(C) The rebuilding of the abode or residence is begun within one (1) year and completed within two (2) years after the destruction of the former abode or residence.
(D) The abode or residence is located in the floodway of a stream having a watershed upstream from the abode or residence of less than fifteen (15) square miles in area.
(E) The lowest floor of the rebuilt abode or residence, including the basement, is at or above the one hundred (100) year frequency flood elevation if the abode or residence was totally destroyed.
(F) A variance is obtained from the county or municipality for the lowest floor of the abode or residence to be below the one hundred (100) year frequency flood elevation if the damage to the former abode or residence is less than one hundred percent (100%).
(G) An ordinance allowing the rebuilding of an abode or a residence is adopted by any of the following:
(i) The legislative body of the city or town in which the abode or residence is located.
(ii) The legislative body of the county in which the abode or residence is located if the abode or residence is not located in a city or town.
(3) A property that is to be rehabilitated and reused as an abode or residence if the following conditions are met:
(A) The property is located between the South Newton Bridge (Veterans Memorial Bridge) located at 85.30 miles from the mouth of the Patoka River and the bridge that is part of State Road 164 located at 85.90 miles from the mouth of the Patoka River.
(B) The property is a former industrial site.
(C) The property is adjacent to a navigable waterway.
(D) The property is located adjacent to a riverwalk.
(E) The property is a property in need of revitalization.
(F) The property is vacant or in danger of becoming vacant.
(G) The lowest floor that is used as an abode or residence is at least two (2) feet above the one hundred (100) year frequency flood elevation.
As added by P.L.1-1995, SEC.21. Amended by P.L.108-2013, SEC.4.

14-28-1-20

Sec. 20. A person may not do any of the following:
(1) Erect in or on any floodway a permanent structure for use as an abode or a place of residence, except as authorized under sections 24, 25, and 26.5 of this chapter.
(2) Except as authorized under section 26.5 of this chapter, erect, make, use, or maintain in or on any floodway, or suffer or permit the erection, making, use, or maintenance in or on any floodway, a structure, an obstruction, a deposit, or an excavation that will do any of the following:

(A) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.
(B) By virtue of the nature, design, method of construction, state of maintenance, or physical condition do any of the following:
(i) Constitute an unreasonable hazard to the safety of life or property.
(ii) Result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources.
(3) Reconstruct or allow or permit the reconstruction of an abode or a residence located in a floodway, except as authorized under sections 24, 25, and 26.5 of this chapter.
As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.13.

14-28-1-21

Sec. 21. A structure, an obstruction, a deposit, or an excavation described in section 20(2) of this chapter is a public nuisance. The director may commence, maintain, and prosecute an appropriate action to enjoin or abate a nuisance, including the following:
(1) Any of the nuisances described in section 20(2) of this chapter.
(2) Any other nuisance that:
(A) adversely affects flood control or the safety of life or property; or
(B) is unreasonably detrimental to fish, wildlife, or botanical resources.
As added by P.L.1-1995, SEC.21.

14-28-1-22

Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.
(b) This section does not apply to the following:
(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.
(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.
(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.
(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.
(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.
(6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:
(A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.
(B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.
(C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.
(D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:
(i) Associated with or in close proximity to larger obstructions.
(ii) Posing a hazard to navigation.
(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and

stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.

(G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.

(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of two hundred dollars ($200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

(2) to:

(A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or

(B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.

(h) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(i) The permit holder shall post and maintain a permit issued under this section at the authorized site.

(j) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

(1) inspected; and

(2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.4; P.L.2-1997, SEC.53; P.L.135-1997, SEC.14; P.L.2-1998, SEC.59; P.L.154-2002, SEC.1; P.L.186-2003, SEC.75; P.L.76-2010, SEC.1.

14-28-1-23

Sec. 23. (a) The director may remove or eliminate a structure, an obstruction, a deposit, or an excavation in a floodway that:

(1) adversely affects the efficiency of or unduly restricts the capacity of the floodway;
(2) constitutes an unreasonable hazard to the safety of life or property; or
(3) is unreasonably detrimental to fish, wildlife, or botanical resources;
by an action in condemnation.

(b) In assessing the damages in the proceedings, the appraisers and the court shall take into consideration whether the structure, obstruction, deposit, or excavation is legally in or on the floodway.

As added by P.L.1-1995, SEC.21.

14-28-1-24

Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a residence that is located in a floodway and is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) unless the person has:

(1) obtained a permit under this section or section 26.5 of this chapter; or
(2) demonstrated to the department through the submission of material facts, plans, and specifications that the material used to elevate the reconstructed abode or residence:
(A) does not extend beyond the original foundation of the abode or residence; and
(B) meets the criteria set forth in subsection (d)(2) through (d)(7).

(c) A person who desires to reconstruct an abode or a residence that does not meet the requirements under subsection (b)(2) must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars ($50). An application submitted under this section must do the following:

(1) Set forth the material facts concerning the proposed reconstruction.
(2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

(1) The abode or residence will be reconstructed:
(A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or
(B) in a location that is, as determined by the director, safer than the location of the original foundation.
(2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at least two (2) feet above the one hundred (100) year flood elevation.
(3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
(4) The abode or residence will be reconstructed with materials resistant to flood damage.
(5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.
(6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.
(7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
(2) IC 14-30-1 or IC 36-7-6 (before its repeal);
that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who knowingly:

(1) begins the reconstruction of an abode or a residence in violation of subsection (b);
(2) violates a condition or restriction of a permit issued under this section; or
(3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);
commits a Class B infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.
As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.15; P.L.71-2004, SEC.17; P.L.53-2008, SEC.1.

14-28-1-25

Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:
(1) is located in a floodway; and
(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997);
is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.
(b) A person who knowingly reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a Class B infraction.
As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.16; P.L.71-2004, SEC.18; P.L.53-2008, SEC.2.

14-28-1-26

Sec. 26. (a) This section does not apply to the construction of an addition to a residence located in a boundary river floodway.
(b) Subject to:
(1) subsection (c); and
(2) the restrictions imposed by the unit (as defined in IC 36-1-2-23) in which the abode or residence is located;
a person may construct at least one (1) addition to an abode or a residence that is located in a floodway.
(c) A person may not construct an addition to an abode or a residence located in a floodway if the addition, in combination with all other additions to the abode or residence that have been constructed since the abode or residence was originally built, would increase the market value of the abode or residence to an amount more than fifty percent (50%) greater than:
(1) the market value of the abode or residence if no additions have been constructed since the abode or residence was originally built; or
(2) the approximate market value the abode or residence would have in the form in which the abode or residence was originally built if at least one (1) addition has already been constructed.
(d) For the purposes of subsection (c), the market value of an abode or a residence does not include the value of the land on which the abode or residence is built.
As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.17.

14-28-1-26.5

Sec. 26.5. (a) This section applies to the following activities:
(1) The placement or replacement of a mobile home within a boundary river floodway.
(2) The repair of a residence that:
(A) is located in a boundary river floodway; and
(B) has been damaged by floodwaters or another means;
except for the reconstruction of a residence to which section 25 of this chapter applies.
(3) The construction of an:
(A) addition to; or
(B) improvement of;
a residential structure within a boundary river floodway.
(4) The construction of a new residence within a boundary river floodway.
(b) The federal regulations that:
(1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);
(2) are published in 44 CFR Parts 59 through 60; and
(3) are in effect on January 1, 1997;
are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana.

However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

(1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and

(2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

(1) file with the director a verified written application for a permit on a form provided by the department; and

(2) pay to the department a nonrefundable fee of ten dollars ($10).

(e) An application filed under this section must:

(1) set forth the material facts concerning the proposed activity; and

(2) in the case of an activity described in subsection (a)(1), (a)(3), or (a)(4), include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

(1) there is a dispute under this section about the elevation of a site; and

(2) the elevation of the site has been determined by a professional surveyor;

the elevation determined by the professional surveyor must be used as the accepted elevation.

As added by P.L.135-1997, SEC.18. Amended by P.L.121-2003, SEC.1; P.L.57-2013, SEC.18.

14-28-1-27

Sec. 27. (a) Except as provided in subsection (b), this section does not apply to the following:

(1) A person using chemicals in a normal manner in the production of agricultural products.

(2) A person acting in accordance with an appropriate permit issued by the director.

(3) A person acting in accordance with a permit issued by the department of environmental management under water pollution control laws (as defined in IC 13-11-2-261) or environmental management laws (as defined in IC 13-11-2-71).

(b) This section applies to the permitting requirements set forth in the following:

(1) Section 22 of this chapter.

(2) IC 14-26-2.

(c) A person may not put, throw, dump, or leave a contaminant, garbage, or solid waste:

(1) in, upon, or within fifteen (15) feet of a lake; or

(2) in or upon a floodway.

As added by P.L.1-1995, SEC.21. Amended by P.L.1-1996, SEC.66.

14-28-1-28

Sec. 28. (a) The commission may by order:

(1) establish a floodway as a commission floodway; and

(2) alter, change, or revoke and terminate the commission floodway.

(b) In the order establishing the commission floodway, the commission shall fix the following:

(1) The floodway's length at any practical distance.

(2) The floodway's width or the landside limits so as to include parts of the flood plains adjoining the channel that, with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of the river or stream.

(c) Notwithstanding any other provision of law, an order establishing a commission floodway is not in force until notice has been given as follows:

(1) In writing to the county executive in the county affected.

(2) By publication at least two (2) times, seven (7) days apart, as follows:

(A) In two (2) daily newspapers in the city of Indianapolis as provided in IC 5-3-1-6.

(B) In newspapers in the counties where all or part of the commission floodway is established as provided in IC 5-3-1-6.

(d) All of the area within a commission floodway is the floodway for all purposes of this chapter.

As added by P.L.1-1995, SEC.21.

14-28-1-29

Sec. 29. (a) All works of any nature for flood control in Indiana that are established and constructed shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout Indiana. A:

(1) person may not construct or install any works of any nature for flood control; and

(2) court may not enter the final order or judgment establishing or ordering works constructed;

unless the proposed works and the plans and specifications are approved by the commission.

(b) The interested parties must file a verified written application with the commission. The commission shall consider all the pertinent facts relating to the proposed works that will affect flood control in Indiana and shall determine whether the proposed works in the plans and specifications will:

(1) be in aid of and acceptable as part of; or

(2) adversely affect and interfere with;

flood control in Indiana.

(c) The commission shall enter an order approving or disapproving the application, plans, and specifications. If the commission disapproves the application, the order must set forth the objectionable features so that the proposed works and plans and specifications may be corrected or adjusted to obtain the approval of the commission.

As added by P.L.1-1995, SEC.21.

14-28-1-30

Sec. 30. IC 4-21.5 applies to the commission.

As added by P.L.1-1995, SEC.21.

14-28-1-31

Sec. 31. The commission shall report to the governor periodically the results of the commission's study, investigation, and experience so that any necessary additional powers and duties may be obtained to effect and obtain complete flood control and the protection and preservation of water resources.

As added by P.L.1-1995, SEC.21.

14-28-1-32

Sec. 32. (a) A person who knowingly violates section 20(2), 20(3), or 29 of this chapter commits a Class B infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.

As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.19.

14-28-1-33

Sec. 33. (a) A person who knowingly fails to:

(1) comply with the requirements of section 20(1) of this chapter; or

(2) obtain a permit under section 22 of this chapter;

commits a Class B infraction.

(b) Each day a person violates section 20(1) or 22 of this chapter constitutes a separate infraction.

As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.20.

14-28-1-34

Sec. 34. A person who knowingly fails to comply with section 22(i) of this chapter commits a Class B infraction. Each day a person violates section 22(i) of this chapter constitutes a separate infraction.

As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.5; P.L.71-2004, SEC.21.

14-28-1-35

Sec. 35. The commission may enjoin a violation of this chapter under IC 14-25.5-2.

As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.22.

14-28-1-36

Sec. 36. In addition to other penalties prescribed by this chapter, the director may impose a civil penalty under IC 14-25.5-4.
As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.23.

Chapter 3. Flood Plain Management

14-28-3

14-28-3-1

Sec. 1. The general assembly finds the following:

(1) That the loss of lives and property, the disruption of commerce and government services, and the unsanitary conditions caused by floods, all of which are detrimental to the health, safety, and welfare of the people of Indiana, are a matter of deep concern.

(2) That structural measures alone do not provide an adequate solution to flood problems.

(3) That it is necessary to enact and implement a state flood plain management program to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and general welfare of the people of Indiana.

As added by P.L.1-1995, SEC.21.

14-28-3-2

Sec. 2. The commission shall develop and adopt appropriate rules under IC 4-22-2, including consideration of nonconforming uses, as minimum standards for the delineation and regulation of all flood hazard areas within Indiana. The commission and all counties and municipalities shall consider the production of crops, pasture, forests, and park and recreational uses to be conforming uses. These specific conforming uses shall be included as minimum standards in adoption of the rules.
As added by P.L.1-1995, SEC.21.

14-28-3-3

Sec. 3. (a) All counties and municipalities are encouraged and authorized to delineate and regulate all flood hazard areas within their respective jurisdictions by adopting and implementing all necessary ordinances, rules, and regulations under procedures established by law. For ordinances, rules, and regulations adopted after June 30, 1974, the ordinances, rules, and regulations:

(1) may not be less restrictive than the minimum rules of the commission adopted under section 2 of this chapter; and

(2) must be approved by the commission before the effective date.

(b) This chapter does not prevent a county or municipality from adopting ordinances, rules, and regulations that are more restrictive than the minimum rules adopted by the commission.
As added by P.L.1-1995, SEC.21.

14-28-3-4

Sec. 4. (a) The commission may provide technical data and information and otherwise assist a county or municipality in the following:

(1) The identification and delineation of all flood hazard areas within the jurisdiction of the county or municipality.

(2) The preparation of all necessary ordinances, rules, and regulations.

(b) The commission may cooperate with a state, regional, local, or federal board, commission, or agency in the preparation of necessary information or data.
As added by P.L.1-1995, SEC.21.

14-28-3-5

Sec. 5. A county or municipality may not issue a permit for a structure, an obstruction, a deposit, or an excavation within a flood hazard area or part of a flood hazard area that lies within a floodway without the prior written approval of the commission as provided in IC 14-28-1.

As added by P.L.1-1995, SEC.21.

14-28-3-6

Sec. 6. City, county, and state employees, agencies, boards, districts, and commissions may cooperate with and furnish information to the commission or a county or municipality for the purpose of implementing this chapter.
As added by P.L.1-1995, SEC.21.

Chapter 4. Flood Plain Commissions

14-28-4

14-28-4-1

Sec. 1. As used in this chapter, "commission" refers to a flood plain commission established under this chapter.
As added by P.L.1-1995, SEC.21.

14-28-4-2

Sec. 2. As used in this chapter, "improvement location permit" means a permit to alter, expand, or enlarge any use of land or structure. The term includes the erection of a structure.
As added by P.L.1-1995, SEC.21.

14-28-4-3

Sec. 3. A county or municipality may establish a flood plain commission by ordinance of the unit's legislative body. The commission may regulate land uses within identified flood hazard areas under this chapter.
As added by P.L.1-1995, SEC.21.

14-28-4-4

Sec. 4. The commission, to be known as the "_____ Flood Plain Commission", consists of three (3) members as follows:

(1) One (1) member of the legislative body of the county or municipality to be appointed by the legislative body.

(2) Two (2) citizens who reside within the jurisdiction of the legislative body and who do not hold an elective public office to be appointed as follows:

(A) The board of commissioners, for a county.

(B) The city executive, for a city.

(C) The town executive, for a town.

As added by P.L.1-1995, SEC.21.

14-28-4-5

Sec. 5. (a) Commission members serve terms of one (1) year, beginning with the first Monday of January of each year. The initial members serve from the date of establishment of the commission until the first Monday of January of the following year.

(b) If a vacancy occurs, the appointing authority shall appoint a member to fill the unexpired term.
As added by P.L.1-1995, SEC.21.

14-28-4-6

Sec. 6. (a) At the first regular meeting of each year the commission shall elect from the members of the commission the following officers:

(1) A president.

(2) A vice president.

(3) A secretary.

(b) The vice president may act as president of the commission during the absence or disability of the president.
As added by P.L.1-1995, SEC.21.

14-28-4-7

Sec. 7. The commission shall fix the time for holding regular meetings, but the commission shall meet at least

one (1) time in January, April, July, and October.
As added by P.L.1-1995, SEC.21.

14-28-4-8

Sec. 8. (a) A special meeting of the commission may be called by any member upon written request to the secretary.

(b) The secretary shall send to all the members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

(c) Written notice of a special meeting is not required if:

(1) the time of the special meeting has been fixed in a regular meeting; or

(2) all members are present at the special meeting.

As added by P.L.1-1995, SEC.21.

14-28-4-9

Sec. 9. A majority of the members of the commission constitutes a quorum. To be official, an action of the commission must be authorized by a majority of the commission at a regular or special meeting.
As added by P.L.1-1995, SEC.21.

14-28-4-10

Sec. 10. A member of the commission or legislative body of the county or municipality may not participate in a hearing or decision upon a zoning matter, other than the preparation and adoption of an initial flood plain zoning ordinance, in which the member is directly or indirectly interested in a financial sense. If a disqualification under this section occurs:

(1) this fact shall be entered on the records of the commission or legislative body; and

(2) the remaining members shall act upon the matter.

As added by P.L.1-1995, SEC.21.

14-28-4-11

Sec. 11. The commission may do the following:

(1) Exercise general supervision of and make rules for the administration of the affairs of the commission.

(2) Prescribe uniform rules pertaining to investigations and hearings.

(3) Supervise the fiscal affairs and responsibilities of the commission.

(4) Keep an accurate and a complete record of all commission proceedings and assume responsibility for the custody and preservation of all papers and documents of the commission.

(5) Make recommendations and an annual report to the legislative body of the county or municipality concerning the operation of the commission.

(6) Make recommendations to the legislative body on the adoption of the initial flood plain zoning ordinance and amendments and any other matter within the commission's jurisdiction under this chapter.

(7) Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter.

(8) Sue and be sued collectively by the commission's legal name, service of process being had on the president of the commission or any of the members in an action.

(9) Invoke any legal, equitable, or special remedy for the enforcement of this chapter or the commission's action taken under this chapter.

As added by P.L.1-1995, SEC.21.

14-28-4-12

Sec. 12. The commission shall prepare and submit an annual budget. After the legislative body of the county or municipality has passed an ordinance creating a commission:

(1) money may be appropriated to carry out the duties of the commission; and

(2) the commission may expend, under procedure provided by law, money appropriated to the commission for purposes and activities authorized by this chapter.

As added by P.L.1-1995, SEC.21.

14-28-4-13

Sec. 13. (a) The commission, county, or municipality may accept gifts, donations, and grants from private and governmental sources for commission purposes. Money accepted shall be deposited in a special nonreverting commission fund available for expenditure by the commission for the purpose designated by the donor.

(b) The disbursing officer of the county or municipality shall draw warrants against regular funds or the special nonreverting fund only upon claims signed by the president and secretary of the commission.

As added by P.L.1-1995, SEC.21.

14-28-4-14

Sec. 14. (a) The county or municipality may compensate the members of the commission for service on the commission.

(b) When the commission determines that it is necessary for members to attend in another city or county a state, regional, or national conference or interview dealing with planning or related problems, the commission may pay the actual expenses of the attending member if the amount has been made available in the commission's appropriation.

(c) The commission may approve a per diem allowance to a member for the purpose of attending a regular or special meeting held by the commission if the amount has been made available in the commission's appropriation.

As added by P.L.1-1995, SEC.21.

14-28-4-15

Sec. 15. (a) To assure the promotion of public health, safety, convenience, and the general welfare within the commission's jurisdiction, the commission shall prepare a proposed initial flood plain zoning ordinance. The ordinance must provide for the following:

(1) The classification of all land within the jurisdiction of the county or municipality into flood plain or nonflooding areas.

(2) The regulation of land use and the location or construction of buildings and other structures within the areas designated as flood plain areas.

(b) In establishing flood plain districts and regulations, the commission may use the special flood hazard area maps supplied by the Federal Insurance Administration or any other criteria approved by the department.

As added by P.L.1-1995, SEC.21.

14-28-4-16

Sec. 16. (a) As used in this section, "flood protection grade" means the elevation of the lowest point around the perimeter of a building at which flood water may enter the interior of the building.

(b) The land classified as flood plain areas may be:

(1) defined and subclassified in the ordinance as floodway or floodway fringe; and

(2) further identified as to flood protection grade.

(c) The mappings or other identification of the areas become effective only at the time that accurate information is made available to the commission and authenticated by the department or the United States Department of Housing and Urban Development.

As added by P.L.1-1995, SEC.21.

14-28-4-17

Sec. 17. (a) A flood plain zoning ordinance may require that:

(1) a structure may not be located;

(2) a use may not be changed; and

(3) an improvement location permit may not be issued for a structure or change of use;

on land either platted or unplatted within the jurisdiction of the commission unless the structure or use and location conform to the requirements of the flood plain zoning ordinance.

(b) The:

(1) commission may set; and

(2) zoning administrator may collect;

reasonable fees for the issuance of improvement location permits.

As added by P.L.1-1995, SEC.21.

14-28-4-18

Sec. 18. (a) A flood plain zoning ordinance must designate:

(1) the county auditor;

(2) the county surveyor; or

(3) the municipal clerk or clerk-treasurer;

as applicable, as the zoning administrator who issues improvement location permits within the jurisdiction of the commission and in conformance with the flood plain ordinance.

(b) A final decision of the zoning administrator may be judicially reviewed in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4.

As added by P.L.1-1995, SEC.21. Amended by P.L.126-2011, SEC.1.

14-28-4-19

Sec. 19. (a) The commission shall prepare and present the proposed initial zoning ordinance, with explanatory maps, to the legislative body of the county or municipality.

(b) The legislative body shall do the following:

(1) Consider the proposed initial zoning ordinance.

(2) Return the ordinance within forty-five (45) days with any suggestions and recommendations to the commission for the commission's final report.

As added by P.L.1-1995, SEC.21.

14-28-4-20

Sec. 20. A county or municipality may not pass an ordinance under this chapter until:

(1) the legislative body of the county or municipality receives; and

(2) the natural resources commission approves;

the final report of the commission.

As added by P.L.1-1995, SEC.21.

14-28-4-21

Sec. 21. (a) After the commission submits the final report, the legislative body of the county or municipality shall give all interested persons an opportunity to be heard with reference to the final report at a public hearing convenient for all persons affected. The legislative body shall publish notice of the hearing in a daily newspaper of general circulation in the county or municipality.

(b) The notice must state the following:

(1) The time and place of the hearing.

(2) That the report contains a flood plain zoning ordinance for the county or municipality.

(3) That written objections to the proposed zoning ordinance filed with the clerk of the legislative body at or before the hearings will be heard.

(4) That the hearing will be continued as is necessary.

(c) The notice shall be published at least two (2) times within the ten (10) days before the time set for the hearing, during which time the proposed zoning ordinance shall be kept on file in the office of the commission or other designated place for public examination.

(d) Upon completion of the public hearing, the legislative body shall proceed to consider the ordinance.

As added by P.L.1-1995, SEC.21.

14-28-4-22

Sec. 22. The legislative body of the county or municipality may amend or supplement the regulations and district boundaries fixed by ordinance under this chapter or IC 13-2-22.6 (before its repeal). However, the area designated as flood plain may not be changed unless the change is based upon data:

(1) supplied by the United States Department of Housing and Urban Development; or

(2) supplied or approved by the department.

As added by P.L.1-1995, SEC.21.

14-28-4-23

Sec. 23. The:

(1) commission; or
(2) owners of at least fifty percent (50%) of the land area involved in the matter set forth in a petition;
may present signed petitions to the legislative body of the county or municipality requesting an amendment or supplement of the regulations of the zoning ordinance.
As added by P.L.1-1995, SEC.21.

14-28-4-24

Sec. 24. The legislative body shall refer a proposed ordinance for the amendment, supplement, or repeal of the zoning ordinance not originating from petition of the commission to the commission for consideration and a report before the legislative body of the county or municipality takes final action.
As added by P.L.1-1995, SEC.21.

14-28-4-25

Sec. 25. (a) Before the commission submits to the legislative body:
(1) a petition; or
(2) a report on a proposed ordinance referred to the commission;
for an amendment, a supplement, or a repeal of the zoning ordinance, the commission shall hold a public hearing.
(b) At least ten (10) days before the date set for the hearing, the commission shall publish in a newspaper of general circulation in the county or municipality a notice of the time and place of the hearing.
(c) After the public hearing has been held, the commission may by resolution recommend the proposed amendments to the legislative body of the county or municipality. However:
(1) the commission may not recommend; and
(2) the legislative body may not adopt;
flood plain district boundaries less extensive than those established by the United States Department of Housing and Urban Development or the department.
(d) The secretary shall do the following:
(1) Certify a copy of an amendment to the legislative body.
(2) Present the amendment at the legislative body's first meeting following commission action.
As added by P.L.1-1995, SEC.21.

14-28-4-26

Sec. 26. (a) The legislative body of the county or municipality may declare:
(1) a building erected, raised, or converted; or
(2) land or premises used;
in violation of an ordinance or a regulation adopted under this chapter or under IC 13-2-22.6 (before its repeal) to be a common nuisance. The owner of the building, land, or premises is liable for maintaining a common nuisance.
(b) If penalties have been provided for violation of an ordinance, the attorney of the county or municipality shall, upon receipt of information of a violation of an ordinance or a regulation adopted under the county's or municipality's authority, make an investigation of the alleged violation. If the facts are sufficient to establish a reasonable belief that a violation has occurred, the attorney may file a complaint against the violator and prosecute the alleged violation.
As added by P.L.1-1995, SEC.21.

14-28-4-27

Sec. 27. (a) The commission may institute the following:
(1) A suit for injunction in the circuit court with jurisdiction in the county to restrain an individual or a governmental entity from violating this chapter or an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).
(2) A suit for a mandatory injunction directing an individual or a governmental entity to remove a structure erected in violation of:
(A) this chapter or IC 13-2-22.6 (before its repeal); or
(B) an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).
(b) If the commission is successful in the commission's suit, the respondent shall pay the costs of the action. A change of venue from the county may not be granted.

As added by P.L.1-1995, SEC.21.

14-28-4-28

Sec. 28. In:

(1) a proceeding by a county or municipality for the taking, appropriation, or condemnation of land; or

(2) an action against a county or municipality;

compensation or damages may not be awarded for the taking of or injury to a structure erected in violation of an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

As added by P.L.1-1995, SEC.21.

14-28-4-29

Sec. 29. (a) It is the purpose of this chapter to enable counties and municipalities that have not adopted effective land use ordinances under IC 36-7 to comply with the requirements of:

(1) the federal National Flood Insurance Act (42 U.S.C. 4001 through 4127);

(2) IC 14-28-1; and

(3) IC 14-28-3;

by permitting the establishment of a single-purpose zoning authority to adopt minimum standards and regulations for the management of identified flood hazard areas.

(b) Because zoning ordinances adopted under comprehensive planning legislation require extensive preparation time and because the national flood insurance program and the state statutes enacted under the program require identified counties and municipalities to regulate land use and improvements to the land in flood hazard areas before those zoning ordinances can be adequately prepared, this chapter authorizes counties and municipalities that do not have land use regulation ordinances in effect to form single-purpose flood plain commissions to administer certain local ordinances, including the following:

(1) A set of minimum standards and regulations to meet the requirements of state and federal flood hazard area programs.

(2) An improvement location permit system to ensure that every new location, land use, or structure in the jurisdiction conforms to flood hazard area regulations.

(3) A set of enforcement procedures suitable to ensure minimum compliance with the regulations.

As added by P.L.1-1995, SEC.21.

14-28-4-30

Sec. 30. (a) This chapter is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other statutes, and these powers remain in full effect. Except as otherwise provided in this chapter, powers of supervision and regulation by divisions of state government over counties, municipalities, individuals, firms, limited liability companies, or corporations also are not abrogated and continue in full effect.

(b) This chapter does not restrict or prohibit the state or any of the state's political subdivisions from the commemoration of persons or objects of historical or architectural interest or value as a part of our citizens' heritage.

As added by P.L.1-1995, SEC.21.

14-28-4-31

Sec. 31. The adoption of a zoning ordinance under IC 36-7 that provides for flood plain management within the jurisdiction of a county or municipality immediately voids a flood plain commission, ordinance, or regulation adopted under:

(1) this chapter; or

(2) IC 13-2-22.6 (before its repeal).

As added by P.L.1-1995, SEC.21.

Chapter 5. Flood Control Revolving Fund

14-28-5

14-28-5-1

Sec. 1. As used in this chapter, "flood control program" includes the following:

(1) The removal of obstructions and accumulated debris from channels of streams.
(2) The clearing and straightening of channels of streams.
(3) The creating of new and enlarged channels of streams, wherever required.
(4) The building or repairing of dikes, levees, or other flood protective works.
(5) The construction of bank protection works for streams.
(6) The establishment of floodways.
As added by P.L.1-1995, SEC.21.

14-28-5-2

Sec. 2. As used in this chapter, "fund" refers to the flood control revolving fund created by this chapter.
As added by P.L.1-1995, SEC.21.

14-28-5-3

Sec. 3. As used in this chapter, "governing board" means the following:
(1) The legislative body of a county, city, or town.
(2) A board created by law to administer the affairs of a special taxing district.
As added by P.L.1-1995, SEC.21.

14-28-5-4

Sec. 4. As used in this chapter, "local unit" means county, city, town, or special taxing district created by law.
As added by P.L.1-1995, SEC.21.

14-28-5-5

Sec. 5. (a) The flood control revolving fund is created. Loans may be made from the fund to local units in accordance with this chapter and the rules adopted under this chapter.
(b) Money in the fund does not revert to the state general fund. The fund is a revolving fund to be used exclusively for the purposes of this chapter.
As added by P.L.1-1995, SEC.21.

14-28-5-6

Sec. 6. The administrative control of the fund and the responsibility for the administration of this chapter are vested in the commission. The commission may do the following:
(1) Adopt rules under IC 4-22-2 that are considered necessary by the commission for the proper administration of the fund and this chapter.
(2) Subject to the approval of the budget committee, employ the personnel that are necessary for the efficient administration of this chapter.
As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.3.

14-28-5-7

Sec. 7. (a) The commission may make an approved loan from the fund to a local unit. The money loaned is to be used by the local unit for the purpose of instituting, accomplishing, and administering an approved flood control program.
(b) The total amount outstanding under loans made under:
(1) this chapter; and
(2) IC 13-2-23 (before its repeal);
to one (1) local unit may not exceed three hundred thousand dollars ($300,000).
As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.4.

14-28-5-8

Sec. 8. A local unit may institute, accomplish, and administer a flood control program if the following conditions are met:
(1) The program is authorized and approved by ordinance or resolution enacted by the governing board of the local unit.
(2) The flood control program has been approved by the commission.
As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.5.

14-28-5-9

Sec. 9. The commission shall authorize the making of a loan to a local unit under this chapter only when the following conditions exist:

(1) An application for the loan has been submitted by the local unit in a verified petition to the commission in the manner and form that the commission directs. The application must state the following:

(A) The need for the flood control program and the need for money for instituting, accomplishing, and administering the program.

(B) A detailed description of the program.

(C) An engineering estimate of the cost of the proposed program acceptable to the commission.

(D) The amount of money considered to be needed.

(E) Other information that is requested by the commission.

(2) There is a need, as determined by the commission, for the proposed flood control program for the purpose of protecting the health, safety, and general welfare of the inhabitants of the local unit.

(3) The proposed flood control program has been approved by the commission, if before granting the approval, the commission determines the following:

(A) That the program:

(i) is based upon sound engineering principles;

(ii) is in the interest of flood control; and

(iii) will accomplish the objectives of flood control.

(B) That for flood control programs involving the reconstruction or repair of existing flood control works that:

(i) in the judgment of the commission, constitutes an unreasonable obstruction or impediment to the proper discharge of flood flows; or

(ii) by virtue of their nature, location, or design, are subject to frequent damage or destruction;

approval is limited to the work that is necessary to afford emergency protection against actual or threatened damage to life and property.

(4) The local unit agrees and furnishes assurance, satisfactory to the commission, that the local unit will operate and maintain the flood control program, after completion, in a satisfactory manner.

As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.6.

14-28-5-10

Sec. 10. (a) The local unit may:

(1) do work; and

(2) provide labor, equipment, and materials from any source at the local unit's disposal;

for the flood control program.

(b) The commission may do the following:

(1) Evaluate the participation of the local unit in the accomplishment of the project.

(2) Compute the participation as a part or all of the share of cost that the local unit is required to pay toward the total cost of the project for which the loan from the fund is obtained.

(c) Participation authorized under this section must be under the direction of the governing board.

(d) If cash amounts are included in the local unit's share of total cost, the amounts shall be provided in the usual and accepted manner for the financing of the affairs of the local unit.

(e) Costs of engineering and legal services to the borrower may be regarded as a part of the total cost of the project.

As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.7.

14-28-5-11

Sec. 11. (a) The commission shall determine and ascribe to each applicant for a loan a priority rating. The rating must be based primarily on the need of the local unit for the proposed flood control program as the need is related to the needs of other applicants for loans. Except as provided in subsection (b):

(1) the local units having the highest priority rating shall be given first consideration in making loans under this chapter; and

(2) loans shall be made in descending order as shown by the priority ratings.

(b) If an emergency demands immediate relief from actual or threatened flood damage, the application made by a local unit for a loan may be considered regardless of a previous priority rating ascribed to the applicant.
As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.8.

14-28-5-12

Sec. 12. (a) A loan made under this chapter or under IC 13-2-23 (before its repeal):

(1) may be made for a period not to exceed ten (10) years; and

(2) bears interest at the rate of three percent (3%) a year.

(b) A local unit receiving a loan under this chapter shall agree to repay the loan in equal annual installments, including interest on the unpaid balance of the loan. The repayments, including interest, become part of the fund and do not revert to the state general fund. However, if a local unit levies a tax as provided in this chapter, the first installment of the loan becomes due and payable out of money first received from the levying and the collection of a tax authorized under this chapter. A borrower may prepay a loan in full or in part without interest penalty.
As added by P.L.1-1995, SEC.21.

14-28-5-13

Sec. 13. A local unit receiving a loan under:

(1) this chapter; or

(2) IC 13-2-23 (before its repeal);

may levy an annual tax on personal and real property located within the geographical limits of the local unit for flood control purposes. The tax is in addition to any other tax authorized by law to be levied for flood control purposes. The tax shall be levied at the rate that will produce sufficient revenue to pay the annual installment and interest on a loan made under this chapter or under IC 13-2-23 (before its repeal). The tax at the rate authorized in this section is in addition to the maximum annual rates prescribed by law.
As added by P.L.1-1995, SEC.21.

14-28-5-14

Sec. 14. If a local unit fails to make a payment to the fund or any other payment required by this chapter or under IC 13-2-23 (before its repeal) or is in any way indebted to the fund for an amount incurred or accrued, the state may recover the amount through any of the following:

(1) The state may, through the attorney general and on behalf of the commission, file a suit in the circuit or a superior court with jurisdiction in the county in which the local unit is located to recover the amount that the local unit owes the fund.

(2) The auditor of state may, after a sixty (60) day written notice to the local unit, withhold the payment and distribution of state money that the defaulting local unit is entitled to receive under Indiana law.

(3) For a special taxing district, upon certification by the auditor of state after a sixty (60) day written notice to the special taxing district, the auditor of each county containing land within the special taxing district shall withhold collected tax money for the special taxing district and remit the withheld tax money to the auditor of state. The auditor of state shall make a payment to the fund in the name of the special taxing district. Upon elimination of the delinquency payment, the auditor of state shall certify the fact to the auditors of the counties involved and any additional withheld tax money shall be released to the special taxing district.

As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.9.

14-28-5-15

Sec. 15. There is appropriated annually to the commission from the state general fund from money not otherwise appropriated an amount sufficient to administer this chapter, subject to the approval of the budget committee.
As added by P.L.1-1995, SEC.21.

Chapter 6. Flood Control; Approval of Plans

14-28-6

14-28-6-1

Sec. 1. Notwithstanding any other law to the contrary, a person may not construct, install, or undertake a work of any nature that is designed to regulate or control the streams or other water of Indiana for the purpose of preventing

floods caused by excessive precipitation or otherwise unless the plans meet the following conditions:

(1) The plans are submitted to and approved by the department.

(2) The plans are found to be feasible and will ultimately constitute a part of an integrated plan for the entire state or a designated major watershed.

(3) The plans are not disadvantageous to any other section of Indiana.

As added by P.L.1-1995, SEC.21.

14-28-6-2

Sec. 2. If the federal government or an agency of the federal government develops plans for flood control affecting Indiana or a part of Indiana, the department may:

(1) approve the plans; and

(2) permit the use of the plans in the control of floods in Indiana.

As added by P.L.1-1995, SEC.21.

Chapter 1. Navigable Waterways

14-29-1

14-29-1-1

Sec. 1. The board of county commissioners of each county may declare any stream or watercourse in the county navigable on the petition of at least twenty-four (24) freeholders of the county residing in the vicinity of the stream.

As added by P.L.1-1995, SEC.22.

14-29-1-2

Sec. 2. (a) On the filing of a petition under section 1 of this chapter, the board of county commissioners shall have an examination of the stream or watercourse made by a suitable person to ascertain and report to the board of county commissioners the following:

(1) The length of the stream or watercourse.

(2) How much of the stream or watercourse is capable of being declared navigable.

(b) The board of county commissioners shall confirm the report if the board is satisfied that the stream, if navigable, would be of public utility. Upon confirmation the board shall declare the stream navigable and have the report recorded in the records of the board, as public highways are recorded.

As added by P.L.1-1995, SEC.22.

14-29-1-3

Sec. 3. A person who obstructs a stream or watercourse declared navigable is subject to the same penalties as a person who obstructs a public highway. General Indiana law governing:

(1) public highways; and

(2) the laying out and working of public highways in all other respects;

applies, as far as applicable, to the defining and working of navigable watercourses.

As added by P.L.1-1995, SEC.22.

14-29-1-4

Sec. 4. (a) Subject to subsection (b), a riparian owner of land in Indiana bordering upon a navigable stream may do the following:

(1) Build and maintain:

(A) within the premises bordering on the stream; and

(B) upon the submerged land beneath the water;

a pier, wharf, dock, or harbor in aid of navigation and commerce.

(2) Use, occupy, and enjoy the constructed item as appurtenant to the owner's land.

(b) A pier, dock, or wharf may not do any of the following:

(1) Extend into the stream further than is necessary to accommodate shipping and navigation.

(2) Obstruct shipping and navigation.

As added by P.L.1-1995, SEC.22.

14-29-1-5

Sec. 5. The declaration of a watercourse as navigable by a board of county commissioners does not affect a mill, a dam, an aqueduct, a viaduct, a bridge, or machinery on the stream, except if the mill, dam, aqueduct, viaduct, bridge, or machinery has been abandoned for at least twelve (12) months.
As added by P.L.1-1995, SEC.22.

14-29-1-6

Sec. 6. The board of county commissioners may use the money:
(1) that is appropriated from the county treasury; and
(2) as the board of county commissioners considers necessary;
to remove obstructions from streams that are declared navigable under this chapter.
As added by P.L.1-1995, SEC.22.

14-29-1-7

Sec. 7. A person living on or owning property along a watercourse that is navigable for boats of a large size may hang gates:
(1) at or near the top of the bank; and
(2) across a road leading down the bank and terminating at the watercourse;
except within the limits of a city or town.
As added by P.L.1-1995, SEC.22.

14-29-1-8

Sec. 8. (a) A person, other than a public or municipal water utility, may not:
(1) place, fill, or erect a permanent structure in;
(2) remove water from; or
(3) remove material from;
a navigable waterway without a permit from the department.
(b) An application for a permit under this section must be made in a manner prescribed by rule.
(c) The department shall issue a permit if the issuance of the permit will not do any of the following:
(1) Unreasonably impair the navigability of the waterway.
(2) Cause significant harm to the environment.
(3) Pose an unreasonable hazard to life or property.
(d) A separate permit is not required under this section for an activity permitted under any of the following:
(1) IC 14-21-1.
(2) IC 14-28-1.
(3) IC 14-29-3.
(4) IC 14-29-4.
(5) IC 14-34.
(6) IC 14-37.
However, a permit issued under a statute specified in this subsection must also apply the requirements of this section with respect to an activity within a navigable waterway.
(e) A separate permit is not required under this section for an activity for which a permit has been issued under any of the following:
(1) 16 U.S.C. 1451 et seq. (the federal Coastal Zone Management Act).
(2) 33 U.S.C. 1344 (the federal Clean Water Act).
(3) 42 U.S.C. 9601 et seq. (the federal Comprehensive Environmental Response, Compensation, and Liability Act).
(f) The department shall adopt rules under IC 4-22-2 to implement this section.
(g) A person who violates this section commits a Class B infraction.
As added by P.L.1-1995, SEC.22.

Chapter 2. Navigable Streams; Kankakee River

14-29-2

14-29-2-1

Sec. 1. The part of the Kankakee River that flows through Indiana from the Indiana-Michigan border to the Indiana-Illinois border is a navigable stream for the purpose of exercise of the police power of the state.
As added by P.L.1-1995, SEC.22.

Chapter 3. Sand and Gravel Permits

14-29-3

14-29-3-1

Sec. 1. The department may issue a permit to a person to take sand, gravel, stone, or other mineral or substance from or under the bed of the navigable water of Indiana.
As added by P.L.1-1995, SEC.22.

14-29-3-2

Sec. 2. In issuing a permit under this chapter, the department shall do the following:

(1) Fix by the permit the area within which it is lawful and in the best interests of the state to permit the taking by the permittee of the mineral or substance.

(2) Fix by the permit and collect from the permittee when due the amount of the reasonable value of the mineral or substance to be taken, measured by weight, cubic dimensions, or other common and usual measurement.

(3) Collect a fee of fifty dollars ($50) for each permit issued.

As added by P.L.1-1995, SEC.22.

14-29-3-3

Sec. 3. (a) A permit issued under this chapter must include the following conditions:

(1) The permittee shall give bond in the amount and with surety approved by the department for full and prompt compliance with the terms and conditions of the permit.

(2) The permittee shall, monthly or quarterly as the department stipulates, make to the department a verified report and full account and payment for all mineral or substance taken during the preceding month or quarter.

(3) The department may, at any time in reasonable hours, inspect the following:

(A) All books, papers, and records of the permittee relating to the account.

(B) The works and workings of the permittee.

(4) The department may revoke or suspend the permit for the failure of the permittee to comply with this chapter or with the terms and conditions of the permit.

(5) Subject to suspension or revocation, the permit will remain in force for the period that the department determines, not to exceed five (5) years from the date of issuance. However, the permit may be renewed by the permittee by written application filed with the department six (6) months before expiration of the permit.

(6) The works, workings, and operations under the permit must not do any of the following:

(A) Impede the navigation of the water.

(B) Damage or endanger a bridge, highway, railroad, public work, utility, or the property of a riparian owner or adjoining proprietor or adjacent permittee.

(C) Endanger the lives of individuals.

(7) The permittee shall take the measures, to be determined by the department and stipulated in the permit, that are reasonable to avoid the damage and danger.

(b) The department may also prescribe other reasonable conditions in the permit that are in the best interests of the state.
As added by P.L.1-1995, SEC.22.

14-29-3-4

Sec. 4. (a) A person who knowingly takes sand, gravel, stone, or other mineral or substance from or under the bed of the navigable water of Indiana without a permit commits a Class B infraction.

(b) Each day a violation continues constitutes a separate infraction.

As added by P.L.1-1995, SEC.22. Amended by P.L.71-2004, SEC.24.

Chapter 4. Construction of Channels

14-29-4

14-29-4-1

Sec. 1. As used in this chapter, "channel" means:

(1) an artificial channel; or

(2) the improved channel of a natural watercourse;

connecting to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

As added by P.L.1-1995, SEC.22.

14-29-4-2

Sec. 2. The general assembly finds that the unregulated construction of channels may be injurious to the public health, safety, and welfare and that the construction of these channels shall be regulated.

As added by P.L.1-1995, SEC.22.

14-29-4-3

Sec. 3. A person may not construct a channel before receiving the written approval of the commission.

As added by P.L.1-1995, SEC.22.

14-29-4-4

Sec. 4. A person who desires to construct a channel must do the following:

(1) File a verified written application for a permit with the commission that does the following:

(A) States the material facts.

(B) Includes the plans and specifications for the construction of the channel.

(C) Identifies each facility to which the channel will provide access.

(2) Include with the application a nonrefundable fee of one hundred dollars ($100).

As added by P.L.1-1995, SEC.22.

14-29-4-5

Sec. 5. Before commission consideration of the application, the applicant must do the following:

(1) Obtain the prior written approval of the department of environmental management for sewage disposal facilities involved with the channel and each facility that the channel is to serve. Prior approval is not required for housing developments of less than six (6) lots.

(2) If a channel will:

(A) connect to a navigable river or stream; and

(B) create additional water areas that will be connected to the navigable river or stream;

dedicate any water created to general public use.

As added by P.L.1-1995, SEC.22.

14-29-4-6

Sec. 6. The commission shall issue an order of authorization if in the opinion of the commission the channel and each facility that the channel is to serve will not do any of the following:

(1) Constitute an unreasonable hazard to life and property.

(2) Result in undue effects upon the water levels of the river or stream or upon fish and wildlife resources.

(3) Adversely affect the public health, safety, and welfare.

As added by P.L.1-1995, SEC.22.

14-29-4-7

Sec. 7. The commission may, in the name of the state, maintain an action to enjoin a violation of this chapter.

As added by P.L.1-1995, SEC.22.

14-29-4-8

Sec. 8. The commission may adopt rules under IC 4-22-2 to administer this chapter.
As added by P.L.1-1995, SEC.22.

14-29-4-9

Sec. 9. (a) A person who knowingly violates this chapter commits a Class B infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.
As added by P.L.1-1995, SEC.22. Amended by P.L.71-2004, SEC.25.

Chapter 5. Change in Watercourses; Highway Construction

14-29-5

14-29-5-1

Sec. 1. (a) The governing bodies or agencies of the state charged with the duties of the construction, maintenance, and repair of public highways may, to the extent money is available and subject to subsection (b), do the following:

(1) Change the course of a stream, watercourse, or drainage ditch.

(2) Restore to the original or former channel a stream, watercourse, or drainage ditch if the stream, watercourse, or drainage ditch has meandered from the original or former course.

(3) The construction work that is necessary to protect the banks or slopes of a stream, watercourse, or ditch to prevent wash, caving, slides, or erosion if the water of the stream, watercourse, or ditch is causing or threatening injury to, damage to, or destruction of a public highway or bridge by erosion, wash, slides, change of course, or overflow.

(4) Construct walls or levees for the purposes of subdivision (3) if it is determined by an engineering survey that this method would be more practicable or less expensive.

(5) Exercise the authority granted in this section to protect public highways against injury, damage, or destruction caused or threatened by landslides.

(b) If a navigable stream is under the jurisdiction of a federal authority or an agency and the proposed work of the highway officials under this section conflicts or interferes with the jurisdiction of the federal agency, the consent or waiver of the federal agency must be procured by the highway officials before the beginning of the proposed work.
As added by P.L.1-1995, SEC.22.

14-29-5-2

Sec. 2. (a) If work under this chapter involves the protection of an existing highway not under construction, the work shall be performed and the costs paid under Indiana law governing the maintenance of highways applicable to the public agency or authorities having charge of the highway involved in the proposed work.

(b) If work under this chapter involves the construction or reconstruction of a highway, the work shall be performed and the costs paid under Indiana law governing construction of highways applicable to the public agency or body having charge of the highway involved in the proposed work.

(c) If it is necessary in the performance of work under this chapter to procure a right-of-way or interests in land outside the limits of the highway involved, the costs, if any, of the right-of-way or interests in land shall be paid as follows:

(1) Out of the maintenance fund if the work constitutes maintenance.

(2) Out of the construction fund if the work constitutes construction.
As added by P.L.1-1995, SEC.22.

14-29-5-3

Sec. 3. The governing or administrative bodies charged with the control of highways may do the following:

(1) If it becomes necessary to procure rights-of-way or interests in land or property outside the limits of a highway under section 2 of this chapter, procure the rights or interests by grant, purchase, or voluntary donation.

(2) Exercise the power of eminent domain for any purpose designated in this chapter under Indiana eminent

domain law.
As added by P.L.1-1995, SEC.22.

Chapter 6. Natural, Scenic, and Recreational River System

14-29-6

14-29-6-1

Sec. 1. As used in this chapter, "adjacent land" means the area of land paralleling, but not necessarily contiguous to, a river needed to preserve, protect, and manage the natural, scenic, or recreational character of the river.
As added by P.L.1-1995, SEC.22.

14-29-6-2

Sec. 2. As used in this chapter, "recreational river" means a river that does not have the characteristics necessary to qualify as a natural or scenic river, but that still maintains scenic or recreational characteristics of unusual and significant value.
As added by P.L.1-1995, SEC.22.

14-29-6-3

Sec. 3. As used in this chapter, "river" means any flowing body of water and adjacent land or part of the body of water and adjacent land.
As added by P.L.1-1995, SEC.22.

14-29-6-4

Sec. 4. As used in this chapter, "scenic river" means a river that:
(1) is free of impoundments;
(2) is accessible in several places; and
(3) has minimal pollution and shoreline developments.
As added by P.L.1-1995, SEC.22.

14-29-6-5

Sec. 5. As used in this chapter, "system" means the Indiana natural, scenic, and recreational river system.
As added by P.L.1-1995, SEC.22.

14-29-6-6

Sec. 6. The department shall administer this chapter.
As added by P.L.1-1995, SEC.22.

14-29-6-7

Sec. 7. As part of the continuing growth of the population and development of the economy of Indiana, it is necessary and desirable that rivers of unusual natural, scenic, or recreational significance be set aside and preserved for the benefit of present and future generations before the rivers have been destroyed. After rivers are destroyed, the rivers cannot be wholly restored. It is essential to the people of Indiana that the people retain the opportunities to maintain close contact with the natural, scenic, and recreational rivers and to benefit from the scientific, aesthetic, cultural, recreational, scenic, and spiritual values the rivers possess. It is, therefore, the following public policy of Indiana:
(1) That a natural, scenic, and recreational river system be established and maintained.
(2) That such areas be designated, acquired, and preserved by the state.
(3) That other agencies, organizations, and individuals, both public and private, be encouraged to set aside adjacent land for the common benefit of the people of present and future generations.
As added by P.L.1-1995, SEC.22.

14-29-6-8

Sec. 8. (a) As used in this section, "natural river" means a river that, free of impoundments, is generally unpolluted, undeveloped, and inaccessible.

(b) The director may study and periodically submit to the commission proposals for the inclusion of a section of a river into the system that, in the director's judgment, falls within at least one (1) of the following categories:

(1) Natural river.

(2) Scenic river.

(3) Recreational river.

(c) In recommending a river or section for inclusion in the system, the director shall prepare a detailed report on the factors that, in the director's judgment, make the river worthy of designation for inclusion in the system. This report shall evaluate among other categories the following:

(1) Length of segment.

(2) Condition of naturally occurring vegetation.

(3) Stream scenic view.

(4) Physical modification of stream course.

(5) Human developments along stream.

(6) Unique or special features of area.

(7) Water quality.

(8) Paralleling roads.

(9) Number of stream crossings.

(d) Specific criteria for each of these natural river, scenic river, and recreational river categories shall be selected after having given due consideration to the categories specified in subsection (c) and any other categories that are considered to be important.

As added by P.L.1-1995, SEC.22.

14-29-6-9

Sec. 9. (a) Based upon the study and recommendations of the director, the commission may adopt rules under IC 4-22-2 to designate a river for inclusion into the system.

(b) Before adopting rules, the director shall do the following:

(1) Notify each adjoining or abutting landowner of the plans and recommendations by registered mail.

(2) Conduct a public hearing in the county that contains the largest section of the river being considered.

As added by P.L.1-1995, SEC.22.

14-29-6-10

Sec. 10. In all planning for the use and development of water and related land resources of rivers in the system, including the construction of impoundments, diversions, realignments, riprap, roadways, crossings, channelizations, locks, canals, or other uses that change the character of a river or destroy the river's scenic values:

(1) full review and evaluation of the river as a scenic resource shall be given; and

(2) the environmental impact of the proposed use and development shall be determined as specified in IC 13-12-4;

before the commission approves plans for use and development.

As added by P.L.1-1995, SEC.22. Amended by P.L.1-1996, SEC.68.

14-29-6-11

Sec. 11. Use or development of water and related land resources of rivers in the system may not be approved if in the judgment of the commission the use or development may alter the original classification of a river in the system.

As added by P.L.1-1995, SEC.22.

14-29-6-12

Sec. 12. (a) The director shall prepare and maintain a plan for the establishment, development, management, use, and administration of rivers in the system. The river system plan shall be included and becomes an integral part of the comprehensive state plans for water management and outdoor recreation.

(b) When a river is proclaimed a part of the system, the river becomes an administrative responsibility of the director. The director shall take the necessary action in keeping with the policy of this chapter to acquire, develop, maintain, and preserve the river and authorized related land area in accordance with the director's powers and duties with respect to parks, fish and wildlife areas, reservoirs, forests, and miscellaneous areas. The director may seek

assistance in the development, operation, and maintenance of scenic rivers from other governmental units and agencies.
As added by P.L.1-1995, SEC.22.

14-29-6-13

Sec. 13. (a) As used in this section, "conservation easement" has the meaning set forth in IC 32-23-5-2.

(b) As used in this section, "land use easement" means the granting of the right of the general public to use the adjacent land.

(c) As used in this section, "scenic easement" means the granting of protection of adjacent land in the land's present state to preserve the land's natural or scenic characteristics.

(d) As used in this section, "water use easement" means the granting of the right of the general public to travel along or across all water parts of the river.

(e) The director may do the following:

(1) Acquire on behalf of the state land in fee title or any other interest in land, including the following:

(A) Water use easements.

(B) Scenic easements.

(C) Land use easements.

(2) Exercise the right of eminent domain on behalf of the state to acquire the following:

(A) Conservation easements.

(B) Water use easements.

(f) Land or an interest in land may be acquired by purchase with appropriated or donated money, exchanges, donations, or otherwise.

(g) The director may seek financial assistance for land acquisition and for facility development of scenic rivers from the following:

(1) Federal and local governmental sources.

(2) Private groups and individuals.

As added by P.L.1-1995, SEC.22. Amended by P.L.2-2002, SEC.62.

14-29-6-14

Sec. 14. Recognizing that most of the rivers recommended for inclusion in the system may not be state owned, the general assembly encourages riparian owners to grant easements to the director for the purposes of this chapter.
As added by P.L.1-1995, SEC.22.

14-29-6-15

Sec. 15. The department may expend money that is:

(1) already appropriated for the purposes of this chapter; or

(2) periodically appropriated to the department from any fund for the purpose of developing public recreation facilities.

As added by P.L.1-1995, SEC.22.

Chapter 7. River Commissions

14-29-7

14-29-7-1

Sec. 1. This chapter applies only to land in a county whose board of county commissioners has elected to participate in a river commission.
As added by P.L.1-1995, SEC.22.

14-29-7-2

Sec. 2. As used in this chapter, "river" means that part of a body of flowing water and adjacent land that is the subject of a river commission established under this chapter.
As added by P.L.1-1995, SEC.22.

14-29-7-3

Sec. 3. (a) The department may establish a river commission for a river designated as a natural, scenic, or recreational river under IC 14-29-6. An established river commission shall be known as the "_____ River Commission".

(b) Each river commission shall be established for a period of four (4) years, at the end of which the river commission terminates. After termination, a river commission may be reestablished any number of times.

As added by P.L.1-1995, SEC.22.

14-29-7-4

Sec. 4. The board of county commissioners of each county containing a river for which a river commission has been established may elect that the county participate in the river commission.

As added by P.L.1-1995, SEC.22.

14-29-7-5

Sec. 5. The membership of a river commission consists of the following:

(1) The director or the director's designee.

(2) Two (2) individuals appointed for terms of four (4) years by the board of commissioners of each participating county from among owners of land that is:

(A) within the county; and

(B) contiguous to the river.

As added by P.L.1-1995, SEC.22.

14-29-7-6

Sec. 6. A vacancy on a river commission shall be filled for the unexpired term in the same manner as original appointments are made.

As added by P.L.1-1995, SEC.22.

14-29-7-7

Sec. 7. Each member of a river commission is entitled to one (1) vote. Voting by proxy is not permitted.

As added by P.L.1-1995, SEC.22.

14-29-7-8

Sec. 8. Members of a river commission serve without compensation.

As added by P.L.1-1995, SEC.22.

14-29-7-9

Sec. 9. A majority of the members of a river commission constitutes a quorum. The affirmative vote of a majority of the members is necessary to issue a permit.

As added by P.L.1-1995, SEC.22.

14-29-7-10

Sec. 10. As soon as possible after a river commission has been established, the director shall designate the time and place of the first meeting.

As added by P.L.1-1995, SEC.22.

14-29-7-11

Sec. 11. (a) At the first meeting of a river commission, the river commission shall select the following:

(1) A chairman from the membership.

(2) Other officers that the river commission determines.

(b) The officers serve for terms of one (1) year.

As added by P.L.1-1995, SEC.22.

14-29-7-12

Sec. 12. (a) Each river commission shall hold not less than six (6) regular, bimonthly meetings at a time and place fixed at the initial meeting.

(b) A river commission may hold special meetings that the river commission considers necessary.

(c) The chairman of a river commission may call special meetings.
As added by P.L.1-1995, SEC.22.

14-29-7-13

Sec. 13. Each river commission may:
(1) appoint;
(2) prescribe the duties of; and
(3) fix the compensation of;
the employees that are necessary for the discharge of the duties and responsibilities of the river commission.
As added by P.L.1-1995, SEC.22.

14-29-7-14

Sec. 14. Each river commission may do the following:
(1) Adopt a seal.
(2) Sue and be sued in the river commission's own name.
(3) Establish bylaws and rules for the river commission's government.
(4) Make and enter into all contracts or agreements.
(5) Do all things necessary or incidental to the performance of the powers and duties of the river commission under this chapter.
As added by P.L.1-1995, SEC.22.

14-29-7-15

Sec. 15. A member or an employee of a river commission may do the following:
(1) Conduct a hearing or an investigation.
(2) Take evidence.
(3) Report the evidence to the river commission for consideration and action.
As added by P.L.1-1995, SEC.22.

14-29-7-16

Sec. 16. As soon as possible after the establishment of a river commission, the river commission and the department shall negotiate a memorandum of understanding for the management and preservation of the natural and scenic qualities of the river.
As added by P.L.1-1995, SEC.22.

14-29-7-17

Sec. 17. Each river commission shall protect and enhance the natural and scenic qualities of the river in cooperation with the department.
As added by P.L.1-1995, SEC.22.

14-29-7-18

Sec. 18. A person may not substantially affect the natural or scenic qualities of a river that is the subject of a river commission unless the person has secured a permit to do so from the river commission.
As added by P.L.1-1995, SEC.22.

14-29-7-19

Sec. 19. (a) After a hearing and subject to subsection (b), a river commission may issue a permit to a person to substantially affect the natural or scenic qualities of the river if the river commission finds the need of the person seeking the permit to be more compelling than the need of the people to have the natural and scenic qualities of the river preserved.
(b) A permit may not be issued that substantially affects the natural or scenic qualities of a river in a manner visible from five (5) feet above the water surface of the river at normal water level between May 1 and October 15 of a year.
As added by P.L.1-1995, SEC.22.

14-29-7-20

Sec. 20. A person adversely affected by a decision of a river commission may appeal the decision, de novo, to the circuit or superior court with jurisdiction in the county in which the affected land is located.
As added by P.L.1-1995, SEC.22.

14-29-7-21

Sec. 21. The lawful use of a structure existing at the time of the effective date of the establishment of a river commission:

(1) may be continued even though the use does not conform to this chapter; and

(2) may be extended throughout the structure if a structural alteration is not made, except those required by law.

As added by P.L.1-1995, SEC.22.

14-29-7-22

Sec. 22. This chapter does not require a change in the plans, construction, or designated use of a building for which a building permit was issued before the river commission was established if the following conditions are met:

(1) Construction is begun not later than ninety (90) days of the date of the permit.

(2) The building is completed according to the plans not later than two (2) years from the date the river commission was established.

As added by P.L.1-1995, SEC.22.

14-29-7-23

Sec. 23. The establishment of a river commission does not affect the right of:

(1) the owner of land to sell; or

(2) the department to acquire;

an easement or other property interest under IC 14-29-6-13.
As added by P.L.1-1995, SEC.22.

14-29-7-24

Sec. 24. The director may not use the power of eminent domain to acquire an easement under IC 14-29-6-13 on land subject to the authority of a river commission.
As added by P.L.1-1995, SEC.22.

14-29-7-25

Sec. 25. (a) If a river commission brings an action in the circuit or superior court with jurisdiction in the county in which the land is located, the court shall order a person who violates section 18 of this chapter to be:

(1) enjoined from continuing the violation; and

(2) required to do the following:

(A) Remove a structure erected in violation of:

(i) this chapter; or

(ii) IC 13-2-27 (before its repeal).

(B) Restore the natural and scenic qualities of the river altered by the person's activities.

(C) Pay the costs of the action.

(b) In addition to the requirements of subsection (a), a person who violates section 18 of this chapter may be assessed a civil penalty of:

(1) at least ten dollars ($10); and

(2) not more than three hundred dollars ($300);

for each day the violation continues.
As added by P.L.1-1995, SEC.22.

Chapter 8. Recreational Streams

14-29-8

14-29-8-1

Sec. 1. As used in this chapter, "stream" means a natural or an altered river, creek, slough, or artificial channel

that has:

(1) definable banks and a bed capable of conducting confined runoff;

(2) visible evidence of the flow or occurrence of water; and

(3) a watershed in excess of one (1) square mile.

As added by P.L.1-1995, SEC.22.

14-29-8-2

Sec. 2. (a) A person may use a stream that is capable of use by a watercraft for boating, fishing, or other recreational purposes if the stream is designated as a recreational stream by rule adopted by the commission.

(b) The right of a person to use a recreational stream is limited to the water within the stream and does not do any of the following:

(1) Authorize the use of the bed or bank of the stream, except in an emergency.

(2) Establish a right of access to the stream over private land.

As added by P.L.1-1995, SEC.22.

14-29-8-3

Sec. 3. (a) The commission shall adopt rules under IC 4-22-2 for the designation of streams or parts of streams as recreational streams.

(b) Before a hearing on the designation of a stream as a recreational stream and in addition to the notification requirements under IC 4-22-2, the commission shall do the following:

(1) Publish notice at least twenty-one (21) days before the hearing in a newspaper of general circulation in the county where a stream is located that the commission proposes to designate the stream as a recreational stream. The notice must state the time and place of the hearing.

(2) Conduct a separate hearing in each county where a stream is proposed to be designated as a recreational stream.

(c) If a stream:

(1) is located wholly within one (1) county; and

(2) is a regulated drain under IC 36-9-27;

the county drainage board must concur in the designation before final adoption of the rule.

As added by P.L.1-1995, SEC.22.

14-29-8-4

Sec. 4. The use of a stream designated under this chapter does not do any of the following:

(1) Impose a duty upon the riparian landowner or tenant to provide for the safe use of the stream.

(2) Affect ownership of the bed of the stream.

(3) Affect a determination of the stream's navigability.

As added by P.L.1-1995, SEC.22.

14-29-8-5

Sec. 5. A person who:

(1) throws, dumps, or leaves refuse in the water or on the banks of a stream designated under this chapter; or

(2) crosses private land to gain access to a designated stream without the permission of the landowner or tenant of the land;

commits a Class B misdemeanor.

As added by P.L.1-1995, SEC.22.

Chapter 1. Kankakee River Basin Commission

14-30-1

14-30-1-1

Sec. 1. As used in this chapter, "basin" refers to the Kankakee River basin.

As added by P.L.1-1995, SEC.23.

14-30-1-2

Sec. 2. As used in this chapter, "commission" refers to the Kankakee River basin commission established by this chapter.
As added by P.L.1-1995, SEC.23.

14-30-1-3

Sec. 3. As used in this chapter, "Kankakee River basin" means the area in Jasper County, LaPorte County, Lake County, Marshall County, Newton County, Porter County, St. Joseph County, and Starke County that is drained by the Kankakee River and tributaries of the Kankakee River in Indiana.
As added by P.L.1-1995, SEC.23.

14-30-1-4

Sec. 4. The Kankakee River basin commission is established.
As added by P.L.1-1995, SEC.23.

14-30-1-5

Sec. 5. The commission shall limit the commission's activities to the Kankakee River basin.
As added by P.L.1-1995, SEC.23.

14-30-1-6

Sec. 6. The commission consists of the following three (3) individuals from each county that contains part of the basin:

(1) The county surveyor or an employee of the county surveyor appointed by the county surveyor to represent the county surveyor on the commission.

(2) One (1) member of the board of supervisors of the soil and water conservation district, appointed by the supervisors of the soil and water conservation district.

(3) One (1) member appointed by the executive of the county.

As added by P.L.1-1995, SEC.23. Amended by P.L.141-1997, SEC.1.

14-30-1-7

Sec. 7. The term of office of an appointed member of the commission is three (3) years and continues until a successor is appointed and certified.
As added by P.L.1-1995, SEC.23.

14-30-1-8

Sec. 8. (a) An individual appointed to the commission is eligible for reappointment.

(b) If a vacancy occurs in the position of an appointed member of the commission, the entity authorized under section 6(2) or 6(3) of this chapter to appoint the member shall appoint a new member to fill the vacancy in the same way that the member to be replaced was appointed.
As added by P.L.1-1995, SEC.23. Amended by P.L.141-1997, SEC.2.

14-30-1-9

Sec. 9. (a) The commission shall elect the following officers:

(1) A chairman.

(2) A vice chairman.

(3) A secretary.

(4) A treasurer.

(b) The:

(1) terms of the officers elected under subsection (a) may not exceed one (1) year; and

(2) officers are eligible for reelection.

(c) The commission may establish and fill other offices the commission considers necessary.

(d) Each officer of the commission shall perform the duties usually pertaining to the office.
As added by P.L.1-1995, SEC.23.

14-30-1-10

Sec. 10. (a) The commission shall fix the times of the commission's regular meetings. The commission shall hold

regular meetings at least bimonthly.

(b) A special meeting of the commission may be called by the chairman or by five (5) members upon written notice fixing the time and place of the meeting. However, written notice of a special meeting is not required if:

(1) the time of the special meeting was fixed at a regular meeting; or

(2) all the members are present at the special meeting.

(c) A member of the commission may waive notice of a meeting by a written waiver filed with the secretary of the commission.

As added by P.L.1-1995, SEC.23. Amended by P.L.141-1997, SEC.3.

14-30-1-11

Sec. 11. (a) The following rules apply to proceedings of the commission:

(1) Twelve (12) members constitute a quorum.

(2) At least eight (8) affirmative votes are required for the commission to take action.

(3) The commission shall keep a record of the commission's resolutions, transactions, and findings. This record is a public record.

(b) The commission may adopt additional rules for the transaction of business.

As added by P.L.1-1995, SEC.23. Amended by P.L.141-1997, SEC.4.

14-30-1-12

Sec. 12. The commission shall make an annual report of the commission's activities to the following:

(1) The executive of each county in the basin.

(2) Upon request to the following:

(A) The governor.

(B) The general assembly. The report must be in an electronic format under IC 5-14-6.

As added by P.L.1-1995, SEC.23. Amended by P.L.28-2004, SEC.132.

14-30-1-13

Sec. 13. (a) The commission:

(1) shall coordinate the development of the basin; and

(2) may request assistance of the regional planning commissions affected in the preparation of a comprehensive development plan for the basin.

(b) All planning and development programs of the commission must be approved by the following:

(1) Each regional planning commission affected.

(2) The department.

As added by P.L.1-1995, SEC.23.

14-30-1-14

Sec. 14. The commission may do the following:

(1) Conduct all studies necessary for the performance of the commission's duties.

(2) Publicize, advertise, and distribute reports on the commission's purposes, objectives, and findings.

(3) When requested, provide recommendations in matters related to the commission's functions and objectives to the following:

(A) Political subdivisions in the basin.

(B) Other public and private agencies.

(4) When requested, act as a coordinating agency for programs and activities of other public and private agencies that are related to the commission's objectives.

As added by P.L.1-1995, SEC.23.

14-30-1-15

Sec. 15. (a) The commission may receive grants and appropriations from the following:

(1) Federal, state, and local governments.

(2) Individuals, foundations, and other organizations.

(b) The commission may enter into agreements or contracts regarding the acceptance or use of these grants and appropriations for the purpose of carrying out the commission's activities under this chapter.

(c) The commission must expend money appropriated to the commission for the purpose for which the money is appropriated.
As added by P.L.1-1995, SEC.23. Amended by P.L.141-1997, SEC.5.

14-30-1-16

Sec. 16. (a) The commission may:

(1) acquire and dispose of real or personal property by grant, gift, purchase, lease, devise, or otherwise; and

(2) hold, use, improve, maintain, operate, own, manage, or lease as lessor or lessee real or personal property or any interest in that property;

for the purposes prescribed by this chapter.

(b) The commission may exercise the powers granted by this section for the development of the water resources of the basin.
As added by P.L.1-1995, SEC.23.

14-30-1-17

Sec. 17. The commission may sue and be sued.
As added by P.L.1-1995, SEC.23.

14-30-1-18

Sec. 18. The commission may, with the approval of the regional planning commissions affected and the department, enter into agreements with agencies in another state that are responsible for the planning or development of all or part of the basin in the other state.
As added by P.L.1-1995, SEC.23.

14-30-1-19

Sec. 19. (a) The commission may establish an executive board consisting of the following:

(1) The chairman of the commission.

(2) Eight (8) other members, one (1) from each county in the basin, to be chosen in a manner prescribed by the commission.

(b) The commission may delegate to the executive board the power to do the following:

(1) Recommend to the commission rules and regulations for the use and operation of commission properties.

(2) Conduct hearings on proposed commission projects.

(3) Perform other administrative duties assigned by the commission.

As added by P.L.1-1995, SEC.23.

14-30-1-20

Sec. 20. The commission may appoint advisory committees consisting of individuals whose experience, training, or interest in the program enables the individuals to assist the commission. A member of an advisory committee is not entitled to compensation for the member's services.
As added by P.L.1-1995, SEC.23.

14-30-1-21

Sec. 21. (a) The counties in the basin may budget, appropriate, and disburse an aggregate amount not to exceed fifty thousand dollars ($50,000) per year to carry out the purposes of the commission under this chapter. The appropriation shall be apportioned among the counties in the basin in direct relationship to the amount of land area lying within the basin boundaries.

(b) The department shall certify the boundaries and the drainage area of each county within the basin after consultation with the respective county surveyors and the United States Army Corps of Engineers. The determination and certification shall be prepared before submission of budgets to the appropriating bodies so that the correct amount can be appropriated.

(c) A regional planning commission may, upon request from the commission, furnish for a reasonable charge the support staff necessary for the commission.
As added by P.L.1-1995, SEC.23.

14-30-1-22

Sec. 22. (a) The commission shall do the following:

(1) Prepare and adopt by majority vote an annual budget.

(2) Submit the budget to each county, municipality, or agency appropriating money for the use of the commission.

(b) After approval of the budget by the commission, money may be expended only as budgeted unless a majority vote of the commission authorizes other expenditure.

(c) Any appropriated amounts remaining unexpended or unencumbered at the end of the year become part of a nonreverting cumulative fund to be held in the name of the commission. The commission may authorize unbudgeted expenditures from this fund by a majority vote of the commission.

(d) The commission is responsible for the safekeeping and deposit of money the commission receives under this chapter. The state board of accounts shall:

(1) prescribe the methods and forms for keeping; and

(2) periodically audit;

the accounts, records, and books of the commission.

(e) The treasurer of the commission may receive, disburse, and handle money belonging to the commission, subject to the following:

(1) Applicable statutes.

(2) Procedures established by the commission.

As added by P.L.1-1995, SEC.23.

14-30-1-23

Sec. 23. A member of the commission is entitled in the performance of official duties to an amount for mileage equal to that fixed by the budget agency as payment to all persons entitled to receive a mileage allowance from the state.

As added by P.L.1-1995, SEC.23.

Chapter 2. Maumee River Basin Commission

14-30-2

14-30-2-1

Sec. 1. As used in this chapter, "basin" refers to the Maumee River basin.

As added by P.L.1-1995, SEC.23.

14-30-2-2

Sec. 2. As used in this chapter, "commission" refers to the Maumee River basin commission established by this chapter.

As added by P.L.1-1995, SEC.23.

14-30-2-3

Sec. 3. As used in this chapter, "Maumee River basin" means the area in Indiana drained by the Maumee River and the tributaries of the Maumee River.

As added by P.L.1-1995, SEC.23.

14-30-2-4

Sec. 4. As used in this chapter, "participating county" refers to a county that joins the commission under section 7 of this chapter.

As added by P.L.1-1995, SEC.23.

14-30-2-5

Sec. 5. As used in this chapter, "plan" refers to a plan described in section 14(1) of this chapter.

As added by P.L.1-1995, SEC.23.

14-30-2-6

Sec. 6. The Maumee River basin commission is established as a separate municipal corporation.

As added by P.L.1-1995, SEC.23.

14-30-2-7

Sec. 7. The executive of a county that includes territory in the Maumee River basin may do the following:

(1) Elect to participate in the commission by designating the county as a participating county.

(2) Revoke the designation.

As added by P.L.1-1995, SEC.23.

14-30-2-8

Sec. 8. The following shall serve as voting members of the commission:

(1) Each member of the county executive for a participating county.

(2) The executive director or, if a county does not have an executive director, the chairman of a soil and water conservation district that:

(A) is subject to IC 14-32;

(B) includes territory in a participating county; and

(C) includes territory in the basin.

(3) The county surveyor of each participating county.

As added by P.L.1-1995, SEC.23. Amended by P.L.142-1997, SEC.1.

14-30-2-9 Repealed

14-30-2-9 (Repealed by P.L.142-1997, SEC.3.)

14-30-2-10

Sec. 10. (a) A member of the commission may:

(1) designate another individual to perform the duties of the member on the commission; and

(2) revoke the designation.

(b) A designation or a revocation of a designation under this section must be filed with the commission to be effective.

As added by P.L.1-1995, SEC.23.

14-30-2-11

Sec. 11. (a) The commission shall annually elect from among the voting members the following officers:

(1) A chairperson.

(2) A vice chairperson.

(3) A secretary.

(4) A treasurer.

(b) The officers elected under subsection (a) shall be elected and shall perform the duties specified in the commission's bylaws.

(c) The commission may establish other offices and determine the means of filling the offices.

As added by P.L.1-1995, SEC.23.

14-30-2-12

Sec. 12. (a) Each member of the commission is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. Money paid under this section may be paid only from the money available to the commission.

(b) A county may pay members of the commission the salary per diem provided by IC 4-10-11-2.1(b) for the performance of the member's duties on the commission.

As added by P.L.1-1995, SEC.23. Amended by P.L.142-1997, SEC.2.

14-30-2-13

Sec. 13. (a) The commission may do the following:

(1) Sue and be sued.

(2) Manage the commission's internal affairs.

(3) Employ staff.

(4) Enter into contracts to implement a cooperative agreement described in section 14 of this chapter.
(5) Exercise the powers of a political subdivision specified in a cooperative agreement described in section 14 of this chapter.
(b) This section does not exempt the commission from any statute.
As added by P.L.1-1995, SEC.23.

14-30-2-14

Sec. 14. A political subdivision in a participating county may under IC 36-1-7 enter into a cooperative agreement with the commission and at least one (1) other legal entity to authorize the commission to:
(1) develop a plan to control flooding in that part of the basin that is described in the cooperative agreement;
(2) exercise any of the other powers of the political subdivision to regulate water courses in the basin; or
(3) develop and promote good soil and water conservation practices and procedures.
As added by P.L.1-1995, SEC.23.

14-30-2-15

Sec. 15. In developing the plan, the commission shall determine the best method and manner of establishing flood control, giving consideration to the following:
(1) The reservoir method.
(2) The channel improvement method.
(3) The levee method.
(4) Flood plain regulation.
(5) All nonstructural methods.
As added by P.L.1-1995, SEC.23.

14-30-2-16

Sec. 16. The commission shall give the public an opportunity to participate in the development of the plan.
As added by P.L.1-1995, SEC.23.

14-30-2-17

Sec. 17. Before the plan is implemented by a political subdivision, the plan must be approved by the state in accordance with IC 14-25 through IC 14-29.
As added by P.L.1-1995, SEC.23.

14-30-2-18

Sec. 18. A political subdivision in a participating county may appropriate money to the commission to carry out any of the commission's responsibilities under a cooperative agreement described in section 14 of this chapter. Money appropriated to the commission that remains at the end of a year does not revert to the political subdivision appropriating the money.
As added by P.L.1-1995, SEC.23.

14-30-2-19

Sec. 19. The commission shall prepare an annual budget for the commission's operation and other expenditures under IC 6-1.1-17. However, the annual budget is not subject to review and modification by the county board of tax adjustment of any county. Notwithstanding any other law, the budget of the commission shall be treated for all other purposes as if the appropriate county board of tax adjustment had approved the budget.
As added by P.L.1-1995, SEC.23. Amended by P.L.224-2007, SEC.104; P.L.146-2008, SEC.426.

14-30-2-20

Sec. 20. The commission may adopt rules to do the following:
(1) Require that increased water runoff resulting from new construction be impounded on the construction site.
(2) Permit the waiver of requirements of onsite water impoundment on payment of a reasonable fee by the developer of the new construction.
As added by P.L.1-1995, SEC.23.

14-30-2-21

Sec. 21. The commission may appoint advisory committees consisting of individuals whose experience, training, or interest in the program enables the committees to assist the commission. A member of an advisory committee is not entitled to compensation for the member's services.
As added by P.L.1-1995, SEC.23.

14-30-2-22

Sec. 22. (a) For the purposes of this chapter, the commission may do the following:

(1) Acquire by grant, gift, purchase, or devise and dispose of conservation easements under IC 32-23-5 in land within the one hundred (100) year flood plains and the wetlands in the basin.

(2) Acquire by grant, gift, purchase, or devise improvements within the one hundred (100) year flood plains of the basin for the purpose of removal of those improvements.

(3) Adopt rules under IC 4-22-2 that restrict construction within the one hundred (100) year flood plains of the basin.

(4) Acquire, dispose, hold, use, improve, maintain, operate, own, manage, or lease real or personal property by grant, gift, purchase, or devise.

(b) The commission may exercise the powers granted by this section as follows:

(1) For purposes of IC 32-23-5.

(2) To contribute to the following:

(A) Flood control.

(B) Flood damage reduction.

(C) Improvements in water quality.

(D) Soil conservation.

As added by P.L.1-1995, SEC.23. Amended by P.L.2-2002, SEC.63.

14-30-2-23

Sec. 23. (a) The commission, board of directors, employees, or authorized representatives of the commission acting under this chapter may:

(1) enter the land lying within the one hundred (100) year flood plain of any watercourse; and

(2) enter nonflood plain land to gain access to the flood plain land;

to investigate, examine, survey, or investigate suspected violations of the Indiana flood control laws.

(b) The commission must give twenty-one (21) days written notice to:

(1) an affected landowner;

(2) a contract purchaser; or

(3) for a municipality, the executive of the municipality;

before exercising the right of entry granted in this section. The notice must state the purpose of the entry and that there is a right of appeal under this section.

(c) An affected landowner may, within the twenty-one (21) day notice period under subsection (b), appeal to the commission the proposed necessity for entry. If an appeal is made, the commission shall hold a hearing on the necessity for right of entry before the right of entry is exercised.

(d) A person acting under this section must use due care to avoid damage to crops, fences, buildings, or other structures.

(e) The commission, board of directors, employees, or authorized representative of the commission acting under this chapter does not commit criminal trespass under IC 35-43-2-2.
As added by P.L.1-1995, SEC.23.

14-30-2-24

Sec. 24. (a) This section does not apply to the following:

(1) The adoption of rules restricting construction within the one hundred (100) year flood plain.

(2) The acquisition of conservation easements under IC 32-23-5.

(3) The investigation of alleged violations of the Indiana flood control laws.

(b) A power of the commission may not be exercised upon any of the following:

(1) A river included in the natural, scenic, or recreational river system under IC 14-29-6 or the river's associated one hundred (100) year flood plain.

(2) A nature preserve under IC 14-31-1.

As added by P.L.1-1995, SEC.23. Amended by P.L.2-2002, SEC.64.

Chapter 3. St. Joseph River Basin Commission

14-30-3

14-30-3-1

Sec. 1. As used in this chapter, "basin" refers to the St. Joseph River basin.
As added by P.L.1-1995, SEC.23.

14-30-3-2

Sec. 2. As used in this chapter, "commission" refers to the St. Joseph River basin commission established by this chapter.
As added by P.L.1-1995, SEC.23.

14-30-3-3

Sec. 3. As used in this chapter, "participating county" refers to a county that joins the commission under section 6 of this chapter.
As added by P.L.1-1995, SEC.23.

14-30-3-4

Sec. 4. As used in this chapter, "St. Joseph River basin" means the area in Elkhart County, Kosciusko County, LaGrange County, Noble County, St. Joseph County, and Steuben County that drains into the St. Joseph River.
As added by P.L.1-1995, SEC.23.

14-30-3-5

Sec. 5. The St. Joseph River basin commission is established as a separate municipal corporation.
As added by P.L.1-1995, SEC.23.

14-30-3-6

Sec. 6. The executive of a county that includes territory in the basin may do the following:
(1) Elect to participate in the commission by designating the county as a participating county.
(2) Revoke the designation.
As added by P.L.1-1995, SEC.23.

14-30-3-7

Sec. 7. After consultation with the surveyor of each county in the basin, the director shall certify the boundaries of the basin.
As added by P.L.1-1995, SEC.23.

14-30-3-8

Sec. 8. The commission consists of the following individuals:
(1) From each participating county the following:
(A) The executive of each second class city or the executive's designee.
(B) If the county does not have a second class city, the executive of the municipality with the largest population or the executive's designee.
(2) A member of the county executive or the county executive's designee from each participating county.
(3) The county health officer or the health officer's designee from each participating county.
(4) An individual appointed by the governor who is a member of the board of supervisors of a soil and water conservation district that contains a part of the basin within all or part of the district's boundaries.
(5) The director or the director's designee.
As added by P.L.1-1995, SEC.23.

14-30-3-9

Sec. 9. The term of office of an appointed member of the commission is three (3) years and continues until a successor is appointed and certified.

As added by P.L.1-1995, SEC.23.

14-30-3-10

Sec. 10. The members of the commission serve without compensation. However, each member is entitled to reimbursement for travel, lodging, meals, and other expenses as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.
As added by P.L.1-1995, SEC.23.

14-30-3-11

Sec. 11. (a) The commission shall elect from among the members the following officers:
(1) A chairman.
(2) A vice chairman.
(3) A secretary.
(4) A treasurer.
(b) The:
(1) term of office for the officers elected under subsection (a) is one (1) year; and
(2) officers are eligible for reelection.
(c) The commission may establish and fill other offices that the commission considers necessary.
As added by P.L.1-1995, SEC.23.

14-30-3-12

Sec. 12. (a) The commission may establish an executive board consisting of the following:
(1) The chairman of the commission.
(2) One (1) member from each participating county that is not represented by the chairman, to be chosen in a manner prescribed by the commission.
(b) The commission may delegate to the executive board the power to do the following:
(1) Recommend agenda items and activities to the commission.
(2) Conduct hearings on proposed commission projects.
(3) Perform other administrative duties assigned by the commission.
As added by P.L.1-1995, SEC.23.

14-30-3-13

Sec. 13. The commission may appoint an advisory committee to assist the commission. A member of an advisory committee is not entitled to compensation for serving on the advisory committee.
As added by P.L.1-1995, SEC.23.

14-30-3-14

Sec. 14. (a) The commission shall do the following:
(1) Fix the times of the commission's regular meetings.
(2) Have at least one (1) meeting in each quarter of the year.
(b) A special meeting of the commission may be called in a manner that the commission shall establish.
(c) A member of the commission may waive notice of any meeting by filing a written waiver with the secretary of the commission.
As added by P.L.1-1995, SEC.23.

14-30-3-15

Sec. 15. (a) A majority of all the members of the commission constitutes a quorum.
(b) An affirmative vote of a majority of the entire membership is required for the commission to take action.
As added by P.L.1-1995, SEC.23.

14-30-3-16

Sec. 16. (a) The commission shall keep a record of the commission's resolutions, transactions, and findings. This record is a public record.
(b) The commission may adopt rules for the transaction of business.
As added by P.L.1-1995, SEC.23.

14-30-3-17

Sec. 17. The commission may sue and be sued.
As added by P.L.1-1995, SEC.23.

14-30-3-18

Sec. 18. The commission shall make an annual report of the commission's activities to the executive of each participating county. The commission shall upon request make an annual report to the following:

(1) The governor.
(2) Any member of the general assembly.

As added by P.L.1-1995, SEC.23.

14-30-3-19

Sec. 19. The commission may do the following:

(1) Provide a forum for the discussion, study, and evaluation of water resource issues of common concern in the basin.
(2) Facilitate and foster cooperative planning and coordinated management of the basin's water and related land resources.
(3) Develop positions on major water resource issues and serve as an advocate of the basin's interests before Congress and federal, state, and local governmental agencies.
(4) Develop plans to improve water quality in the basin.
(5) Publicize, advertise, and distribute reports on the commission's purposes, objectives, studies, and findings.
(6) When requested, make recommendations in matters related to the commission's functions and objectives to political subdivisions in the basin and to other public and private agencies.
(7) When requested, act as a coordinating agency for programs and activities of other public and private agencies that are related to the commission's objectives.

As added by P.L.1-1995, SEC.23.

14-30-3-20

Sec. 20. The commission may invite the governor, government officials, or other individuals from the St. Joseph River basin in Michigan to do the following:

(1) Attend the commission's meetings.
(2) Advise the commission upon the commission's request.

As added by P.L.1-1995, SEC.23.

14-30-3-21

Sec. 21. The commission shall do the following:

(1) Explore the desirability of entering into an interstate compact with Michigan to improve water quality in the basin.
(2) Make recommendations on the content of a compact.

As added by P.L.1-1995, SEC.23.

14-30-3-22

Sec. 22. (a) The commission may receive grants and appropriations from the following:

(1) Federal, state, and local governments.
(2) Individuals, foundations, and other organizations.

(b) The commission may enter into agreements or contracts regarding the acceptance or use of these grants and appropriations for the purpose of carrying out the commission's activities under this chapter.
As added by P.L.1-1995, SEC.23.

14-30-3-23

Sec. 23. The commission shall do the following:

(1) Prepare and adopt an annual budget.
(2) Submit the budget to the executive of each participating county.
(3) Make the budget available to each agency appropriating money to the commission.

As added by P.L.1-1995, SEC.23.

14-30-3-24

Sec. 24. (a) The participating counties may budget, appropriate, and disburse money to carry out the purposes of the commission under this chapter.

(b) The appropriation from the participating counties that is needed for all or part of the commission's budget shall be apportioned among the participating counties in direct relationship to the amount of land area in each participating county certified under section 7 of this chapter.

(c) The apportionment that is needed from each participating county shall be presented to the county executive at the same time that budgets are presented by county officers.

As added by P.L.1-1995, SEC.23.

14-30-3-25

Sec. 25. (a) The commission shall make expenditures only as budgeted. However, the commission may revise the budget at any time to authorize unbudgeted expenditures.

(b) Any appropriated amounts remaining unexpended or unencumbered at the end of the fiscal year become part of a nonreverting cumulative fund to be held in the name of the commission. The commission may authorize unbudgeted expenditures from this fund.

(c) The commission is responsible for the safekeeping and deposit of money the commission receives under this chapter. The state board of accounts shall:

(1) prescribe the methods and forms for keeping; and

(2) periodically audit;

the accounts, records, and books of the commission.

(d) The treasurer of the commission may receive, disburse, and handle money belonging to the commission, subject to the following:

(1) Applicable statutes.

(2) Procedures established by the commission.

As added by P.L.1-1995, SEC.23.

Chapter 4. Upper Wabash River Basin Commission

14-30-4

14-30-4-1

Sec. 1. As used in this chapter, "basin" refers to the upper Wabash River basin.

As added by P.L.35-2001, SEC.7.

14-30-4-2

Sec. 2. As used in this chapter, "commission" refers to the Upper Wabash River basin commission established by this chapter.

As added by P.L.35-2001, SEC.7.

14-30-4-3

Sec. 3. As used in this chapter, "participating county" refers to a county that joins the commission under section 7 of this chapter.

As added by P.L.35-2001, SEC.7.

14-30-4-4

Sec. 4. As used in this chapter, "plan" refers to a plan described in section 13(1) of this chapter.

As added by P.L.35-2001, SEC.7.

14-30-4-5

Sec. 5. As used in this chapter, "upper Wabash River basin" means the area located in Adams County, Huntington County, Jay County, or Wells County that is drained by the Wabash River, including the tributaries of the Wabash River.

As added by P.L.35-2001, SEC.7.

14-30-4-6

Sec. 6. The upper Wabash River basin commission is established as a separate municipal corporation.
As added by P.L.35-2001, SEC.7. Amended by P.L.2-2005, SEC.56.

14-30-4-7

Sec. 7. Subject to section 6(b) of this chapter, the executive of a county that includes territory in the upper Wabash River basin may do the following:

(1) Elect to participate in the commission by designating the county as a participating county.
(2) Revoke the designation.

As added by P.L.35-2001, SEC.7.

14-30-4-8

Sec. 8. The following serve as voting members of the commission:

(1) The three (3) county commissioners from each participating county.
(2) The chairman of a soil and water conservation district for each participating county that:
  (A) is subject to IC 14-32;
  (B) includes territory in a participating county; and
  (C) includes territory in the basin.
(3) The county surveyor of each participating county.

As added by P.L.35-2001, SEC.7.

14-30-4-9

Sec. 9. (a) A member of the commission may:

(1) designate another individual to perform the duties of the member on the commission; and
(2) revoke the designation.

(b) Any designation or a revocation of a designation under this section must be filed with the commission to be effective.
As added by P.L.35-2001, SEC.7.

14-30-4-10

Sec. 10. (a) The commission shall annually elect from among the voting members the following officers:

(1) A chairperson.
(2) A vice chairperson.
(3) A secretary.
(4) A treasurer.

(b) The officers elected under subsection (a) shall be elected and shall perform the duties specified in the commission's bylaws.

(c) The commission may establish other offices and determine the means of filling the offices.
As added by P.L.35-2001, SEC.7.

14-30-4-11

Sec. 11. (a) Each member of the commission is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. Money paid under this section may be paid only from the money available to the commission.

(b) A county may pay members of the commission the salary per diem provided by IC 4-10-11-2.1(b) for the performance of the member's duties on the commission.
As added by P.L.35-2001, SEC.7.

14-30-4-12

Sec. 12. (a) The commission may do the following:

(1) Sue and be sued.
(2) Manage the commission's internal affairs.

(3) Employ staff.
(4) Enter into contracts to implement a cooperative agreement described in section 13 of this chapter.
(5) Exercise the powers of a political subdivision specified in a cooperative agreement described in section 13 of this chapter.
(b) This section does not exempt the commission from any statute.
As added by P.L.35-2001, SEC.7.

14-30-4-13

Sec. 13. A political subdivision in a participating county may under IC 36-1-7 enter into a cooperative agreement with the commission and at least one (1) other legal entity to authorize the commission to:
(1) develop a plan to control flooding and improve drainage in that part of the basin that is described in the cooperative agreement;
(2) organize and coordinate the installation of trails along the upper Wabash River basin through partnerships with other organizations; or
(3) develop and promote good soil and water conservation practices and procedures, including erosion control and bank stabilization.
As added by P.L.35-2001, SEC.7.

14-30-4-14

Sec. 14. In developing the plan, the commission shall determine the best method and manner of establishing flood control, giving consideration to the following:
(1) The reservoir method.
(2) The channel improvement method.
(3) The levee method.
(4) Flood plain regulation.
(5) All nonstructural methods.
As added by P.L.35-2001, SEC.7.

14-30-4-15

Sec. 15. (a) The commission shall give the public an opportunity to participate in the development of the plan by holding public hearings at which public testimony is heard and by accepting written recommendations from the public.
(b) Before the plan is implemented by a political subdivision, the plan must be approved by the department of natural resources in accordance with IC 14-25 through IC 14-29.
As added by P.L.35-2001, SEC.7.

14-30-4-16

Sec. 16. (a) The commission shall prepare an annual budget for the commission's operation and other expenditures under IC 6-1.1-17. The annual budget is subject to review and modification by the county board of tax adjustment of any participating county.
(b) The commission is not eligible for funding through the Wabash River heritage corridor commission established by IC 14-13-6-6.
As added by P.L.35-2001, SEC.7. Amended by P.L.224-2007, SEC.105; P.L.146-2008, SEC.427.

14-30-4-17

Sec. 17. The commission may adopt rules under IC 4-22-2 to require that increased water runoff resulting from new construction be impounded on the construction site.
As added by P.L.35-2001, SEC.7.

14-30-4-18

Sec. 18. The commission may appoint advisory committees consisting of individuals whose experience, training, or interest in the upper Wabash River basin enables the committees to assist the commission. A member of an advisory committee is not entitled to compensation for the member's services.
As added by P.L.35-2001, SEC.7.

14-30-4-19

Sec. 19. (a) The commission, board of directors, employees, or authorized representatives of the commission acting under this chapter may:

(1) enter the land lying within the one hundred (100) year flood plain of any watercourse; and

(2) enter nonflood plain land to gain access to the flood plain land;

to investigate, examine, survey, or investigate suspected violations of the Indiana flood control laws.

(b) The commission must give sixty (60) days written notice to:

(1) an affected landowner;

(2) a contract purchaser; or

(3) for a municipality, the executive of the municipality;

before exercising the right of entry granted in this section. The notice must state the purpose of the entry and that there is a right of appeal under this section.

(c) An affected landowner may, within the sixty (60) day notice period under subsection (b), appeal the proposed necessity for entry to a court in the county in which the property is located. If an appeal is made, the commission may not exercise the right of entry until a final decision is made by the court.

(d) A person acting under this section must use due care to avoid damage to crops, fences, buildings, or other structures.

As added by P.L.35-2001, SEC.7.

Chapter 1. Legislative Policy

14-32-1

14-32-1-1

Sec. 1. The following are declared as a matter of legislative determination:

(1) That the land and water resources of Indiana are among the basic assets of Indiana and that the proper management of these resources is necessary to protect and promote the health, safety, and general welfare of the people of Indiana.

(2) That improper land use practices and failure to control and use rainfall and runoff water cause and contribute to deterioration and waste of these resources of Indiana.

(3) That the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors excessive runoff and erosion, with the following results:

(A) The topsoil is being blown and washed out of the fields and pastures.

(B) There has been an accelerated washing of sloping fields.

(C) These processes of erosion by wind and water speed up with removal of the topsoil, exposing the less absorptive, less protective, less productive, and more erosive subsoil.

(4) That valuable water resources are being lost causing damages in watersheds.

(5) That failure by a land occupier to properly manage the soil and water causes a washing and blowing of these resources onto other land and makes the conservation of these resources on the other land more difficult.

(6) That the consequences of soil erosion and failure to control and use rainfall and runoff water are the following:

(A) The silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors.

(B) The loss of fertile soil material.

(C) The piling up of soil on lower slopes and the deposit over alluvial plains.

(D) The reduction in productivity or outright ruin of bottom land by flooding and overwash of poor subsoil material, sand, and gravel swept out of the hills.

(E) The deterioration of soil and the soil's fertility, deterioration of crops grown, and reduction in crop yields.

(F) The loss of soil and water that causes destruction of food and cover for wildlife.

(G) A blowing and washing of soil into streams and lakes that silts over spawning beds and destroys water plants, diminishing the food supply of fish.

(H) A diminishing of the underground water reserve and loss of surplus rainfall runoff causing water

shortages, intensifying periods of drought, and causing crop failures.

(I) An increase in the speed and volume of rainfall runoff, causing severe and increasing floods.

(J) Economic hardship for those attempting to farm land that is eroded or subject to frequent flooding.

(K) Damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms.

(L) Losses in navigation, hydroelectric power, municipal water supply, recreational water development, irrigation developments, farming, and grazing.

(7) That to conserve soil and water resources, control and prevent soil erosion, protect water quality, reduce flood damage, and further the conservation development, use, and disposal of water, it is necessary that:

(A) land use practices contributing to soil and water wastage, water quality impairment, and soil erosion be discouraged and discontinued; and

(B) appropriate soil and water conserving land use practices and works of improvement for flood prevention or the conservation development, use, and disposal of water be adopted and carried out.

(8) That among the procedures necessary for widespread adoption are the following:

(A) Carrying on of engineering operations such as the construction of flood preventing reservoirs and channels, terraces, terrace outlets, check dams, dikes, ponds, ditches, and similar operations.

(B) The use of soil protecting agronomic practices, such as strip cropping, contour cropping, and conservation tillage.

(C) Land irrigation.

(D) Seeding and planting of sloping, abandoned, or eroded land to water-conserving and erosion-preventing plants, trees, and grasses.

(E) Forestation and reforestation.

(F) Rotation of crops.

(G) Soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops.

(H) Retardation of runoff by impounding the runoff water behind structures, by increasing the absorption of rainfall, and by retiring from cultivation all steep, highly erosive areas and areas already badly eroded.

(I) The use of water quality protection practices, including nutrient and pesticide management on all lands.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.7; P.L.175-2006, SEC.2.

14-32-1-2

Sec. 2. In light of the determination set forth in section 1 of this chapter, it is the policy of the general assembly to provide for the proper management of soil and water resources, the control and prevention of soil erosion, the prevention of flood water and sediment damage, the prevention of water quality impairment, and the conservation, development, use, and disposal of water in the watersheds of Indiana to accomplish the following:

(1) Conserve the natural resources, including wildlife.

(2) Control floods.

(3) Prevent impairment of dams and reservoirs.

(4) Assist in maintaining the navigability of rivers and harbors.

(5) Protect the water quality of lakes and streams.

(6) Protect the tax base.

(7) Protect public land.

(8) Protect and promote the health, safety, and general welfare of the people of Indiana.

(9) Protect a high quality water resource.

(10) Protect and improve soil quality.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.8; P.L.175-2006, SEC.3; P.L.129-2011, SEC.1.

Chapter 2. Soil Conservation Board

14-32-2

14-32-2-1

Sec. 1. The soil conservation board is established within the Indiana state department of agriculture established by IC 15-11-2-1 as the policy making body for soil and water conservation.

As added by P.L.1-1995, SEC.25. Amended by P.L.1-2006, SEC.218; P.L.175-2006, SEC.4; P.L.2-2008, SEC.33;

P.L.120-2008, SEC.11.

14-32-2-2

Sec. 2. The board consists of the following seven (7) members:

(1) Four (4) members who must be land occupiers with farming interests, appointed by the governor.

(2) Three (3) members who must be land occupiers with nonfarming interests, appointed by the governor.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.9; P.L.1-2006, SEC.219; P.L.175-2006, SEC.5.

14-32-2-3

Sec. 3. (a) A majority of the seven (7) appointed members of the board must have experience as district supervisors.

(b) In making appointments to the board, the governor may invite and consider the recommendations of the following:

(1) The Purdue University cooperative extension service.

(2) The Indiana state department of agriculture.

(3) The Indiana Association of Soil and Water Conservation Districts.

(c) All appointments to the board shall be made without regard to political affiliation.

(d) The members appointed to the board under section 2(1) and 2(2) of this chapter must be residents of at least four (4) different geographic regions of Indiana.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.10; P.L.1-2006, SEC.220; P.L.175-2006, SEC.6; P.L.120-2008, SEC.12.

14-32-2-4

Sec. 4. The term of an appointed member of the board is four (4) years. An appointed member shall serve until a successor is appointed and has qualified. The terms shall be staggered so that at least three (3) members are appointed every two (2) years.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.11; P.L.175-2006, SEC.7.

14-32-2-5

Sec. 5. The appointed members of the board are entitled to the following:

(1) Reimbursement for travel, lodging, meals, and other expenses as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(2) The minimum salary per diem as provided in IC 4-10-11-2.1(b) for each day that the members are engaged in the official business of the board.

As added by P.L.1-1995, SEC.25.

14-32-2-6 Repealed

14-32-2-6 (Repealed by P.L.136-1997, SEC.43.)

14-32-2-7

Sec. 7. (a) The governor may appoint advisory members from other organizations that promote conservation, including local, state, and federal agencies upon the recommendation of the board.

(b) The governor shall appoint members to the advisory board that represent the following:

(1) The Indiana state department of agriculture.

(2) The department of natural resources.

(3) The department of environmental management.

(4) The Purdue University cooperative extension service.

(5) The Indiana Association of Soil and Water Conservation Districts.

(6) The Farm Service Agency of the United States Department of Agriculture.

(7) The Natural Resources Conservation Service of the United States Department of Agriculture.

As added by P.L.1-1995, SEC.25. Amended by P.L.175-2006, SEC.8; P.L.120-2008, SEC.13.

14-32-2-8

Sec. 8. (a) The members of the board shall elect a member as the chairman of the board.

(b) The director of the division of soil conservation established within the Indiana state department of agriculture

by IC 15-11-4-1 is the secretary of the board.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.12; P.L.1-2006, SEC.221; P.L.2-2008, SEC.34; P.L.120-2008, SEC.14.

14-32-2-9

Sec. 9. A majority of the members of the board constitutes a quorum. The concurrence of a majority of the members is required for the board to take any action.
As added by P.L.1-1995, SEC.25.

14-32-2-10

Sec. 10. The board may delegate the powers and duties that the board considers proper to:

(1) the chairman of the board;
(2) any of the members of the board; or
(3) the division of soil conservation.

As added by P.L.1-1995, SEC.25.

14-32-2-11

Sec. 11. (a) The board may call upon the attorney general for the legal services that the board requires.

(b) For the purpose of carrying out any of the board's functions, the supervising officers of a state agency or of a state educational institution shall, upon request of the board, do the following:

(1) Assign or detail to the board any personnel of the agency or educational institution, taking into account available appropriations and the needs of the entity to which the request is directed.
(2) Make the special reports, surveys, or studies that the board requests.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.13.

14-32-2-12

Sec. 12. The board shall do the following:

(1) Provide for the execution of surety bonds for all board employees and officers who are entrusted with money or property.
(2) Provide for the keeping of a full and accurate record of all board proceedings and of all resolutions and rules the board issues or adopts. The accounts of receipts and disbursements are subject to examination by the state board of accounts.
(3) Offer appropriate assistance to the supervisors of soil and water conservation districts to carry out district powers and programs.
(4) Keep the supervisors of districts informed of the activities and experience of all other districts and facilitate cooperation and an interchange of advice and experience among districts.
(5) Coordinate the programs of the districts as far as this may be done by advice and consultation.
(6) Secure the cooperation and assistance of the United States and state agencies in the work of the districts. However, this subdivision does not authorize either of the following:
    (A) The transfer or control of authority over districts to a federal agency.
    (B) The transfer of title of land or control to the United States.
(7) Disseminate information throughout Indiana concerning the activities and programs of the districts and encourage the formation of districts in areas where organization is desirable.
(8) Coordinate the erosion and sediment part of 33 U.S.C. 1288 (Public Law 92-500, Section 208) and other erosion and sediment reduction programs that affect water quality, in cooperation with state and federal agencies and through districts as provided under IC 14-32-5-1.
(9) Develop a statewide regulatory program to be initiated after all reasonable voluntary approaches to erosion and sediment reduction have been exhausted.
(10) Conduct an inventory of conservation needs for planning purposes and to inform the general assembly.
(11) Hold meetings in locations throughout Indiana.
(12) Adopt rules under IC 4-22-2 to implement this article.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.14; P.L.175-2006, SEC.9.

14-32-2-13

Sec. 13. The board may perform the acts and hold the public hearings that are necessary for the execution of the board's functions under this article.
As added by P.L.1-1995, SEC.25.

Chapter 4. Supervisors

14-32-4

14-32-4-1

Sec. 1. (a) The governing body of a district consists of five (5) supervisors as follows:
(1) Two (2) who are appointed.
(2) Three (3) who are elected.
(b) To hold the position of elected supervisor, an individual:
(1) must be an occupier of a tract of land that is located within the district;
(2) must maintain the individual's permanent residence within the district; and
(3) must be qualified by training and experience to perform the duties that this article imposes on supervisors.
(c) To hold the position of appointed supervisor, an individual:
(1) must be of voting age;
(2) must maintain the individual's permanent residence within the district; and
(3) must be qualified by training and experience to perform the duties that this article imposes on supervisors.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.15; P.L.175-2006, SEC.10; P.L.129-2011, SEC.2.

14-32-4-2 Repealed

14-32-4-2 (Repealed by P.L.136-1997, SEC.43.)

14-32-4-3 Repealed

14-32-4-3 (Repealed by P.L.136-1997, SEC.43.)

14-32-4-4 Repealed

14-32-4-4 (Repealed by P.L.136-1997, SEC.43.)

14-32-4-5 Repealed

14-32-4-5 (Repealed by P.L.136-1997, SEC.43.)

14-32-4-6

Sec. 6. (a) During the first quarter of each calendar year, each district shall hold an annual meeting of all land occupiers in the district. The meeting shall be held on a date designated by the supervisors. The supervisors shall give due notice of the time and place of the meeting.
(b) At the meeting:
(1) the supervisors shall make a full and an accurate report of the activities and financial affairs of the district since the previous annual meeting; and
(2) an election shall be conducted by the land occupiers present to elect one (1) supervisor to a three (3) year term of office beginning on the date of the meeting.
(c) The supervisors shall provide a copy of the annual report presented at the meeting to the board and, upon request, to:
(1) other cooperating agencies;
(2) residents of the district; and
(3) any other individual or entity that requests a copy of the annual report.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.16; P.L.129-2011, SEC.3.

14-32-4-7

Sec. 7. (a) The election held at the annual meeting of land occupiers shall be conducted by an election committee appointed under this section.
(b) In October, the district chairman shall do the following:

(1) Appoint an election committee made up of a supervisor as chairman and two (2) interested citizens.
(2) Submit the names of the committee members to the board by November 1.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.17.

14-32-4-8

Sec. 8. The election committee appointed under section 7 of this chapter shall do the following:
(1) Select qualified individuals as prospective nominees to fill any vacancies that exist among the elected supervisors of the district.
(2) Contact and ascertain the willingness and ability of each individual to serve if elected.
(3) Submit the list of nominees with the qualifications for certification and printing of a sample ballot to the board by December 1.
(4) Place the names of the prospective nominees selected under subdivisions (1) and (2) in nomination at the meeting and provide an opportunity for additional nominations to be made from the floor.
(5) After nominations are closed:
(A) if only one (1) candidate is nominated, allow for the election of the sole candidate by the land occupiers by a show of hands; and
(B) if more than one (1) candidate is nominated, distribute a ballot to each land occupier present at the meeting.
(6) If a ballot is distributed, collect and count the ballots after each land occupier present at the meeting has had an opportunity to vote.
(7) Report the results of the election to the chairman.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.18; P.L.175-2006, SEC.11; P.L.129-2011, SEC.4.

14-32-4-9

Sec. 9. (a) If a tie vote occurs in an election held at an annual meeting under this chapter, voting shall continue until the tie is broken.
(b) The individual receiving the highest number of votes is elected a supervisor for the three (3) year term. If there is also a vacancy to fill an unexpired term of an elected supervisor, the individual receiving the second highest number of votes is elected to fill the unexpired term.
(c) The chairman shall announce the individuals who have been elected and report the election results to the board.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.19.

14-32-4-10

Sec. 10. (a) The term of an appointed supervisor is three (3) years.
(b) Before the term of an appointed supervisor expires, the supervisor's position shall be filled as follows:
(1) Not later than November 1, the district supervisors shall recommend to the board in writing one (1) or more individuals qualified to fill the position.
(2) At the first board meeting held after the board receives a recommendation under subdivision (1), the board shall act upon the recommendation.
(3) The board shall notify the supervisors of the appointment made by the board.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.20.

14-32-4-10.5

Sec. 10.5. (a) The board may appoint associate supervisors to assist in performing duties in each district.
(b) Associate supervisors are nonvoting members of the board and may not hold officer positions on the board.
(c) Associate supervisors may be reimbursed for approved expenses but are not entitled to per diem.
As added by P.L.175-2006, SEC.12.

14-32-4-11

Sec. 11. Newly elected and appointed supervisors shall assume the duties of office upon signing an oath of office at the conclusion of the annual meeting of the district.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.21.

14-32-4-12

Sec. 12. A supervisor holds office until the supervisor's successor has been elected or appointed and qualified.
As added by P.L.1-1995, SEC.25.

14-32-4-13

Sec. 13. (a) If a vacancy in the position of elected supervisor occurs during the district's operating year:

(1) the district supervisors shall, within thirty (30) days after the vacancy occurs, recommend to the board in writing one (1) or more individuals qualified to fill the position;

(2) at the first board meeting held after the board receives a recommendation under subdivision (1), the board shall act upon the recommendation and appoint an individual to temporarily fill the vacancy; and

(3) the board shall notify the supervisors of the appointment made by the board.

(b) The individual appointed to temporarily fill a vacancy under subsection (a) shall serve until the district's next annual meeting.

(c) At the annual meeting immediately following the appointment of an individual to temporarily fill a vacant elected supervisor's position, the position shall be filled through the regular election procedure set forth in sections 6 through 9 of this chapter.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.22.

14-32-4-13.5

Sec. 13.5. (a) If a vacancy in the position of appointed supervisor occurs during a district's operating year:

(1) the district supervisors shall, within thirty (30) days after the vacancy occurs, recommend to the board in writing one (1) or more individuals qualified to fill the position;

(2) at the first board meeting held after the board receives a recommendation under subdivision (1), the board shall act upon the recommendation; and

(3) the board shall notify the supervisors of the appointment made by the board.

(b) The individual appointed to fill a vacant appointed supervisor position under subsection (a) shall serve the unexpired term of the individual's predecessor.

(c) At the expiration of the term of a supervisor appointed under this section, the position of appointed supervisor shall be filled through the regular appointment procedure set forth in section 10 of this chapter.
As added by P.L.136-1997, SEC.23.

14-32-4-14

Sec. 14. The supervisors shall designate a chairman and may change the designation.
As added by P.L.1-1995, SEC.25.

14-32-4-15

Sec. 15. The board may, upon notice and a hearing, remove a supervisor for neglect of duty or malfeasance in office, but for no other reason.
As added by P.L.1-1995, SEC.25.

14-32-4-16

Sec. 16. A majority of the supervisors constitutes a quorum and the concurrence of a majority of the supervisors is required for the determination of any matter.
As added by P.L.1-1995, SEC.25.

14-32-4-17

Sec. 17. (a) A supervisor may be paid a salary per diem for any part of a day that the supervisor is engaged in the official business of the district in any amount not to exceed the salary per diem that may be paid by the state under IC 4-10-11-2.1(b).

(b) A supervisor may also receive for travel, lodging, meals, and other expenses any amount not to exceed the amount a county employee of the county in which the supervisor resides is entitled to receive under the policies and procedures established by the county.

(c) All amounts under this section shall be fixed by the supervisors of each district and paid from money of the district.

As added by P.L.1-1995, SEC.25.

14-32-4-18

Sec. 18. (a) The supervisors of a district:

(1) may employ necessary personnel, subject to IC 36-2-5-3 and IC 36-2-5-7; and

(2) shall:

(A) determine the qualifications and duties of the personnel; and

(B) provide supervision to personnel.

(b) In any district except a district containing a consolidated city, an employee of the district:

(1) is considered to be an employee of the county in which the employee works, except as provided in subsection (c); and

(2) is eligible for and shall be included in all fringe benefit programs provided for employees of the county.

(c) An employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee's position is not considered an employee of the county.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.24; P.L.129-2011, SEC.5.

14-32-4-19

Sec. 19. (a) The supervisors and employees of a district are subject to IC 34-13-3.

(b) The supervisors of a district may employ their own counsel and legal staff.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.25; P.L.1-1998, SEC.111.

14-32-4-20

Sec. 20. The supervisors may delegate the powers and duties that the supervisors consider proper to any of the following:

(1) The chairman.

(2) Any number of supervisors.

(3) Any number of agents or employees.

As added by P.L.1-1995, SEC.25.

14-32-4-21

Sec. 21. The supervisors of a district shall furnish to the board, upon request, copies of rules, contracts, forms, and other information concerning the activities of the supervisors that the board requires in the performance of duties under this article.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.26.

14-32-4-22

Sec. 22. The supervisors of a district shall do the following:

(1) Provide for the execution of surety bonds for all district employees and officers who are entrusted with money or property.

(2) Provide for the keeping of a full and accurate record of all district proceedings and of all district resolutions and orders issued or adopted.

(3) Provide for an annual audit of the accounts of receipts and disbursements of the district.

(4) Provide a copy of each annual financial statement of the district to the board not later than March 31.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.27; P.L.175-2006, SEC.13.

14-32-4-23

Sec. 23. The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors on all questions of program and policy that affect the property, water supply, or other interests of the municipality or county.

As added by P.L.1-1995, SEC.25.

14-32-4-24

Sec. 24. (a) Claims against a district must be allowed and approved by the governing body of the district before payment by the district's fiscal officer. However, the governing body may, subject to review and approval at the

governing body's next regular meeting, authorize the following:

(1) Payroll.

(2) Insurance premiums.

(3) Utility payments.

(4) Bulk mailing fees.

(5) Maintenance agreements and service agreements.

(6) Lease agreements and rental agreements.

(7) Expenses that must be paid because of emergency circumstances.

(8) Recurring or periodic expenses specifically authorized by a resolution adopted at a governing body meeting.

(b) Each payment under this section must be certified by the district's fiscal officer. The certification must be on a form prescribed by the state board of accounts.

As added by P.L.52-2010, SEC.1.

Chapter 5. Powers and Duties of Districts

14-32-5

14-32-5-1

Sec. 1. (a) A district constitutes a governmental subdivision of the state and a public body corporate and politic exercising public powers.

(b) A district may do the following:

(1) Carry out soil erosion and water runoff preventive and control measures within the district, including engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in IC 14-32-1-1(7) and IC 14-32-1-1(8), on the following:

(A) Land owned or controlled by the state with the consent and cooperation of the agency administering and having jurisdiction of the land.

(B) Any other land within the district upon obtaining the consent of the occupier of the land or the necessary rights or interests in the land.

(2) Construct, improve, operate, and maintain the structures that are necessary or convenient for the performance of any of the operations authorized in this article.

(3) Cooperate or enter into agreements with, and within the limits of appropriations made available to the district by law to furnish financial or other aid to, a federal, state, or other agency or an occupier of land within the district in the carrying on of conservation operations within the district, subject to the conditions that the supervisors consider necessary to advance the purpose of this article.

(4) Obtain options upon and acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, real or personal property or rights or interests in property.

(5) Maintain, administer, and improve property acquired, receive income from the property, and expend the income in carrying out this article.

(6) Sell, lease, or otherwise dispose of property or interests in property in furtherance of this article.

(7) Make available to land occupiers within the district, on terms that the district prescribes:

(A) agricultural and engineering machinery and equipment;

(B) fertilizer;

(C) seeds;

(D) seedlings;

(E) other material or equipment; and

(F) services from the district;

that will assist in conserving the soil and water resources of the land occupiers.

(8) Develop or participate in the development of comprehensive plans for the proper management of soil and water resources within the district that specify the acts, procedures, performances, and avoidances necessary or desirable for the effectuation of the plans.

(9) Publish plans and information developed under subdivision (8) and bring the plans and information to the attention of land occupiers within the district.

(10) Take over, with the consent of the United States or the state, by purchase, lease, or otherwise, and

administer any soil and water conservation, erosion control, water quality protection, or flood prevention project of the entity located within the district's boundaries.
(11) Manage, as agent of the United States or the state, any soil and water conservation, erosion control, water quality protection, flood prevention, or outdoor recreation project within the district's boundaries.
(12) Act as agent for the United States or the state in connection with the acquisition, construction, operation, or administration of any soil and water conservation, erosion control, water quality protection, flood prevention, or outdoor recreation project within the district's boundaries.
(13) Accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States and use or expend the services, materials, or other contributions in carrying on the district's operations.
(14) Sue and be sued in the name of the district.
(15) Have perpetual succession unless terminated as provided in this article.
(16) Make and execute contracts and other instruments necessary or convenient to the exercise of the district's powers.
(17) Adopt rules and regulations consistent with this article to carry into effect the purposes and powers of this article.
(18) Require an occupier of land not owned or controlled by the state, as a condition to extending benefits under this article to or the performance of work upon the land, to do either or both of the following:
(A) Make contributions in money, services, materials, or otherwise to an operation conferring benefits.
(B) Enter into agreements or covenants concerning the use and treatment of the land that will tend to:
(i) prevent or control soil erosion;
(ii) achieve water conservation and water quality protection; and
(iii) reduce flooding;
on the land.
(19) Cooperate with the state in the following:
(A) Conducting surveys, investigations, and research relating to the character of soil erosion and water losses and the preventive and control measures needed.
(B) Publishing the results of the surveys, investigations, or research.
(C) Disseminating information concerning the preventive and control measures.
(D) The management of watersheds.
(20) Cooperate with the state in conducting, within the district, soil and water conservation, erosion control, water quality protection, and flood prevention demonstration projects:
(A) on land owned or controlled by the state with the agency administering and having jurisdiction of the land; and
(B) on any other land upon obtaining the consent of the occupier of the land or the necessary rights or interests in the land.
(21) Serve as the management agency for:
(A) the erosion and sediment part of 33 U.S.C. 1288 (P.L. 92-500, section 208); and
(B) other erosion and sediment reduction programs that affect water quality in each county.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.28; P.L.175-2006, SEC.14.

14-32-5-2

Sec. 2. A provision concerning the acquisition, operation, or disposition of property by other public bodies does not apply to a district unless the provision specifically states that the provision applies.
As added by P.L.1-1995, SEC.25.

14-32-5-3

Sec. 3. If:
(1) a district disposes of real property or awards a contract for the procurement of property by acceptance of bids, proposals, or quotations; and
(2) a bid, proposal, or quotation is submitted by a trust (as defined in IC 30-4-1-1(a));
the bid, proposal, or quotation submitted by the trust must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.29.

14-32-5-3.5

Sec. 3.5. (a) In an action or proceeding that:

(1) relates to; or

(2) involves the validity or enforcement of;

a contract, proceeding, or action of a district, proof of the issuance of a certificate of organization to the district by the secretary of state creates a rebuttable presumption of the establishment of the district under this article or IC 13-3-1 (before its repeal).

(b) A copy of a certificate of organization that was issued to a district and certified by the secretary of state is:

(1) admissible in evidence in an action or proceeding referred to in subsection (a); and

(2) proof of the filing and contents of the certificate.

As added by P.L.136-1997, SEC.30.

14-32-5-4

Sec. 4. (a) As used in this section, "landfill" means a facility where solid waste is to be disposed of through placement on or beneath the surface of the ground. However, the term does not include any of the following:

(1) A land application operation regulated under 327 IAC 6.

(2) A surface impoundment.

(3) An injection well.

(4) A facility for the disposal of solid waste other than sludge from a municipal wastewater treatment plant that is:

(A) generated at the site of the facility; or

(B) generated by the owner or operator of the facility.

(5) An operation permitted under IC 14-34.

(b) As used in this section, "underground injection" means the subsurface emplacement of fluids through:

(1) a bored, drilled, or driven shaft; or

(2) a dug hole, the depth of which is greater than the hole's largest surface dimension.

(c) A district shall inspect every landfill located within the boundaries of the district for compliance with rules adopted under IC 13-18 or IC 13-19 concerning erosion and sediment control. Each landfill shall be inspected under this section at least two (2) times each calendar year as follows:

(1) One (1) time before July 1.

(2) One (1) time after June 30 and before December 31.

(d) Not later than ten (10) days after an inspection of a landfill under this section, the individual who conducted the inspection on behalf of the district shall prepare a written report on the results of the inspection and send the report to the following:

(1) The executive of the county.

(2) The commissioner of the department of environmental management.

(3) The director of the division of soil conservation established within the Indiana state department of agriculture by IC 15-11-4-1.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.31; P.L.1-2006, SEC.222; P.L.2-2008, SEC.35; P.L.120-2008, SEC.15.

14-32-5-5

Sec. 5. A district may not do any of the following:

(1) Exercise the right of eminent domain.

(2) Incur indebtedness beyond available money.

(3) Issue bonds.

(4) Take contributions by exactions or persuasions. However, the district may accept voluntary contributions from any source if the following conditions are met:

(A) The donations are offered for the sole and exclusive purpose of promoting soil and water conservation within the district.

(B) The district satisfactorily guarantees to the donors the faithful use of the donations for that purpose.

(5) Engage in:

(A) the marketing of farm products; or

(B) the buying and selling of farm supplies;

other than those products or supplies used or needed directly or indirectly in soil and water conservation work.

(6) Engage in agricultural research or agricultural extension teaching except in cooperation with Purdue University.

(7) Levy taxes.

(8) Make or levy benefit assessments or any other kind of assessments.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.32.

14-32-5-6

Sec. 6. Districts organized under this article or IC 13-3-1 (before its repeal) may cooperate with each other in carrying on the work of the districts. However, this section does not permit the transfer of authority or powers from one (1) district to another.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.33.

14-32-5-7

Sec. 7. (a) An:

(1) agency of the state; or

(2) county or other governmental subdivision of the state;

that has jurisdiction over or is charged with the administration of publicly owned land lying within the boundaries of a district shall cooperate to the fullest extent with the district to effect programs and operations undertaken by the district under this article.

(b) The district shall be given free access to enter and perform work upon the publicly owned land referred to in subsection (a).

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.34.

14-32-5-8

Sec. 8. The fiscal body of each county that contains a district in whole or in part may appropriate money for the use of the district serving the county from which the appropriation is to be made.

As added by P.L.1-1995, SEC.25.

Chapter 6.5. Changing the Boundaries of a District or Dissolving a District

14-32-6.5

14-32-6.5-1

Sec. 1. (a) Land occupiers of a district may file a petition with the board requesting either of the following:

(1) That the boundaries of the district be changed to encompass territory described in the petition.

(2) That the district cease to operate and be dissolved.

(b) A petition filed under this section must be signed by at least twenty-five (25) land occupiers whose tracts of land are located within the boundaries of the district referred to in the petition.

As added by P.L.136-1997, SEC.35.

14-32-6.5-2

Sec. 2. In the case of a petition filed under section 1(a)(1) of this chapter to change the boundaries of a district, the following conditions apply:

(1) The territory proposed for inclusion in the reconfigured district may consist of two (2) or more separate tracts, and the tracts need not be contiguous.

(2) The petition must include a generally accurate description of the territory proposed for inclusion in the reconfigured district, but the territory need not be defined by metes and bounds or by legal subdivisions.

As added by P.L.136-1997, SEC.35.

14-32-6.5-3

Sec. 3. (a) If:

(1) a petition is filed under section 1(a)(1) of this chapter to change the boundaries of a district; and

(2) the territory proposed for inclusion in the reconfigured district includes all or part of the territory of one (1)

or more existing districts;

the petition must meet the requirement set forth in subsection (b), subsection (c), or subsection (d).

(b) If the territory proposed for inclusion includes only a portion of the existing district, a petition described in subsection (a) must be signed by at least twenty-five (25) land occupiers whose tracts of land are located within the territory, except as provided in subsection (d).

(c) If the territory proposed for inclusion includes all or part of two (2) or more existing districts, the petition must be signed by at least twenty-five (25) land occupiers whose tracts of land are located within the part of each existing district that is proposed for inclusion, except as provided in subsection (d).

(d) If there are fewer than fifty (50) land occupiers whose tracts of land are located in:

(1) a territory referred to in subsection (b); or

(2) a part of a district referred to in subsection (c);

the petition must be signed by a majority of the land occupiers whose tracts of land are located within the territory or part of a district.

(e) The signature requirements of this section are in addition to the signature requirement imposed by section 1(b) of this chapter.

As added by P.L.136-1997, SEC.35.

14-32-6.5-4

Sec. 4. (a) If:

(1) a petition is filed under section 1(a)(1) of this chapter to change the boundaries of a district; and

(2) the territory proposed for inclusion in the reconfigured district includes all or part of the territory of one (1) or more other existing districts;

the petition must be accompanied by a copy of a joint resolution described in subsection (b).

(b) The resolution required by this section must be adopted by the supervisors and certified by the secretary of:

(1) the district into which the territory proposed for inclusion would be incorporated; and

(2) each district whose territory would be incorporated into the district referred to in subdivision (1).

(c) The resolution required by this section must set forth:

(1) the amount of the assets and obligations that would be transferred to the district referred to in subsection (b)(1) by each district referred to in subsection (b)(2) as part of the incorporation of territory; and

(2) the amount of the assets and obligations of the district referred to in subsection (b)(1) that would be retained by the district after the incorporation of territory.

As added by P.L.136-1997, SEC.35.

14-32-6.5-5

Sec. 5. If a petition filed under section 1 of this chapter does not meet the requirements set forth in sections 1 through 4 of this chapter, the board shall:

(1) declare the petition invalid;

(2) in writing, inform the person who filed the petition that the petition is invalid, specifying the reason or reasons for the invalidity of the petition; and

(3) return the petition to the person who filed it for the incorporation of corrections to remedy the invalidity.

As added by P.L.136-1997, SEC.35.

14-32-6.5-6

Sec. 6. (a) If a petition filed under section 1 of this chapter meets the requirements set forth in sections 1 through 4 of this chapter, the board shall do the following:

(1) Not more than sixty (60) days after the filing of the petition, give due notice that a hearing will be held concerning the petition.

(2) Pay all expenses arising from the issuance of the notice and the holding of the hearing.

(3) Conduct the hearing.

(b) The hearing held on the petition shall be open to the public. The following may testify at the hearing:

(1) A land occupier whose tract of land is located within the district or territory referred to in the petition.

(2) An individual of voting age who resides within the district or territory referred to in the petition.

(c) Testimony may be presented at the hearing concerning:

(1) the desirability and necessity, in the interest of the public welfare, of granting the petition;

(2) the validity of:
(A) the petition; and
(B) proceedings conducted on the petition under this chapter; and
(3) all questions relevant to the petition.
As added by P.L.136-1997, SEC.35.

14-32-6.5-7

Sec. 7. (a) When considering a petition to change the boundaries of a district, the board shall consider and give due weight to the following:
(1) The information presented at the hearing held under section 6 of this chapter.
(2) The attitudes toward the change in district boundaries expressed by land occupiers whose tracts of land are located within the territory proposed for inclusion within the district.
(3) The desirability and necessity of including the territory within the district, including the benefits that the land occupiers whose tracts of land are located within the territory may receive from the inclusion.
(4) The relation of the territory to:
(A) watersheds;
(B) agricultural regions; and
(C) other districts.
(5) The physical, geographical, and economic factors that are relevant, having regard to the legislative determination set forth in IC 14-32-1.
(b) When considering a petition to dissolve a district, the board shall consider and give due weight to the following:
(1) The information presented at the hearing held under section 6 of this chapter.
(2) The attitudes toward dissolution of the district expressed by land occupiers whose tracts of land are located within the district.
(3) The approximate wealth and income of the residents of the district.
(4) The probable expense of carrying on soil and water resource protection activities within the district.
(5) Other economic and social factors that are relevant, having regard to the legislative determination set forth in IC 14-32-1.
As added by P.L.136-1997, SEC.35.

14-32-6.5-8

Sec. 8. Not more than sixty (60) days after a public hearing on a petition is held under section 6 of this chapter, the board shall determine whether the petition should be denied.
As added by P.L.136-1997, SEC.35.

14-32-6.5-9

Sec. 9. If, after the hearing and consideration of the factors set forth in section 7 of this chapter, the board determines that a petition should be denied, the board shall, when appropriate, do the following:
(1) Record the determination.
(2) Deny the petition.
(3) Notify a representative of the petitioners in writing that the petition is denied.
As added by P.L.136-1997, SEC.35.

14-32-6.5-10

Sec. 10. (a) If, after the hearing and consideration of the factors set forth in section 7(a) of this chapter, the board determines that a petition to change the boundaries of a district should not be denied, the board shall, when appropriate, do the following:
(1) Record the determination.
(2) Define, by metes and bounds or by legal subdivisions, the territory to be included in the proposed reconfigured district.
(3) In consultation with the petitioners, establish a name for the proposed reconfigured district.
(4) Not more than sixty (60) days after recording the determination, give due notice that an election, by secret ballot, will be held on the local public question set forth in the petition.

(5) Prescribe appropriate procedures for the conduct of the election and the determination of the eligibility of voters.
(6) Supervise the conduct of the election.
(7) Publish the results of the election.
(8) Pay all expenses arising from the issuance of notices and the holding of the election.

(b) If, after the hearing and consideration of the factors set forth in section 7(b) of this chapter, the board determines that a petition to dissolve a district should not be denied, the board shall, when appropriate, do the following:

(1) Record the determination.
(2) Not more than sixty (60) days after recording the determination, give due notice that an election, by secret ballot, will be held on the local public question set forth in the petition.
(3) Prescribe appropriate procedures for the conduct of the election and the determination of the eligibility of voters.
(4) Supervise the conduct of the election.
(5) Publish the results of the election.
(6) Pay all expenses arising from the issuance of notices and the holding of the election.

As added by P.L.136-1997, SEC.35.

14-32-6.5-11

Sec. 11. (a) The ballot provided for an election on whether to change the boundaries of a district must contain the following:

(1) A definition, by metes and bounds or by legal subdivisions, of the territory within the proposed reconfigured district.
(2) Two (2) propositions, one (1) of which reads "For creation of the (insert name) soil and water conservation district comprising the territory defined here" and the other of which reads "Against creation of the (insert name) soil and water conservation district comprising the territory defined here".
(3) A square in front of each proposition.
(4) Instruction to insert an X mark in the square before only one (1) of the propositions to indicate that the voter favors or opposes the inclusion of the described territory within the district.

(b) The ballot provided for an election on whether to dissolve a district must contain the following:

(1) Two (2) propositions, one (1) of which reads "For terminating the existence of the (insert name) soil and water conservation district" and the other of which reads "Against terminating the existence of the (insert name) soil and water conservation district".
(2) A square in front of each proposition.
(3) Instruction to insert an X mark in the square before only one (1) of the propositions to indicate that the voter favors or opposes the dissolution of the district.

As added by P.L.136-1997, SEC.35.

14-32-6.5-12

Sec. 12. (a) All land occupiers whose tracts of land are located within:

(1) the boundaries of the district as they would be changed to encompass the territory proposed for inclusion; or
(2) the district proposed for dissolution;

are eligible to vote in the election on the local public question held under section 10(a) or 10(b) of this chapter.

(b) A voting place used in the election must be arranged so that the voter can mark a ballot without disclosing to any person how the ballot was marked.

(c) An informality in the conduct of the election on the local public question or in a matter relating to the election does not invalidate the election or the result of the election if:

(1) due notice of the election was given substantially as required by section 10 of this chapter and IC 14-8-2-80; and
(2) the election was conducted fairly.

As added by P.L.136-1997, SEC.35.

14-32-6.5-13

Sec. 13. If at least a simple majority of the votes cast on the local public question are against the request set forth in the petition, the board shall, when appropriate, do the following:

(1) Certify the results of the election in the records of the board.

(2) Declare the request set forth in the petition denied.

As added by P.L.136-1997, SEC.35.

14-32-6.5-14

Sec. 14. (a) In an election on the local public question of whether to change the boundaries of a district, the board shall proceed under subsection (c) if at least a simple majority:

(1) of all the votes cast; and

(2) of the votes cast in each:

(A) district; or

(B) portion of a district;

that would be included within the proposed reconfigured district;

are in favor of the inclusion of the described territory within the district.

(b) In an election on the local public question of whether to dissolve a district, the board shall proceed under subsection (c) if at least a simple majority of the votes cast on the local public question are in favor of the dissolution of the district.

(c) Under the circumstances set forth in subsection (a) or (b), the board shall do the following:

(1) Certify the results of the election in the records of the board.

(2) Implement the request set forth in the petition under:

(A) sections 15 through 21 of this chapter, if changing the boundaries of a district; or

(B) sections 22 through 23 of this chapter, if dissolving a district.

As added by P.L.136-1997, SEC.35.

14-32-6.5-15

Sec. 15. (a) To incorporate the described territory within the district, the board shall do the following not more than thirty (30) days after certifying the election:

(1) Appoint two (2) individuals who meet the qualifications set forth in IC 14-32-4-1(c) as supervisors of the district.

(2) Establish the length of the terms of the appointed supervisors within the limits set forth in subsection (b).

(b) The term of one (1) supervisor appointed under subsection (a) may not be more than three (3) years. The term of the other supervisor appointed under subsection (a) may not be more than two (2) years.

As added by P.L.136-1997, SEC.35.

14-32-6.5-16

Sec. 16. (a) Not more than thirty (30) days after being appointed under section 15(a) of this chapter, the two (2) appointed supervisors shall present to the secretary of state the following:

(1) A notarized letter of application, signed by the two (2) appointed supervisors, for reorganization of the district as a governmental subdivision and a public body corporate and politic under this article.

(2) A copy of the original petition filed with the board.

(3) A copy of the certification by the board of the results of the election held on the local public question.

(4) A copy of the records of appointment by the board of the two (2) supervisors who signed the letter of application.

(b) The letter of application presented under subsection (a) must include the following:

(1) The name proposed for the district.

(2) A definition, by metes and bounds or by legal subdivisions, of the reconfigured boundaries of the district.

(3) A statement certifying that, upon notification by the secretary of state of the approval of the application, an existing district lying entirely within the boundaries of the newly reorganized district will terminate operation and cease to exist.

As added by P.L.136-1997, SEC.35.

14-32-6.5-17

Sec. 17. (a) After receiving, examining, and approving a letter of application and the accompanying documents

that are presented under section 16 of this chapter, the secretary of state shall do the following:

(1) Issue to the appointed supervisors a certificate of organization indicating that the district is reestablished with boundaries incorporating the territory defined in the notarized letter of application presented under section 16 of this chapter.

(2) Record the certificate of organization with the letter of application and accompanying documents in an appropriate record.

(3) Issue to the supervisors of any existing district lying entirely within the boundaries of the newly reestablished district a certificate of dissolution of the existing district.

(4) Record the certificate of dissolution in an appropriate record.

(b) On the date the secretary of state issues the certificates required by subsection (a):

(1) all property and responsibilities of any existing district lying entirely within the boundaries of the newly reestablished district are assumed by the reestablished district; and

(2) any existing district lying entirely within the boundaries of the newly reestablished district ceases to exist.

As added by P.L.136-1997, SEC.35.

14-32-6.5-18

Sec. 18. (a) After the secretary of state issues a certificate of organization to the supervisors of a newly reestablished district under section 17 of this chapter, the board shall, when appropriate, circulate petitions for the nomination of candidates for the three (3) elected supervisor positions of the reestablished district. The petitions must be filed with the board not more than sixty (60) days after the secretary of state issues the certificate of organization. However, the board may extend the time within which the petitions may be filed.

(b) To be valid, a nominating petition must meet the following conditions:

(1) The candidate named on the petition must meet the qualifications for elected supervisors set forth in IC 14-32-4-1(b).

(2) The petition must be signed by at least twenty-five (25) land occupiers whose tracts of land are located within the district.

(c) A land occupier may sign more than one (1) petition to nominate more than one (1) candidate.

(d) Not more than thirty (30) days after receiving at least four (4) valid nominating petitions, the board shall do the following:

(1) Give due notice that an election, by secret ballot, will be held to elect the three (3) supervisors of the newly reestablished district.

(2) Prescribe appropriate procedures for the conduct of the election and the determination of the eligibility of voters.

(3) Supervise the conduct of the election.

(4) Publish the results of the election.

(5) Pay all expenses arising from the issuance of notices and the holding of the election.

As added by P.L.136-1997, SEC.35.

14-32-6.5-19

Sec. 19. (a) The ballot provided for the initial election of supervisors of a newly reestablished district must contain the following:

(1) The names, in alphabetical order of the surnames, of all the nominees on behalf of whom valid nominating petitions have been filed.

(2) A square in front of each name.

(3) Instruction to insert an X mark in the square before any three (3) of the names to indicate the voter's preference.

(b) A land occupier whose tract of land is located within the newly reestablished district is eligible to vote in the election.

As added by P.L.136-1997, SEC.35.

14-32-6.5-20

Sec. 20. (a) The three (3) candidates who receive the largest number of votes cast in the initial election of supervisors of a newly reestablished district are elected.

(b) The terms of office of the elected supervisors are as follows:

(1) The individual receiving the highest number of votes has a three (3) year term of office.
(2) The individual receiving the second highest number of votes has a two (2) year term of office.
(3) The individual receiving the third highest number of votes has a (1) year term of office.

(c) If a tie vote occurs among the three individuals elected as supervisors, the terms of office for those receiving the same number of votes shall be decided by lot.

As added by P.L.136-1997, SEC.35.

14-32-6.5-21

Sec. 21. (a) The five (5) initial supervisors of a newly reestablished district shall assume the duties of office upon taking and signing an oath of office. The oath shall be administered:

(1) to the two (2) appointed supervisors at the date of their appointment by the board; and
(2) to the three (3) elected supervisors within one (1) week after publication by the board of the results of the election.

(b) An appointed supervisor holding office when a district is reestablished under sections 15 through 21 of this chapter is discharged from office when the initial appointed supervisors of the reestablished district assume the duties of office under subsection (a). An elected supervisor holding office when a district is reestablished under sections 15 through 21 of this chapter is discharged from office when the initial elected supervisors of the reestablished district assume the duties of office under subsection (a).

(c) Although an initial supervisor assumes the duties of office at the time set forth in subsection (a), the term of office of the supervisor does not begin until the conclusion of the first annual meeting of the newly reestablished district for purposes of determining the expiration of the supervisor's term of office.

As added by P.L.136-1997, SEC.35.

14-32-6.5-22

Sec. 22. (a) To proceed with the dissolution of a district under section 14(b) of this chapter in accordance with the results of an election, the supervisors of the district, upon notification of the results of the election, shall do the following:

(1) Begin immediately to terminate the affairs of the district.
(2) Dispose of all property belonging to the district at public auction and pay over the proceeds of the sale into the state treasury.
(3) File with the secretary of state a notarized letter of application for dissolution of the district that:
  (A) recites that the property of the district has been disposed of and the proceeds of the sale paid over as required by this section; and
  (B) sets forth a full accounting of the property and proceeds of the sale.
(4) Transmit with the letter of application a copy of the certification by the board of the results of the election on the local public question of whether to dissolve the district.

(b) Upon receipt, examination, and approval of the letter of application and accompanying required document, the secretary of state shall do the following:

(1) Issue to the supervisors a certificate of dissolution.
(2) Record the certificate with the letter of application and accompanying required document in an appropriate record.

As added by P.L.136-1997, SEC.35.

14-32-6.5-23

Sec. 23. (a) Despite the issuance of a certificate of dissolution of a district under section 22 of this chapter, all contracts to which the district is a party remain in force and effect for the period provided in the contracts.

(b) The board:

(1) is substituted for the district as party to the contracts;
(2) is entitled to all benefits and subject to all liabilities under the contracts; and
(3) has the same right and obligation under the contracts as the district would have had to:
  (A) perform;
  (B) require performance;
  (C) sue and be sued; and
  (D) modify or terminate the contracts by mutual consent or otherwise.

As added by P.L.136-1997, SEC.35.

14-32-6.5-24

Sec. 24. If a valid petition requesting a change in the boundaries of a district or the dissolution of a district has been denied due to:

(1) the determination of the board after a public hearing; or

(2) the results of an election held on the local public question;

the board may not consider a later petition containing the same request or a similar request until two (2) years after the denial of the original petition.

As added by P.L.136-1997, SEC.35.

14-32-6.5-25

Sec. 25. If a district is dissolved under this chapter, the board may prescribe the procedure under which a new district may be organized within the territory encompassed by the dissolved district.

As added by P.L.136-1997, SEC.35.

Chapter 7. Duties of Department

14-32-7

14-32-7-1

Sec. 1. (a) The general assembly recognizes the following:

(1) That the land resource of Indiana, including the principal elements of geology, landscape, and soils, is one (1) of the basic natural resources of Indiana.

(2) That an ever increasing demand upon the fixed and limited land resource is resulting from a growing population, with the accompanying expansions in commercial, industrial, transportation, recreation, and cultural development and the continuing need for an adequate agricultural base for the production of food and fiber.

(3) That conservation of the land resource is essential to protect and promote the public health, safety, and welfare.

(4) That the task of conservation can only be accomplished through a factual knowledge and understanding of the land resource.

(b) Therefore, it is the policy of the general assembly that the state promote and participate in the conservation of the land resource of Indiana by doing the following:

(1) Providing new or expanded means for the securing, development, and furnishing to land use decision makers of adequate factual knowledge concerning the geology, landscape, and soils of Indiana, including their potentials, limitations, and interrelationships, in the manner set forth in this chapter.

(2) Strengthening the capabilities of local soil and water conservation districts.

(3) Expanding the level of small watershed planning for soil and water conservation measures.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.36.

14-32-7-2

Sec. 2. As used in this chapter, "geology" means the study of the following:

(1) Earth materials, which are minerals, rocks, water, and soil.

(2) The processes that have formed earth materials.

As added by P.L.1-1995, SEC.25.

14-32-7-3

Sec. 3. As used in this chapter, "land conservation" means the wise use of land:

(1) for the satisfaction of human needs; and

(2) based upon knowledge and understanding of the land's capabilities and limitations.

As added by P.L.1-1995, SEC.25.

14-32-7-4

Sec. 4. As used in this chapter, "landscape" means the aggregate of all factors and features that constitute the

total visual and perceptive impact of a given area of the earth's surface upon the human senses.
As added by P.L.1-1995, SEC.25.

14-32-7-5

Sec. 5. As used in this chapter, "soil" means the surface layer of the earth that serves as a natural medium for the growth of plant life.
As added by P.L.1-1995, SEC.25.

14-32-7-6

Sec. 6. (a) The division of soil conservation:

(1) shall administer and coordinate the duties and responsibilities of the Indiana state department of agriculture under the land resource programs authorized by this chapter; and

(2) in carrying out its duties under subdivision (1), may work in cooperation with the following:

(A) Federal and state agencies.

(B) Local governmental agencies involved in land use planning and zoning.

(C) Any person, firm, institution, or agency, public or private, having an interest in land conservation.

(b) The Indiana state department of agriculture may employ the personnel and provide facilities and services that are necessary to carry out the Indiana state department of agriculture's duties and responsibilities under this chapter.

(c) The Indiana state department of agriculture shall prepare an annual report of the division of soil conservation's expenditures and accomplishments and that contains a proposed business plan.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.37; P.L.1-2006, SEC.223; P.L.175-2006, SEC.15; P.L.120-2008, SEC.16.

14-32-7-7

Sec. 7. (a) As used in this section, "urban geology survey" means a systematic scientific identification, inventory, and mapping of the earth materials of a given area that sets forth the capabilities, potentials, and limitations of the earth materials for human needs.

(b) The Indiana state department of agriculture shall use the money appropriated by the general assembly to initiate and carry out a program of urban geology surveys, together with other geologic investigations, for Indiana to develop and present the geologic data and information necessary to a coordinated land conservation program that will promote sound land use decisions.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.38; P.L.1-2006, SEC.224; P.L.120-2008, SEC.17.

14-32-7-8

Sec. 8. (a) As used in this section, "landscape survey" means a systematic scientific identification, inventory, and mapping of the features of the earth's surface that serve to constitute the landscape of a given area, including key factors such as the following:

(1) Land form.

(2) Vegetation.

(3) Wildlife.

(4) Physical characteristics.

(5) Visual perception.

(6) Historical and cultural sites.

(b) The Indiana state department of agriculture shall use the money appropriated by the general assembly to initiate and carry out a program of landscape surveys for Indiana to develop and present the surficial landscape data and information necessary to promote wise land use decisions.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.39; P.L.1-2006, SEC.225; P.L.120-2008, SEC.18.

14-32-7-8.5

Sec. 8.5. (a) As used in this section, "soil survey" means a systematic scientific identification, inventory, and mapping of the soils of a given area that sets forth the capabilities, potential, and limitations of the soils in the satisfaction of human needs.

(b) The Indiana state department of agriculture shall use the money appropriated by the general assembly to implement and supplement a program of modern soil surveys and geographic information systems (GIS) for Indiana that will, within the shortest practicable time, provide a modern soil survey and geographic information system for each county as an essential tool in land conservation.
As added by P.L.136-1997, SEC.40. Amended by P.L.1-2006, SEC.226; P.L.175-2006, SEC.16; P.L.120-2008, SEC.19.

14-32-7-9

Sec. 9. The Indiana state department of agriculture shall provide more support and assistance to the local soil and water conservation districts by:

(1) granting to the districts the additional money that is appropriated by the general assembly; and
(2) increased coordination and consultative services;

to obtain increased participation by the districts in the development of improved local land use practices and decisions.
As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.41; P.L.1-2006, SEC.227; P.L.120-2008, SEC.20.

14-32-7-10

Sec. 10. The Indiana state department of agriculture shall use the money appropriated by the general assembly to expand the small watershed planning program as carried out in cooperation with the Natural Resources Conservation Service of the United States Department of Agriculture under 16 U.S.C. 1001 et seq., to reduce the accumulation of approved watershed planning requests and expedite the realization of the multiple benefits of this soil and water conservation program.
As added by P.L.1-1995, SEC.25. Amended by P.L.1-2006, SEC.228; P.L.120-2008, SEC.21.

14-32-7-11

Sec. 11. The Indiana state department of agriculture shall coordinate and schedule the programs authorized by sections 7 through 8 of this chapter to provide, as nearly as practicable, for concurrent completion and furnishing of the results of each program for each selected area study unit.
As added by P.L.1-1995, SEC.25. Amended by P.L.1-2006, SEC.229; P.L.120-2008, SEC.22.

14-32-7-12

Sec. 12. (a) As used in this section, "river" includes streams and the tributaries of rivers.
(b) The division of soil conservation shall do the following:

(1) Perform all administrative duties required by the rules of the board.
(2) Provide professional assistance to districts in planning, coordinating, and training for the following:
  (A) Adult soil and water conservation education.
  (B) Natural resources conservation information programs for elementary and secondary schools.
  (C) Supervisors and staff.
(3) Provide professional soil conservation technical assistance to districts.
(4) Provide nonagricultural soils interpretive and erosion control expertise on a regional basis.
(5) Assist the districts and other federal, state, and local entities in encouraging and monitoring compliance with those aspects of the programs that are related to erosion and sediment reduction.
(6) Administer a cost share program for installation of erosion control structural measures on severely eroding cropland and for conversion of highly erodible land from crop production to permanent vegetative cover.
(7) Administer a lake and river enhancement program to do the following:
  (A) Control sediment and associated nutrient inflow into lakes and rivers.
  (B) Accomplish actions that will forestall or reverse the impact of that inflow and enhance the continued use of Indiana's lakes and rivers.
(8) Provide professional assistance to districts in conservation needs assessments, program development, and program evaluation.

As added by P.L.1-1995, SEC.25. Amended by P.L.136-1997, SEC.42; P.L.175-2006, SEC.17.

14-32-7-13

Sec. 13. The Indiana state department of agriculture shall administer this article subject to the direction of the board.
As added by P.L.1-1995, SEC.25. Amended by P.L.1-2006, SEC.230; P.L.120-2008, SEC.23.

Chapter 8. Clean Water Indiana Program

14-32-8

14-32-8-1

Sec. 1. As used in this chapter, "fund" means the clean water Indiana fund established by this chapter.
As added by P.L.160-1999, SEC.4.

14-32-8-2

Sec. 2. As used in this chapter, "political subdivision" means a county, township, city, or town.
As added by P.L.160-1999, SEC.4.

14-32-8-3

Sec. 3. As used in this chapter, "program" means the clean water Indiana program established by this chapter.
As added by P.L.160-1999, SEC.4.

14-32-8-4

Sec. 4. The clean water Indiana program is established. The division of soil conservation established within the department of agriculture by IC 15-11-4-1 shall administer the program subject to the direction of the board.
As added by P.L.160-1999, SEC.4. Amended by P.L.1-2006, SEC.231; P.L.2-2008, SEC.36.

14-32-8-5

Sec. 5. The purpose of the program is to provide financial assistance to:
(1) soil and water conservation districts;
(2) land occupiers; and
(3) conservation groups;
to implement conservation practices to reduce nonpoint sources of water pollution through education, technical assistance, training, and cost sharing programs.
As added by P.L.160-1999, SEC.4. Amended by P.L.175-2006, SEC.18.

14-32-8-6

Sec. 6. (a) The clean water Indiana fund is established to carry out the purposes of this chapter. The fund shall be administered by the division of soil conservation subject to the direction of the board.
(b) The fund consists of:
(1) amounts deposited in the fund under IC 6-7-1-29.3;
(2) amounts appropriated by the general assembly; and
(3) donations, grants, and money received from any other source.
(c) The expenses of administering the fund shall be paid from money in the fund.
(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund or any other fund but remains in the fund to be used for the purposes of the fund.
As added by P.L.160-1999, SEC.4. Amended by P.L.241-2005, SEC.5; P.L.24-2009, SEC.1.

14-32-8-7

Sec. 7. Money in the fund may be spent in the following ways:
(1) To increase district technical assistance in local conservation efforts.
(2) To develop an environmental stewardship program to assist land occupiers in complying with environmental regulations voluntarily.
(3) To qualify for federal matching funds.
(4) To provide for the following cost sharing programs:
(A) A program to encourage land occupiers to implement conservation practices to reduce nutrient, pesticide, and sediment runoff.

(B) Programs that encourage land occupiers to implement nutrient management programs by sharing the cost of any of the following:

(i) Fencing for intensive grazing systems.

(ii) Purchasing nutrient management equipment.

(iii) Voluntary environmental audits.

(iv) Other similar expenditures related to nutrient management.

(5) To provide matching grants to districts for the following:

(A) Professional watershed coordinators to facilitate and administer local watershed protection projects.

(B) District managers to administer district conservation policies and programs.

(6) To increase state technical and capacity building assistance to districts and local conservation efforts by providing for the following:

(A) Capacity building specialists to train district personnel in grant writing, grant administration, and leadership development.

(B) Conservation education specialists to help implement district conservation education efforts.

(C) Urban storm water specialists to provide technical assistance to developers to contain soil erosion on construction sites.

(7) To make distributions as provided under section 8 of this chapter.

(8) Implementation of geographic information systems (GIS) or similar technology.

As added by P.L.160-1999, SEC.4. Amended by P.L.175-2006, SEC.19; P.L.129-2011, SEC.6.

14-32-8-8

Sec. 8. (a) In addition to funds provided to a district under section 7 of this chapter or from any other source, the division of soil conservation shall pay to the district one dollar ($1) for every one dollar ($1) the district receives from a political subdivision.

(b) The state is not obligated to match more than ten thousand dollars ($10,000) under this section.

(c) In order to receive funding under this section each year, a district must certify to the division of soil conservation the amount of money the district received from all political subdivisions during the one (1) year period beginning January 1 of the previous year. The information prepared under this subsection must be part of the annual financial statement prepared and provided to the board under IC 14-32-4-22. The division of soil conservation shall make distributions under this section not later than July 15 of each year.

(d) Before making distributions under this section, the division of soil conservation shall determine the total amount of money that has been certified by all districts as having been provided by political subdivisions. If the cumulative amount to be distributed to all districts exceeds the amount appropriated to the fund, the division of soil conservation shall reduce the distribution to each district proportionately.

(e) A district must spend money received under this section for the purposes of the district.

As added by P.L.160-1999, SEC.4. Amended by P.L.155-2002, SEC.9 and P.L.158-2002, SEC.8; P.L.175-2006, SEC.20; P.L.1-2007, SEC.129.

14-32-8-9

Sec. 9. The districts shall coordinate with the division of soil conservation to compile and provide a report to the executive director of the legislative services agency each year. The report must be in an electronic format under IC 5-14-6 and must describe:

(1) the expenditures of the clean water Indiana fund; and

(2) the number, type, status, and effectiveness of conservation efforts funded by the clean water Indiana program.

As added by P.L.160-1999, SEC.4. Amended by P.L.28-2004, SEC.133.

Chapter 1. Purposes

14-33-1

14-33-1-1

Sec. 1. (a) A conservancy district may be established for any of the following purposes:

(1) Flood prevention and control.

(2) Improving drainage.
(3) Providing for irrigation.
(4) Providing water supply, including treatment and distribution, for domestic, industrial, and public use.
(5) Providing for the collection, treatment, and disposal of sewage and other liquid wastes.
(6) Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management.
(7) Preventing the loss of topsoil from injurious water erosion.
(8) Storage of water for augmentation of stream flow.
(9) Operation, maintenance, and improvement of:
(A) a work of improvement for water based recreational purposes; or
(B) other work of improvement that could have been built for any other purpose authorized by this section.

(b) These purposes may be accomplished by cooperating with federal and state agencies whose programs are designed to accomplish any of the purposes of the district.
As added by P.L.1-1995, SEC.26.

14-33-1-2

Sec. 2. (a) A district established for the purpose of section 1(a)(5) of this chapter that proposes to collect, treat, or dispose of sewage and other liquid wastes produced outside of the district boundaries must petition the Indiana utility regulatory commission for territorial authority to engage in the services to territory outside of the boundaries of the district.

(b) Upon notice and hearing, the Indiana utility regulatory commission shall determine the following:
(1) The territory outside of the boundaries from which sewage and other liquid wastes may be collected, treated, or disposed of.
(2) The rates and charges that the district may make for the services.
As added by P.L.1-1995, SEC.26.

14-33-1-3

Sec. 3. Powers granted by this article may be used only to accomplish each purpose set forth by the court in the order establishing the district. However, a district plan or act of the board necessary to accomplish a purpose for which the district is established is not invalid because the district plan or act incidentally accomplishes a purpose other than a purpose for which the district is established.
As added by P.L.1-1995, SEC.26.

14-33-1-4

Sec. 4. To add a purpose to an established district:
(1) the same procedure may be used as is provided for the establishment of a district; or
(2) the board may pass a resolution adding an additional authorized purpose to the district already established if the board has received a petition that:
(A) is signed by at least ten percent (10%) of the freeholders in the district; and
(B) requests the addition of the purpose to the district.
As added by P.L.1-1995, SEC.26.

14-33-1-5

Sec. 5. (a) If a petition is filed and a resolution passed under section 4 of this chapter, the board shall file the resolution and petition with the court.

(b) Upon receipt, the court shall do the following:
(1) Order a hearing.
(2) Have a copy of the resolution and the date of the hearing forwarded to the commission.
(3) Order notice of the hearing as follows:
(A) A copy of the resolution and the time and place of the hearing shall be published at least one (1) time in at least one (1) newspaper of general circulation in each county containing land in the district.
(B) A copy of the notice as prepared for publication shall be sent by mail, first class postage prepaid, to each freeholder.

(c) The mailing of notice and proof of notice is the same as is required for notice of the hearing on the original

petition to establish the district.

(d) The notice to the commission, the publication, and the mailing must be done at least thirty (30) days before the date of the hearing.

(e) If:

(1) at the hearing an objection is not filed by the commission or by an owner of real property; and

(2) the court determines that the petition is proper;

the court shall order the district to be established also for the additional purpose.

(f) If an objection is filed, the court shall do the following:

(1) Determine at the hearing the following:

(A) The sufficiency of the petition.

(B) The necessity and feasibility of adding the purpose.

(2) Make the order according to the facts found.

As added by P.L.1-1995, SEC.26.

Chapter 2. Establishment

14-33-2

14-33-2-1

Sec. 1. Freeholders who desire the establishment of a district must initiate proceedings by filing a petition in the office of the clerk of the circuit court with jurisdiction in the county containing the most land within the proposed district.

As added by P.L.1-1995, SEC.26.

14-33-2-2

Sec. 2. A petition filed under section 1 of this chapter must be signed by freeholders owning land in the proposed district in the minimum number or proportion of all the freeholders in the proposed district as follows:

(1) Districts of not more than one thousand (1,000) freeholds, thirty percent (30%) of the freeholders.

(2) Districts of at least one thousand one (1,001) and not more than five thousand (5,000) freeholds, fifteen percent (15%) of the freeholders but not less than three hundred (300) signatures.

(3) Districts of at least five thousand one (5,001) and not more than twenty-five thousand (25,000) freeholds, ten percent (10%) of the freeholders but not less than seven hundred fifty (750) signatures.

(4) Districts of at least twenty-five thousand one (25,001) freeholds, five percent (5%) of the freeholders but not less than two thousand five hundred (2,500) signatures.

As added by P.L.1-1995, SEC.26.

14-33-2-3

Sec. 3. To determine the number of freeholds in the proposed district and the number or proportion of freeholders owning land in the district qualified to sign a petition for establishment, the following apply:

(1) Only one (1) freeholder's signature may be counted for any one (1) freehold. If a freehold is held in joint title, only one (1) freeholder's signature may be counted and it may be the signature of any one (1) of the freeholders owning the freehold in joint title. If a given freeholder qualifies as set forth in this section for at least two (2) freeholds, the freeholder's signature shall be counted for each freehold.

(2) One (1) or more tracts of land owned solely by only one (1) freeholder constitute one (1) freehold.

(3) One (1) or more tracts of land owned in joint title by at least two (2) identical freeholders constitute one (1) freehold. However, if one (1) of the freeholders owning the freehold in joint title is a different or additional person, each freehold in joint title among nonidentical persons constitutes a separate and additional freehold.

(4) Subject to subdivisions (1), (2), and (3), if:

(A) a petition for the establishment of a district is filed by a municipality by ordinance adopted by the municipality's legislative body; or

(B) the municipality by ordinance has joined in a petition for inclusion in whole or part in the proposed district;

each freeholder in the area of the municipality that is in the proposed district is counted as a signatory to the petition. However, if a freeholder in the area of the municipality that is in the proposed district, after the filing

of the petition for the establishment of the district, files a petition against the establishment of the proposed district, the number of freeholders considered and counted as signatories to the petition must be reduced by the number of freeholders in the area of the city that is in the proposed district filing a petition against the establishment of the district.

(5) Private corporations owning land in the proposed district may sign the petition by any officer authorized by the corporation. The officer's signature is prima facie evidence of the officer's authorization to sign the petition.

As added by P.L.1-1995, SEC.26.

14-33-2-4

Sec. 4. A petition must contain the following:

(1) The name for the proposed district, which should be in the form of "_____ Conservancy District".

(2) A description of the territory to be included, not necessarily by metes and bounds, but sufficiently accurate to inform the court and apprise the landowners of the possibility of the inclusion of their land in the district.

(3) A statement of each specific purpose for which the district is to be established.

(4) A statement of the necessity of accomplishing each purpose.

(5) A statement that the creation of the district will be conducive to the public health, safety, or welfare.

(6) A statement that the costs and damages of and to be paid solely by the district will probably be less than the benefits received in the district. If the purpose is declared to be water supply or sewage disposal, this statement need not be included.

(7) Whether the petition is conditioned upon a grant of federal or state money, or both, identifying the money upon which the petition is conditioned.

(8) Whether conditions attached to federal or state aid, or both, are acceptable if the federal or state government, or both, offer a grant of money.

(9) Whether maintenance and operation of the works of improvement necessary to accomplish any or all of the purposes will be paid for:

(A) solely by annual levy of the special benefits tax;

(B) by both annual levy of the special benefits tax and an annual assessment on land found to be exceptionally benefited if exceptional benefits are expected to exist; or

(C) by use of any other method provided by statute as long as the proportion between the tax and assessment is in approximately the same ratio as used to pay the cost of establishing the district and placing the district plan into operation.

(10) The number of directors to serve on the board, which must be three (3), five (5), seven (7), or nine (9).

(11) A statement of the division of the proposed district into areas, which must be equal in number to the number of directors.

As added by P.L.1-1995, SEC.26.

14-33-2-5

Sec. 5. If:

(1) a petition is conditioned upon a promise of federal money; and

(2) the responsible federal agency informs the court that federal money is not available for the district as proposed by the petition or amendments to the petition;

the petitioners may move that the petition be dismissed. The court shall grant the motion.

As added by P.L.1-1995, SEC.26.

14-33-2-6

Sec. 6. A petition may be circulated in several counterparts and still constitute a single petition.

As added by P.L.1-1995, SEC.26.

14-33-2-7

Sec. 7. A municipality (as defined in IC 36-1-2) may file a petition to initiate a proposed district by ordinance adopted by the legislative body (as defined in IC 36-1-2). The proposed district may include land:

(1) solely inside the municipality; or

(2) partially inside and partially outside the municipality.

As added by P.L.1-1995, SEC.26.

14-33-2-8

Sec. 8. (a) The petitioners must post a bond sufficient to pay the cost of notice and all legal costs of the court connected with the proceedings in case the court refuses to establish the district and dismisses the petition.

(b) The petitioners shall pay the cost of notice and all legal costs if the court dismisses the petition.

As added by P.L.1-1995, SEC.26.

14-33-2-9

Sec. 9. The circuit court with jurisdiction in the county having the most land in the proposed district has exclusive jurisdiction over the establishment of the district. If the district is established, this court also has exclusive jurisdiction over all further hearings in connection with the district.

As added by P.L.1-1995, SEC.26.

14-33-2-10

Sec. 10. (a) A court in which a petition is filed shall order the proceedings transferred to the court having jurisdiction under section 9 of this chapter if:

(1) the petition was filed in the wrong court by mistake; or

(2) the petition is amended so that another county has more land in the proposed district.

(b) The court that establishes a district retains jurisdiction over the district regardless of a change in area of the district that results from later proceedings.

As added by P.L.1-1995, SEC.26.

14-33-2-11

Sec. 11. Upon receipt of a petition for the establishment of a district, the court shall docket the petition as a civil case and set a date for hearing. The court shall give priority to the hearing in determining the date, but the court must allow at least thirty (30) days for interested persons to receive notice.

As added by P.L.1-1995, SEC.26.

14-33-2-12

Sec. 12. The petitioners shall give notice of hearing on the petition as follows:

(1) By publication in two (2) newspapers of general circulation in each county having land in the proposed district, three (3) times at successive weekly intervals. The first publication must be at least thirty (30) days before the date of the hearing. If there is only one (1) newspaper of general circulation in a county, three (3) publications in that newspaper are sufficient.

(2) By mailing a copy of the notice at least twenty (20) days before the date of the hearing, first class postage prepaid, to each freeholder who has not signed the petition and who owns land in the proposed district, according to the records of the county auditor. The person having the notice mailed shall file an affidavit with the court showing the following:

(A) The names of the persons to whom notice was sent.

(B) The address to which the notice was sent.

(C) The date on which the notice was mailed.

As added by P.L.1-1995, SEC.26.

14-33-2-13

Sec. 13. Notice of the hearing on a petition serves as notice of all further proceedings in connection with the district.

As added by P.L.1-1995, SEC.26.

14-33-2-14

Sec. 14. The notice of the hearing on the petition, in addition to all other requirements, must contain the following:

(1) A statement that a petition for a district is before the court.

(2) A statement of each purpose for which the district is proposed.

(3) A statement as to which municipalities, townships, and counties the area of the proposed district lies

within, in whole or in part.
(4) The place of the hearing.
(5) The date of the hearing.
As added by P.L.1-1995, SEC.26.

14-33-2-15

Sec. 15. (a) A petition against the establishment of a district may be presented to the court:
(1) at the hearing on a petition; or
(2) at any time thereafter before the fifth day before the hearing day initially ordered by the court after the receipt of the commission's report.
(b) If the court finds a petition against the establishment of a district contains the signatures of:
(1) at least fifty-one percent (51%) of the freeholders in the proposed district; or
(2) the freeholders who own at least sixty-six and two-thirds percent (66 2/3%) as determined by the assessed valuation of the real property in the proposed district;
the court shall dismiss the petition for the establishment of the district.
(c) Sections 3 and 6 of this chapter apply to this section.
(d) The fifth day before the hearing date initially ordered by the court after the receipt of the commission's report is the last date on which a petition to withdraw signatures may be filed.
As added by P.L.1-1995, SEC.26.

14-33-2-16

Sec. 16. (a) At the hearing on a petition for the establishment of a district, the court shall determine whether the petition:
(1) bears the necessary signatures; and
(2) complies with the requirements as to form and content.
(b) The court may not dismiss a petition with the requisite signatures because of alleged defects without permitting, in this or subsequent proceedings, amendments to correct errors in form or content. The court shall hear any interested person on the question.
(c) The following are prima facie evidence concerning the requirements for signatures on a petition:
(1) Verified certification, based on personal knowledge or information and belief, by:
(A) the persons who carried the petition; or
(B) other persons knowing the facts as to the identity of the persons signing the petition and as to the ownership by those persons of land within the proposed district.
(2) The records of the county auditor or county treasurer.
(d) The determination of:
(1) the number of freeholds; and
(2) the necessary number and identity of freeholders;
shall be made as of the date of filing a petition. If the petition as of that date bears the necessary number of signatures, the petition may not be dismissed because petitioners withdraw signatures that reduces the number of signatures below the required amount unless the withdrawals constitute more than fifty percent (50%) of the signers as of the date of filing.
As added by P.L.1-1995, SEC.26.

14-33-2-17

Sec. 17. (a) This section applies to all districts, except for districts described in section 18 of this chapter.
(b) If the court determines that a petition conforms to the requirements, the court shall enter an order referring the petition to the commission.
(c) The commission shall make a determination and report to the court whether the proposed district meets the following conditions:
(1) The proposed district appears to be necessary.
(2) The proposed district holds promise of economic and engineering feasibility.
(3) The proposed district seems to offer benefits in excess of costs and damages for purposes other than the following:
(A) Water supply.

(B) Storage of water for augmentation of stream flow.
(C) Sewage disposal.
(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:
(A) Water supply.
(B) Sewage disposal.
(C) Storage of water for augmentation of stream flow.
(D) Any combination of these purposes.
(5) The proposed district proposes to cover and serve a proper area.
(6) The proposed district could be established and operated in a manner compatible with established:
(A) conservancy districts;
(B) flood control projects;
(C) reservoirs;
(D) lakes;
(E) drains;
(F) levees; and
(G) other water management or water supply projects.

(d) The fact that all the land included in the proposed district is owned by one (1) freeholder or a limited number of freeholders is not a sufficient reason for the commission or the court to make unfavorable findings on:
(1) the question of the establishment of the district; and
(2) later, if the district is established, the approval of the district plan.

However, it must appear from the evidence that the land is subdivided or intended for subdivision and development and that the accomplishment of the purposes proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development.
As added by P.L.1-1995, SEC.26.

14-33-2-18

Sec. 18. (a) This section applies only to a district to be located in a county having a population of more than one hundred forty thousand (140,000) but less than one hundred fifty thousand (150,000).

(b) If the court determines that a petition conforms to the requirements, the court shall enter an order referring the petition to the commission.

(c) The commission shall make a determination and report to the court whether the proposed district should be established after determining whether the proposed district meets the following conditions:
(1) The proposed district appears to be necessary.
(2) The proposed district holds promise of economic and engineering feasibility.
(3) The proposed district seems to offer benefits in excess of costs and damages for purposes other than the following:
(A) Water supply.
(B) Storage of water for augmentation of stream flow.
(C) Sewage disposal.
(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:
(A) Water supply.
(B) Sewage disposal.
(C) Storage of water for augmentation of stream flow.
(D) Any combination of these purposes.
(5) The proposed district proposes to cover and serve a proper area.
(6) The proposed district can be established and operated in a manner compatible with established:
(A) districts;
(B) flood control projects;
(C) reservoirs;
(D) lakes;
(E) drains;

(F) levees;
(G) regional water districts;
(H) regional sewer districts; and
(I) other water management or water supply projects.

(d) The fact that all the land included in the proposed district is owned by one (1) freeholder or a limited number of freeholders is not a sufficient reason for the commission or the court to make unfavorable findings on:

(1) the question of the establishment of the district; and
(2) later, if the district is established, the approval of the district plan.

However, it must appear from the evidence that the land is subdivided or intended for subdivision and development and that the accomplishment of the purposes proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development.
As added by P.L.1-1995, SEC.26. Amended by P.L.170-2002, SEC.95; P.L.119-2012, SEC.122.

14-33-2-19

Sec. 19. (a) In determining the facts, the commission shall hold hearings at which the commission shall give any interested person the right to be heard. At the request of an interested person, the commission shall hold hearings at the county seat of a county containing land in the proposed district. The commission shall choose the county seat.

(b) The commission shall give notice of the hearings by publication at least one (1) time in one (1) newspaper of general circulation in each county containing land in the proposed district.
As added by P.L.1-1995, SEC.26.

14-33-2-20

Sec. 20. The expenses of the hearings and other expenses of necessary investigations and surveys, together with any expense incurred by the commission in subsequent studies of district plans, are payable initially out of the general money of the commission. The district shall repay the expenditures, not to exceed thirty percent (30%) of the amount paid by the district to independent private engineers for the preparation of plans, to the commission from the district's planning money. Commission expenses include only expenses incurred by an assisting or a cooperating state agency for services provided by an entity that is not a state agency.
As added by P.L.1-1995, SEC.26. Amended by P.L.165-2011, SEC.25.

14-33-2-21

Sec. 21. (a) If a proposed purpose is within the administrative jurisdiction of another state agency, the commission shall request technical assistance of the agency and give full weight to the agency in making a report to the court.

(b) State agencies shall furnish assistance to the commission necessary to accomplish the purposes of this article.
As added by P.L.1-1995, SEC.26.

14-33-2-22

Sec. 22. The commission shall make a report of the commission's findings to the court, including findings on the territorial limits of the proposed district. The commission shall make this report within one hundred twenty (120) days after the petition is referred to the commission, unless the commission requests and receives approval from the court for additional periods of thirty (30) days each.
As added by P.L.1-1995, SEC.26.

14-33-2-23

Sec. 23. The factfinding report of the commission on the proposed district is prima facie evidence of the facts stated in the report in all subsequent proceedings.
As added by P.L.1-1995, SEC.26.

14-33-2-24

Sec. 24. (a) The court may permit amendments to a petition to conform to the findings of the commission.

(b) If a petition is amended to include additional land other than the land published in the notice for hearing on the petition, the court may make a final determination on the establishment of the district only after there is published notice of the amendments or of motion to amend by the petitioners. In addition, the petitioners shall mail a notice of the amendments or of the motion to amend to all freeholders of the additional land according to section

14 of this chapter, including mailing of notice under section 12 of this chapter.

(c) If a petition is amended to include additional land:

(1) the requirements regarding signatures in sections 2 and 3 of this chapter must be satisfied as if the land had been included in the petition as originally filed; and

(2) the following may be filed with the court at any time before the conclusion of the hearing after the receipt of the commission's report:

(A) Additional signatures to the petition for the establishment of the district.

(B) Signatures to a petition against the establishment of a district.

(C) Withdrawals from either petition.

As added by P.L.1-1995, SEC.26.

14-33-2-25

Sec. 25. (a) Upon receipt of the commission's report, the court shall set a date for a hearing. The court shall give priority to this hearing in determining the date, but the court must allow at least twenty-one (21) days for interested persons, including petitioners, to file exceptions.

(b) The court shall order notice for this hearing as the court considers necessary, but at least one (1) publication must be made in one (1) newspaper of general circulation in each county having land in the proposed district.

As added by P.L.1-1995, SEC.26.

14-33-2-26

Sec. 26. (a) If the court finds at the hearing that:

(1) the only purpose of the district is water supply or sewage disposal, or both; and

(2) the public health is not served immediately or prospectively by the establishment of the district;

the court shall dismiss the petition.

(b) If the court finds at the hearing that:

(1) a purpose of the district is other than water supply or sewage disposal; and

(2) the costs and damages incident to the establishment of the district will exceed the benefits received within the district;

the court shall dismiss the petition.

(c) If the court finds that the evidence does support the statements in a petition, the court shall order the district established for the purposes named in the petition.

(d) If the court finds that the evidence supports at least one (1) of the purposes named in a petition but does not support at least one (1) of the other purposes, the court shall order the district established only for the purposes the court finds supported by the evidence.

As added by P.L.1-1995, SEC.26.

14-33-2-27

Sec. 27. (a) If the court orders a district established, the court shall in the order establishing the district determine the following:

(1) The number of directors to serve on the board and the procedures for the election of the directors.

(2) The division of the district into areas.

(3) The time of the annual meeting of the district, which must be before March 1 each year.

(b) After the district is established, the board of directors of the conservancy district may petition the court to modify its order to change the procedures for election of the directors as provided in IC 14-33-5-2.

As added by P.L.1-1995, SEC.26. Amended by P.L.88-2003, SEC.1.

14-33-2-28

Sec. 28. An order:

(1) dismissing a petition; or

(2) establishing a district;

may be appealed to the supreme court within thirty (30) days.

As added by P.L.1-1995, SEC.26.

14-33-2-29

Sec. 29. If:

(1) a district is established by order of the court and an appeal is not taken within thirty (30) days; or

(2) an order establishing a district is affirmed by the supreme court;

the establishment of the district is final and may not be directly or collaterally questioned in any action or proceeding.

As added by P.L.1-1995, SEC.26.

14-33-2-30

Sec. 30. If a petition is dismissed:

(1) because the court finds the evidence does not support the petition according to section 26 of this chapter; or

(2) according to section 15 of this chapter;

a new petition may not be addressed to any court to establish a district with essentially the same boundaries for any of the same purposes for two (2) years after the date of the order dismissing the petition. However, a petition dismissed for want of jurisdiction, including an insufficient number of signatures, may be refiled at any time after the correction of the jurisdictional defect.

As added by P.L.1-1995, SEC.26.

Chapter 3. Boundaries

14-33-3

14-33-3-1

Sec. 1. Any area may be established as a district if each part of the district is contiguous to another part. A municipality may be included in whole or in part in the district only if at least one (1) of the following conditions exist:

(1) The freeholders in the municipality or the part of the municipality to be included in the district have petitioned to be included in the same proportion as required by IC 14-33-2-2 for the proposed district as a whole.

(2) The municipality has by ordinance of the municipality's legislative body petitioned or joined in the petition to be included in whole or in part in the district.

As added by P.L.1-1995, SEC.26.

14-33-3-2

Sec. 2. (a) This section applies to a district described in IC 14-33-9-4.

(b) If one (1) purpose of the district is flood control, the commission and the court in establishing the boundaries of the district under this article shall consider all watersheds affected by the flooding water.

As added by P.L.1-1995, SEC.26.

14-33-3-3

Sec. 3. A parcel of land may be included in two (2) districts established for the same purpose only with the written consent of all the owners of the land.

As added by P.L.1-1995, SEC.26.

Chapter 4. Additions to Districts

14-33-4

14-33-4-1

Sec. 1. As used in this chapter, "proposed district" refers to the district and the area proposed to be added to the district.

As added by P.L.1-1995, SEC.26.

14-33-4-2

Sec. 2. (a) This section applies to all districts.

(b) To add area to a district already established:
(1) the same procedure must be used as is provided for the establishment of a district with the petition addressed to the court having jurisdiction over the district; or
(2) the board may pass a resolution adding additional area to the district already established if the board has received a petition that:
(A) is signed by:
(i) the majority of freeholders; or
(ii) a municipality under IC 14-33-2-7;
within the area proposed to be added; and
(B) requests the addition of the area to the district.
The resolution may contain reasonable terms and conditions imposed on the additional area.
(c) The board shall file the resolution and petition with the court.
(d) Upon receipt of a petition or a petition and a resolution, the court shall do the following:
(1) Set a date for a hearing.
(2) Have notice published and mailed to:
(A) the commission; and
(B) the freeholders both in the district and in the area proposed to be added;
in the same manner in which notice is required for notice of the hearing on the original petition to establish the district.
(e) If:
(1) an objection is not filed at the hearing by:
(A) the commission; or
(B) an owner of real property either in the district or in the area to be added; and
(2) the court determines that the petition is proper;
the court shall order the district established in the additional area.
(f) If an objection is filed, the court shall do the following:
(1) Determine at the hearing the following:
(A) The sufficiency of the petition.
(B) The necessity and feasibility of adding the area.
(2) Make the order according to the facts found.
As added by P.L.1-1995, SEC.26. Amended by P.L.4-2004, SEC.1.

14-33-4-3 Repealed
14-33-4-3 (Repealed by P.L.4-2004, SEC.3.)

Chapter 5. Board of Directors

14-33-5

14-33-5-0.5 Repealed
14-33-5-0.5 (Repealed by P.L.95-2006, SEC.10.)

14-33-5-1
Sec. 1. (a) Within twenty (20) days after an order establishing a district, the board of commissioners of the county shall appoint the initial board of directors. A director shall be appointed for each of the areas in the district established by the court.
(b) A director must have the following qualifications:
(1) Be:
(A) a freeholder of the area of the district for which appointed; or
(B) an officer or a nominee of a corporate freeholder of the area of the district for which appointed.
(2) Be qualified by knowledge and experience in matters pertaining to the development of the district.
(c) A majority of the directors must be:
(1) resident freeholders of the district if available and qualified; and
(2) petitioners for the establishment of the district. For this purpose an officer or a nominee of a corporate

freeholder of the district, if the corporation is a petitioner, is considered a petitioner.
As added by P.L.1-1995, SEC.26.

14-33-5-2

Sec. 2. (a) At each annual meeting of the district, directors shall be elected to fill vacancies on the board due to expiration of terms, resignation, or otherwise. The election shall be conducted by written ballots. Except as provided in subsection (c), to be elected an individual must receive a majority of the votes of the freeholders of the district who are:

(1) present and voting in person; or

(2) absent but have mailed or delivered a written ballot vote.

(b) A written ballot vote must be signed and mailed or delivered to the district office. A ballot is valid if delivered or received before the scheduled date of the annual meeting.

(c) Upon receipt of a petition from the board of directors of a conservancy district, the circuit court may modify the order establishing the district under IC 14-33-2-27 to provide that each director representing an area established under IC 14-33-2-27 shall be elected by a majority of the votes of the freeholders of the respective areas.
As added by P.L.1-1995, SEC.26. Amended by P.L.88-2003, SEC.2.

14-33-5-3

Sec. 3. (a) Beginning October 24 and not later than November 1, the board shall invite nominations to fill vacancies on the board at the next annual meeting by one (1) publication in a newspaper of general circulation in each county in the district. Each publication must do the following:

(1) Contain the names of the directors whose terms are expiring and the area of the district involved.

(2) Invite nominations to fill vacancies.

(3) State the qualifications for the office as prescribed by section 1 of this chapter, except for the following:

(A) A nominee does not have to have been a petitioner for the establishment of the district.

(B) A nominee does not have to be a resident of the area of the district for which nominations are invited.

(b) Nominations for director must:

(1) be submitted to the office of the district in writing before December 1 following notice of vacancies; and

(2) be signed by at least five (5) freeholders from the areas designated by the secretary's notice.

(c) Nominations that are mailed are valid if:

(1) delivered or postmarked before December 1;

(2) the envelope has sufficient United States postage; and

(3) the envelope is addressed to the district's office.

As added by P.L.1-1995, SEC.26.

14-33-5-4

Sec. 4. (a) The annual meeting of the district must be held at the time designated by the court:

(1) at the district's office; or

(2) at a place in or near the district as determined by resolution of the board adopted before December 1 of the year.

(b) Notice of the annual meeting of the district must be given by one (1) publication in a newspaper of general circulation in each county in the district at least fourteen (14) and not more than thirty-one (31) days before the annual meeting. The notice must contain the following:

(1) The names of the nominees.

(2) The place where the election will be held.

(3) The time of the election.

(4) The fact that this is the annual meeting of the district.

(5) The purposes of the meeting.

(6) The time during which ballots may be cast.

As added by P.L.1-1995, SEC.26.

14-33-5-5

Sec. 5. (a) Before the annual meeting, the board shall prepare the ballots and a list of the freeholders of the district, which must be certified by the county auditor and placed in the district's files. A deficiency in this process

or an omission of the names of any freeholders does not void action taken at an annual meeting.

(b) Only one (1) vote may be cast per freehold.

As added by P.L.1-1995, SEC.26. Amended by P.L.16-2010, SEC.1.

14-33-5-6

Sec. 6. (a) At each annual meeting and before the election of directors, the chairman shall appoint three (3) freeholders of the district who are present at the annual meeting to act as clerks of and conduct the election.

(b) Before the casting of a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the secretary of the district. If the clerks find that a freeholder's name is erroneously omitted from the list, the clerks shall place the name on the list. The omitted freeholder is then entitled to cast a ballot.

(c) The clerks shall note the fact of receipt of a valid written ballot vote opposite the freeholder's name who cast that vote. At this time the written ballot vote is considered cast.

(d) At the close of the election poll, the clerks shall count the cast ballots and make a report of the results. The secretary of the district shall record the results in the records of the district. The chairman shall then declare the successful nominees elected, and the elected directors are entitled to and shall assume all the duties of the office for which elected.

As added by P.L.1-1995, SEC.26.

14-33-5-7

Sec. 7. Promptly after appointment or election a director shall take the following oath:

"I solemnly swear that I shall, to the best of my ability, strive to accomplish the purposes for which the district is established and properly to operate and maintain its works of improvement.".

As added by P.L.1-1995, SEC.26.

14-33-5-8

Sec. 8. If a district fails to conduct an election of directors as provided by this chapter, any interested person of the district may petition the board of commissioners of the county to appoint a director to fill vacancies. The board of commissioners of the county shall make an appointment within fifteen (15) days from the date the petition is filed.

As added by P.L.1-1995, SEC.26.

14-33-5-9

Sec. 9. For the purposes of this chapter, if the district is composed of land from more than one (1) county, the board of commissioners of each county may participate in the following:

(1) The appointment of the initial board.

(2) The filling of vacancies on the board.

As added by P.L.1-1995, SEC.26.

14-33-5-10

Sec. 10. (a) Notwithstanding other provisions of this chapter, this section applies to all districts described in IC 14-33-9-4.

(b) The following shall serve as advisory members of the board and have all privileges of membership except the right to vote:

(1) The city engineer of each second class city in the district.

(2) The county surveyor of the county.

(3) The chairman of the county soil and water conservation district.

(c) On the same day as the primary election held in even-numbered years, the voters shall select the area directors. At the initial election held under this section, the authority that makes the initial appointment of directors under section 1 of this chapter shall designate the initial terms of the directors elected as follows:

(1) One-half (1/2) plus one (1) of the directors serve for two (2) year terms.

(2) The other directors serve for four (4) year terms.

After the first election, all directors serve for four (4) year terms. Area directors take office on June 1 after election.

(d) The initial appointments of directors under section 1 of this chapter shall be made so that the directors serve until the election in the first even-numbered year following the year of appointment.

(e) Nominations for director signed by at least five (5) freeholders shall be filed with the county election board during the period when filing for other county offices takes place, and the board shall publicly invite nominations at least five (5) days before this filing period begins.

(f) Each director must be a freeholder and a resident of the district from which elected. Only one (1) director may be elected from each district.

(g) When a vacancy occurs on the board:

(1) the chairman of the board; or

(2) five (5) freeholders from the district where the vacancy exists;

may petition the appointing authority to have the appointing authority make an appointment to fill the vacancy for the remainder of the unexpired term.

As added by P.L.1-1995, SEC.26.

14-33-5-11

Sec. 11. (a) The board of commissioners of the county shall appoint the initial directors for the following terms:

(1) If there are three (3) or five (5) directors, the terms are as follows:

(A) One (1) term expires at the next annual meeting.

(B) One (1) term expires at the second annual meeting.

(C) One (1) term expires at the third annual meeting.

(D) Any other terms expire at the fourth annual meeting.

(2) If there are seven (7) or nine (9) directors, the terms are as follows:

(A) Two (2) terms expire at the next annual meeting.

(B) Two (2) terms expire at the second annual meeting.

(C) Two (2) terms expire at the third annual meeting.

(D) All other terms expire at the fourth annual meeting.

(b) As the terms expire, each new director shall be elected for a term of four (4) years.

As added by P.L.1-1995, SEC.26.

14-33-5-11.5

Sec. 11.5. (a) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board to represent an area, the nominee for election to the board to represent that area is considered elected.

(b) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board for each area for which a director is to be elected, the following apply:

(1) The election otherwise required to be held under this chapter is not required to be held.

(2) Each of the nominees for election to the board is considered elected as if the election had been held and each nominee was elected as provided in this chapter.

As added by P.L.16-2010, SEC.2.

14-33-5-12

Sec. 12. (a) If a vacancy occurs on the board, the board shall vote to appoint a member to serve until the next annual meeting.

(b) If the vote held under subsection (a) results in a tie, a judge of the circuit court of the county in which the district was established shall designate a person to serve as a member until the next annual meeting.

(c) At the next annual meeting a director shall be elected to complete the term.

As added by P.L.1-1995, SEC.26. Amended by P.L.4-2004, SEC.2.

14-33-5-13

Sec. 13. The board shall by resolution fix the time for holding regular meetings, but the board shall meet at least quarterly each year.

As added by P.L.1-1995, SEC.26.

14-33-5-14

Sec. 14. (a) Special meetings of the board may be called by the chairman or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least three (3) days before a special meeting, a written notice fixing the time and place of the meeting.

(b) Written notice of a special meeting is not required if:
(1) the time of the special meeting has been fixed in a regular meeting; or
(2) all members were present at a meeting at which a special meeting was called.
As added by P.L.1-1995, SEC.26.

14-33-5-15

Sec. 15. A majority of the board constitutes a quorum. An action of the board is official, however, only if authorized by a majority of the board at a regular or properly called special meeting.
As added by P.L.1-1995, SEC.26.

14-33-5-16

Sec. 16. (a) Except as provided in subsection (b), upon approval of the initial district plan, the directors are entitled to compensation in an amount that the court orders, but not to exceed:
(1) one hundred dollars ($100) for not more than two (2) regular or specially called board meetings per month; and
(2) fifty dollars ($50) for not more than five (5) days per month devoted to the work of the district in addition to any day for which payment is received under subdivision (1). In addition, the directors shall be reimbursed for actual expenses, including traveling expense at a rate equal to the rate paid to state officers and employees. Claims for expense reimbursement must be accompanied by an itemized written statement approved by a recorded motion of the board.
(b) At any time after all directors have been elected to the board, the directors may receive an increase in compensation up to a reasonable amount that is:
(1) approved by a majority vote of the board of directors; and
(2) authorized by a court order.
(c) An increase in compensation authorized under subsection (b) may not be based upon an increase of any tax, assessment, rates, or charges by the district.
(d) In addition to any compensation the directors may receive under subsection (b), the directors shall be reimbursed for actual expenses, including traveling expenses, at a rate equal to the rate paid to state officers and employees. Claims for expense reimbursement must be accompanied by an itemized written statement approved by a recorded motion of the board of directors.
As added by P.L.1-1995, SEC.26. Amended by P.L.78-2007, SEC.2; P.L.113-2012, SEC.1.

14-33-5-17

Sec. 17. Immediately following appointment and immediately following each annual meeting of the district, the directors shall meet and elect a chairman and a vice chairman. The vice chairman may act as chairman during the absence or disability of the chairman. The chairman shall promptly notify the commission in writing of the names and addresses of the officers and directors of the district, and the same information, together with the executed oaths, shall be filed with the circuit court.
As added by P.L.1-1995, SEC.26.

14-33-5-18

Sec. 18. (a) The board may appoint, prescribe the duties, and fix the compensation of the following:
(1) A secretary.
(2) A financial clerk.
(3) An engineer.
(4) Employees that are necessary for the discharge of duties and responsibilities of the board.
(b) A financial clerk shall execute a surety bond in the manner prescribed by IC 5-4-1.
(c) The board may make contracts for the following:
(1) Special and temporary services, including professional counsel.
(2) Leases of land to a provider of commercial mobile service (as defined in 47 U.S.C. 332) that allows for the construction, use, and maintenance of a tower that is used for telecommunications purposes.
As added by P.L.1-1995, SEC.26. Amended by P.L.16-2010, SEC.3.

14-33-5-19

Sec. 19. (a) At the first meeting of the first board, the board shall adopt by majority vote a resolution designating the location in or near the district where the district will maintain an office. The board may adopt a resolution by majority vote at any meeting of the board to change the location of the district's office. The board shall report the location of the office and a change in location to the court establishing the district.

(b) The board shall do the following:

(1) Arrange for office space.

(2) Keep a record of all transactions and minutes of all meetings in the office.

(3) Keep all records and minutes available for inspection by any interested person of the district during the hours that the district office is open for business.

As added by P.L.1-1995, SEC.26.

14-33-5-20

Sec. 20. The board shall do the following:

(1) Exercise general supervision of and make regulations for the administration of the affairs of the district.

(2) Prescribe uniform rules pertaining to investigations and hearings.

(3) Supervise the fiscal affairs and responsibilities of the district.

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the district. The compensation must be reasonable and similar in amount to the compensation allowed employees performing similar service for the state and political subdivisions of the state. The board may delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(5) Keep an accurate and complete record of all district proceedings and record and file all bonds and contracts, assuming responsibility for the custody and preservation of all papers and documents of the district.

(6) Make an annual report to the court of income and expenses. The report must be submitted not later than thirty (30) days after the annual meeting and may include any of the following:

(A) A statement of the progress in accomplishing each purpose for which the district is established.

(B) Recommendations for amendment to the district plan.

(C) Any matter that the board believes should be brought to the attention of the court for instructions or approval.

(7) Adopt a seal and certify all official acts.

(8) Sue and be sued collectively by the legal name "_____ Conservancy District", with service of process made on the chairman of the board. However, costs may not be taxed against the directors individually in an action.

(9) Invoke any legal, equitable, or special remedy for the enforcement of this article or of any proper action of the board in a court.

(10) If advisable, establish an advisory committee.

(11) Exercise the powers granted under this article to accomplish each purpose for which the district is established.

(12) If a purpose of the district is the construction or maintenance of a levee in cooperation with the United States Secretary of the Army, divide, by resolution, the levee into maintenance sections and make assignment of each section to a director who must be a resident freeholder near the maintenance section. The director shall, upon assignment, supervise and assist in the maintenance of the assigned maintenance section.

(13) Protect against encroachment by a stream. The board may, alone or in cooperation with state or federal agencies, do whatever is necessary to provide bank stabilization for the protection of the works of improvement of the district.

(14) Insure property, personnel, and operations of the district against risks and in amounts that the board determines necessary to protect the district.

As added by P.L.1-1995, SEC.26.

14-33-5-20.5

Sec. 20.5. (a) A board may adopt a resolution allowing money to be disbursed for lawful district purposes under this section.

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board, the financial clerk of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted a resolution under subsection (a):

(1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.
(2) License or permit fees.
(3) Insurance premiums.
(4) Utility payments or utility connection charges.
(5) General grant programs for which advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.
(6) Grants of state funds authorized by statute.
(7) Maintenance or service agreements.
(8) Leases or rental agreements.
(9) Bond or coupon payments.
(10) Payroll.
(11) State or federal taxes.
(12) Expenses that must be paid because of emergency circumstances.
(13) Expenses described in a resolution.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the financial clerk of the district.

(d) The board shall review and allow the claim at its next regular or special meeting following the preapproved payment of the expense.

As added by P.L.129-2011, SEC.7.

14-33-5-21

Sec. 21. (a) If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

(1) Subject to sections 21.1 and 21.2 of this chapter, establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29.
(2) Collect and enforce the rates, beginning with the commencement of construction as provided in IC 36-9-23.
(3) Establish rules and regulations.
(4) Require connection to the board's sewer system of any property producing sewage or similar waste and require discontinuance of use of privies, cesspools, septic tanks, and similar structures. The board may enforce this requirement by civil action in circuit or superior court as provided in IC 36-9-23-30.
(5) Provide for and collect a connection charge to the board's sewer system as provided in IC 36-9-23-25 through IC 36-9-23-29.
(6) Contract for treatment of the board's sewage and pay a fair and reasonable connection fee or rate for treatment, or a combination of both, as provided in IC 36-9-23-16.
(7) Secure the bonds by a trust indenture as provided in IC 36-9-23-22.
(8) Create a sinking fund for the payment of principal and interest and accumulate reasonable reserves as provided in IC 36-9-23-21.
(9) Issue temporary revenue bonds to be exchanged for definite revenue bonds as provided in IC 36-9-23-17 through IC 36-9-23-20.
(10) Issue additional revenue bonds as part of the same issue if the issue does not meet the full cost of the project for which the bonds were issued as provided in IC 36-9-23-17 through IC 36-9-23-20.
(11) Issue additional revenue bonds for improvements, enlargements, and extensions as provided in IC 36-9-23-18.
(12) Covenant with the holders of the revenue bonds for the following:
    (A) Protection of the holders concerning the use of money derived from the sale of bonds.
    (B) The collection of necessary rates and charges and segregation of the rates and charges for payment of principal and interest.
    (C) Remedy if a default occurs.

The covenants may extend to both repayment from revenues and other money available to the district by other statute as provided in IC 36-9-23.

(b) In the same manner as provided by IC 36-9-23, the rates or charges made, assessed, or established by the

district are a lien on a lot, parcel of land, or building that is connected with or uses the works by or through any part of the sewage system of the district. The liens:

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

As added by P.L.1-1995, SEC.26. Amended by P.L.168-2009, SEC.1.

14-33-5-21.1

Sec. 21.1. (a) This section applies to a campground that:

(1) is connected with the sewage works of a district established for the purpose described in IC 14-33-1-1(a)(5); or

(2) uses or is served by the sewage works of a district established for the purpose described in IC 14-33-1-1(a)(5).

(b) Beginning September 1, 2009, if a campground is billed for sewage service at a flat rate under section 21(a)(1) of this chapter, the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the district's sewers. If a campground elects to be billed by use of a meter:

(1) the rate charged by the district's board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by the board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:

(A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or

(B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under section 21(a)(1) of this chapter, for a calendar year beginning after December 31, 2009, each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground under subsections (b) and (c) if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) concentrations of biochemical oxygen demand (BOD) that exceed federal pollutant standards.

As added by P.L.168-2009, SEC.2.

14-33-5-21.2

Sec. 21.2. (a) As used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) This section applies to an owner or operator of a campground described in section 21.1(b) or 21.1(c) of this chapter who disputes:

(1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 21.1(b)(1) of this chapter;

(2) the number of resident equivalent units determined for the campground under section 21.1(c) of this chapter; or

(3) that any additional charges imposed on the campground under section 21.1(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

(1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:

(A) any grievance or complaint procedure prescribed by the board; or

(B) other negotiations with the board; and

(2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

(1) the owner or operator of the campground; and

(2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

(1) a copy of the appeals division's and commission's decision under subsection (f) for each dispute filed; and

(2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

(h) The commission may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.168-2009, SEC.3.

14-33-5-22

Sec. 22. (a) The board may do the following:

(1) Enter into agreement with and accept money from a federal or state agency or department.

(2) By the agreement provide the manner in which resulting debt is evidenced, with:

(A) the term;

(B) the interest rate; and

(C) the method and time of repayment;

subject to statutes governing the federal or state agency or department, without regard to other limitations of this article.

(b) The board may also enter into an agreement with a person, municipality, county, or special taxing district, whether or not the person, municipality, county, or special taxing district is in the district, for any purpose compatible with the purposes for which the district exists. The municipality, county, or special taxing district may enter into the agreement.

As added by P.L.1-1995, SEC.26.

14-33-5-23

Sec. 23. The board may accept gifts of money or other property to be used for certain aspects of a general

purpose for which the district is established.
As added by P.L.1-1995, SEC.26.

14-33-5-24

Sec. 24. An interested person adversely affected by an action committed or omitted by the board in violation of this chapter may petition the court having jurisdiction over the district to enjoin or mandate the board.
As added by P.L.1-1995, SEC.26.

Chapter 5.4. Election of Board Members in Specific Conservancy Districts

14-33-5.4

14-33-5.4-1

Sec. 1. (a) This chapter applies only to conservancy districts located wholly within a county having a population of more than twenty-three thousand three hundred (23,300) but less than twenty-four thousand (24,000).

(b) This article governs conservancy districts located wholly within a county having a population of more than twenty-three thousand three hundred (23,300) but less than twenty-four thousand (24,000) generally except when this article conflicts with a section of this chapter.
As added by P.L.185-1995, SEC.2. Amended by P.L.170-2002, SEC.97; P.L.119-2012, SEC.123.

14-33-5.4-2

Sec. 2. (a) As used in this chapter, "relative" of a candidate or trustee means an individual who is related to the candidate or trustee, or to the spouse of the candidate or trustee, as one (1) of the following:

(1) Son.
(2) Daughter.
(3) Grandson.
(4) Granddaughter.
(5) Great-grandson.
(6) Great-granddaughter.
(7) Father.
(8) Mother.
(9) Grandfather.
(10) Grandmother.
(11) Great-grandfather.
(12) Great-grandmother.
(13) Brother.
(14) Sister.
(15) Nephew.
(16) Niece.
(17) Uncle.
(18) Aunt.

(b) For the purposes of this section, relatives by adoption, half-blood, marriage, or remarriage are treated as relatives of whole kinship.
As added by P.L.185-1995, SEC.2.

14-33-5.4-3

Sec. 3. (a) Within twenty (20) days after the order establishing the district, the board of commissioners of the county shall appoint the initial board of directors. A director shall be appointed for each of the areas in the district as established by the court. A director must be a freeholder of the area of the district for which appointed or an officer or nominee of a corporate freeholder of the area of the district for which appointed and must be qualified by knowledge and experience in matters pertaining to the development of the district. A majority of the directors must be resident freeholders of the district if available and qualified. A majority of the initial directors must be petitioners for the establishment of the district, but for this purpose an officer or nominee of a corporate freeholder of the district, if the corporation is one (1) of the petitioners, is considered a petitioner.

(b) When vacancies on the board occur due to expiration of terms, resignation, or otherwise, directors shall be elected by a majority, written ballot vote of the freeholders of the district. Between April 24 and May 1, the board shall invite nominations to fill vacancies on the board by one (1) publication in a newspaper of general circulation in each of the counties in the district. Each publication must:

(1) contain the names of the directors whose terms are expiring and the area of the district involved;

(2) invite nominations to fill vacancies; and

(3) state the qualifications for the office, that are the same as prescribed by subsection (a), except a nominee need not have been a petitioner for the establishment of the district nor a resident of the area of the district for which nominations are invited.

(c) Nominations for director must be submitted to the office of the district in writing before June 1 following notice of vacancies and must be signed by at least five (5) freeholders from the areas designated by the secretary's notice. Nominations that are mailed are valid if delivered or postmarked before June 1 if the envelope has sufficient U.S. postage and is addressed to the district's office.

(d) The election of directors of a district shall be held the Saturday or Sunday immediately before or after July 4. The board of directors of a district shall establish the date for the election of directors.

(e) Notice of the annual election of directors of the district must be published in one (1) issue of a newspaper of general circulation in each county in the district. The notice must be published:

(1) not less than fourteen (14); and

(2) not more than thirty-one (31);

days before the election. The notice must contain the names of the nominees, the place where ballots can be cast in the election, and the date and time of the election.

(f) Before the election, the board shall prepare the ballots and a list of the freeholders of the district, that must be certified by the county auditor and placed in the district's files. No deficiency in this process or omission of the names of any freeholders voids action taken at an annual meeting.

(g) A freeholder is entitled to only one (1) vote per freeholder.

(h) Before the election of directors, the chairman shall appoint three (3) or, if necessary, more freeholders of the district to act as clerks of the election and to conduct the election.

(i) If a district fails to conduct an election of directors as provided by this chapter, any interested person of the district may petition the board of commissioners of the county to appoint a director to fill vacancies. The board of commissioners of the county shall make its appointment within fifteen (15) days from the date the petition is filed.
As added by P.L.185-1995, SEC.2.

14-33-5.4-3.5

Sec. 3.5. (a) If in the opinion of the secretary of the district a freehold has been divided into multiple freeholds for the sole purpose of increasing the number of freeholders eligible to cast a vote in an election under this chapter, the secretary of the district may determine to exclude the freeholders of those multiple freeholds from the list of freeholders referred to in section 3(f) of this chapter.

(b) The determination of the secretary of the district under subsection (a) may be challenged by petitioning the circuit court that created the district.
As added by P.L.16-2010, SEC.4.

14-33-5.4-4

Sec. 4. (a) The auditor of each county shall, at least forty-five (45) days before the election of directors of the district, provide the district with a current list of freeholders that sets forth:

(1) each parcel of real property that is:

(A) located within the county and the district; and

(B) subject to property tax under IC 6-1.1; and

(2) the name of each individual who is identified in property tax records as the holder of a freeholder's interest in a parcel of property described in subdivision (1).

(b) To be eligible to vote in an election of directors of a district:

(1) an individual must have a freeholder's interest in real property listed on the current tax list provided under subsection (a); and

(2) the individual's name must appear on the list of freeholders provided under subsection (a).

(c) Before casting a vote at a polling place, a freeholder shall sign the list of freeholders in the presence of the

secretary of the district or an election clerk appointed under section 3(h) of this chapter. The freeholder shall sign the list in the space opposite the name of the freeholder on the list.

(d) Notwithstanding subsection (b)(2), if:

(1) a freeholder's name does not appear on the list of freeholders; and

(2) the secretary of the district or an election clerk finds that the freeholder's name was erroneously omitted from the list;

the secretary or clerk shall place the freeholder's name on the list. After the freeholder's name is placed on the list, the freeholder is entitled to cast a ballot in the election.

(e) After placing a freeholder's name on the list under subsection (d), the secretary or clerk shall mark the list opposite the name of the freeholder who cast that vote to note the receipt of a valid written ballot vote from the freeholder.

As added by P.L.185-1995, SEC.2.

14-33-5.4-5

Sec. 5. (a) Two (2) observers may monitor the voting at each polling place on behalf of each candidate for director. The district must provide each observer with a copy of the list of freeholders provided to the district under section 4(a) of this chapter.

(b) A candidate for director may not be present in a polling place during the day of the election of directors except to cast a ballot.

(c) The relative of a candidate for director may not be present in a polling place during the day of the election of directors except:

(1) to cast a ballot; or

(2) to act as an observer under subsection (a).

As added by P.L.185-1995, SEC.2.

14-33-5.4-6

Sec. 6. (a) A district must adopt a form for applications for absentee ballots. The form adopted by the district must elicit the following information from the applicant:

(1) Name.

(2) Location within the district of the real estate that is held by the applicant, making the applicant a freeholder.

(b) An individual who:

(1) holds a freeholder's interest in real property located within a district; and

(2) wishes to cast an absentee ballot in an election of directors of the district;

must present an application for an absentee ballot to the trustee of the township in which the real property of the freeholder is located. The application must be made on the form adopted by the district under subsection (a).

(c) To be accepted, an application for an absentee ballot must reach the trustee at least thirty (30) days before the election.

(d) When the trustee receives an application for an absentee ballot under this section, the trustee shall verify that the name of the applicant appears on the list of freeholders provided to the district under section 4(a) of this chapter. For the purposes of this subsection, the district shall provide a copy of the list of freeholders to the trustee of each township that is located in whole or in part within the district at least thirty (30) days before the election.

(e) If the name of an applicant appears on the list of freeholders, the trustee shall mail to the applicant:

(1) an absentee ballot; and

(2) instructions on the proper completion and mailing of the ballot.

(f) The instructions provided by the trustee under subsection (e)(2) must direct the applicant to return the absentee ballot by mail to the trustee.

(g) If the name of an applicant does not appear on the list of freeholders, the trustee shall:

(1) discard the application of the applicant; and

(2) mail to the applicant a letter or postcard informing the applicant that the applicant's application for an absentee ballot has been discarded because the applicant's name did not appear on the list of freeholders.

(h) A trustee shall:

(1) keep a record of each absentee ballot mailed to an applicant under subsection (e);

(2) retain absentee ballots that are returned to the office of the trustee before the date of the election; and

(3) on the day of the election, deliver all absentee ballots retained under subdivision (2) to an election polling place.

(i) The district shall:

(1) supply the trustee with:

(A) absentee ballots; and

(B) envelopes; and

(2) reimburse the expenses incurred by the trustee for postage;

under this section.

(j) If a relative of a trustee is a candidate for director of a district, the duties of the trustee under this section with respect to the election of directors of the district shall be carried out by a member of the township board selected by the trustee.

As added by P.L.185-1995, SEC.2.

14-33-5.4-7

Sec. 7. (a) At the close of an election, the clerks appointed under section 3(h) of this chapter shall count the ballots cast and make a report of the results. The secretary of the district shall record the results reported by the clerks in the records of the district.

(b) After the results are reported and recorded under subsection (a), the chairman of the board of directors shall declare the successful nominees elected, and each elected director is entitled to and shall assume all duties of the office to which the nominee was elected at midnight the night of the election or as soon as possible thereafter.

As added by P.L.185-1995, SEC.2.

14-33-5.4-7.5

Sec. 7.5. (a) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board to represent an area, the nominee for election to the board to represent that area is considered elected.

(b) Notwithstanding the other provisions of this chapter, if there is only one (1) nominee for election to the board for each area for which a director is to be elected, the following apply:

(1) The election otherwise required to be held under this chapter is not required to be held.

(2) Each of the nominees for election to the board is considered elected as if the election had been held and each nominee was elected as provided in this chapter.

As added by P.L.16-2010, SEC.5.

14-33-5.4-8

Sec. 8. Promptly after being appointed or elected under this chapter, a director shall take the following oath: "I do solemnly swear that I shall, to the best of my ability, strive to accomplish the purposes for which the district is established and properly to operate and maintain its works of improvement.".

As added by P.L.185-1995, SEC.2.

14-33-5.4-9

Sec. 9. (a) The annual meeting of the district must be held at the time designated by the court under IC 14-33-2-27.

(b) The location of the annual meeting must be:

(1) the office of the district; or

(2) a place in or near the district as determined by resolution of the board adopted before December 1 of the year.

(c) Notice of the annual meeting of the district must be published in one (1) issue of a newspaper of general circulation in each county in the district. The notice must be published:

(1) not less than fourteen (14); and

(2) not more than thirty-one (31);

days before the annual meeting.

(d) The notice must set forth:

(1) the fact that the meeting is the annual meeting of the district; and

(2) the purposes of the meeting.

As added by P.L.185-1995, SEC.2.

Chapter 6. District Plan

14-33-6

14-33-6-1

Sec. 1. (a) Immediately after the organizational meeting of the board, the board must commence the preparation of the district plan to accomplish the purpose for which the district is established. The board may request and receive from a state agency information that:

(1) the agency has collected regarding conditions in and immediately surrounding the district; and

(2) is pertinent to planning the necessary structures or operations of the district.

(b) The board may:

(1) contract;

(2) enter into agreements with a state or federal agency; or

(3) hire necessary personnel;

to provide technical data or otherwise assist in the preparation of the district plan.

(c) The board may also conduct hearings that the board finds necessary.

As added by P.L.1-1995, SEC.26.

14-33-6-2

Sec. 2. (a) A district plan consists of an engineering report that sets forth the general, comprehensive plan for the accomplishment of each purpose for which the district was established. A district plan must contain the following:

(1) Descriptions of the following:

(A) The physical nature of the district.

(B) The problems confronting the district.

(C) The works of improvement needed.

(D) The location of the works of improvement.

(E) The benefits to be derived from the improvements.

(2) Maps, preliminary drawings, and estimates of costs based upon preliminary engineering surveys and studies.

(3) Copies of agreements or other arrangements with other persons or governmental agencies with respect to the financing, construction, maintenance, and operation of any of the works of improvement proposed in the plan.

(b) A district plan may initially provide works of improvement for the accomplishment of less than all the purposes for which the district was established if:

(1) there is good reason for accomplishing less than all the purposes; and

(2) assurance is given that the program for the accomplishment of the other purposes will be set forth in an amendment to the district plan.

(c) It is not necessary to prepare:

(1) detailed construction drawings and specifications; and

(2) refined cost estimates;

as a part of a district plan.

As added by P.L.1-1995, SEC.26.

14-33-6-3

Sec. 3. The board shall present the district plan to the commission within one hundred twenty (120) days after the date of the appointment of the members of the board, unless the board requests and receives additional time from the commission.

As added by P.L.1-1995, SEC.26.

14-33-6-4

Sec. 4. (a) The commission shall do the following:

(1) Review each district plan.

(2) Request the technical assistance of any other state agency, including:

(A) the water pollution control board;
(B) the state department of health; and
(C) the department of environmental management;
having administrative jurisdiction over any of the purposes of the district.
(b) The commission may also request technical assistance of any federal agency.
(c) The commission shall approve a plan if the following conditions are met:
(1) Any other state agency having authority over certain purposes of the district has approved that part of the plan.
(2) The commission finds that the plan accomplishes in an economical manner the purpose for which the district is established.
(d) The commission may reject a plan or any part of a plan.
The board may make the changes that are necessary to secure the approval of the commission.
As added by P.L.1-1995, SEC.26.

14-33-6-5

Sec. 5. (a) After receiving the approval of the commission, the board shall file the district plan with the court.
(b) Upon receipt the court shall set a date for a hearing. The court shall give priority to the hearing in determining the date, but the court must allow at least twenty-one (21) days for interested persons to file exceptions.
(c) The court shall order notice for the hearing that the court considers necessary, but publication must at least be made in each county having land in the district in accordance with IC 5-3-1 as if the notice affected county business.
As added by P.L.1-1995, SEC.26.

14-33-6-6

Sec. 6. (a) At the hearing the court shall make findings on the following:
(1) Whether the district plan is necessary, proper, and feasible for the accomplishment of each purpose for which the district is established.
(2) If the purpose of the district is other than water supply or sewage disposal, whether the estimated benefits to be received in the district will exceed the estimated costs and damages of the plan.
(3) If the purpose of the district is water supply or sewage disposal, or both, whether the public health and convenience is served.
(4) Whether compatibility with water projects listed in IC 14-33-2-17 is reasonably assured.
(b) If the court finds a plan lacking under subsection (a), the court shall refer the plan back to the board for changes that are necessary. The board has:
(1) one hundred twenty (120) days; or
(2) another period that the court orders;
to prepare and submit a new plan. The procedure for approval and order for hearing, notice, and making findings is the same as for the original submissions.
(c) If the court finds that a plan meets all the criteria of subsection (a), the court shall approve the plan.
As added by P.L.1-1995, SEC.26.

14-33-6-7

Sec. 7. The board or an interested person adversely affected by the plan may appeal an order:
(1) referring the district plan back to the board; or
(2) approving the district plan;
to the supreme court within thirty (30) days.
As added by P.L.1-1995, SEC.26.

14-33-6-8

Sec. 8. (a) To implement a district plan, the board shall order the preparation of the detailed construction drawings, specifications, and refined cost estimates as soon as practicable after the approval of the district plan by the court if the work has not been submitted as a part of the district plan. The implementation may involve all or part of the works of improvement if the part constitutes a unit that:
(1) can be constructed and operated as a feasible unit alone; and
(2) can be operated economically in conjunction with other proposed works set forth in the district plan.

(b) When the drawings, specifications, and cost estimates have been prepared to the satisfaction of the board, the board shall by resolution tentatively adopt and submit the drawings, specifications, and cost estimates to the commission for approval.
As added by P.L.1-1995, SEC.26.

14-33-6-9

Sec. 9. (a) Upon receipt of the written approval of the commission, the board shall schedule a hearing on the drawings, specifications, and cost estimates at which any interested person must be heard. The hearing shall be held:

(1) in the office of the district; or

(2) at another place designated in the notice of hearing that is generally convenient to the landowners of the district.

(b) The board shall give notice of the hearing as follows:

(1) By at least one (1) publication in one (1) newspaper of general circulation in each county having land in the district.

(2) By mail, first class postage prepaid, to the freeholder of each tract of real property that will be taken or damaged by the construction of the works of improvements.

(c) The notice must be published and mailed at least ten (10) days before the date of hearing.
As added by P.L.1-1995, SEC.26.

14-33-6-10

Sec. 10. At the hearing the board shall by resolution:

(1) confirm, with or without modification; or

(2) revoke;

the board's tentative resolution adopting the drawings, specifications, and cost estimates.
As added by P.L.1-1995, SEC.26.

14-33-6-11

Sec. 11. If the board confirms the drawings, specifications, and cost estimates, the board shall let contracts or otherwise construct the works of improvement provided in the drawings, specifications, and cost estimates. The board may not let a contract for an amount that exceeds the cost estimate. However, if all bids are greater than the cost estimate, the board may let a contract for an amount that does not exceed five percent (5%) over the cost estimate if the cost of rebidding, rising cost level, or other good reason necessitates this course of action.
As added by P.L.1-1995, SEC.26.

14-33-6-12

Sec. 12. (a) As the result of:

(1) experience gained in the construction or operation of the works of a district; or

(2) changed conditions;

the district plan may be amended in any way as long as the amended district plan conforms to the other requirements of this chapter.

(b) The board shall prepare an amended district plan only if ordered to do so by the court. The court shall order an amended district plan if the court finds there is need for amendment based upon a petition filed by any of the following:

(1) By the board on the board's own motion.

(2) By the commission on the commission's own motion.

(3) By twenty percent (20%) of the freeholders owning land in the district. IC 14-33-2-3 applies to this petition.

(c) The party that filed a petition under subsection (b) may appeal an order denying the petition to the supreme court within thirty (30) days.

(d) The same procedures provided for the initial submission of the district plan must be complied with for the submission of an amended district plan.
As added by P.L.1-1995, SEC.26.

14-33-6-13

Sec. 13. (a) The board shall place the district plan in operation by constructing all works and maintaining the works in accordance with the district plan.

(b) If necessary to discharge these responsibilities, the board may do the following:

(1) Levy taxes on the real property in the district.

(2) Make assessments on the real property in the district, except the property that is exempt under IC 14-33-7-4, for exceptional benefits to the property and further assessments pro rata for maintenance and operation of the works of improvement.

(3) Issue bonds and short and long term notes.

(4) Incur other debts and liabilities.

(5) Exercise the power of eminent domain, both inside and outside the boundaries of the district, in accordance with this article or another eminent domain statute. In the exercise of this power, due care shall be taken to minimize interference with other public interests involved.

(6) Make payments for the fair value of all property taken under eminent domain proceedings, and in cases that are appealed, make the payments into court and proceed promptly in placing the district plan in operation.

(7) Institute any type of civil legal proceedings in a court having jurisdiction over the person or property in question.

(8) Purchase or rent property.

(9) Sell services or property that are produced incident to the district plan at a fair and reasonable price.

(10) Make contracts or otherwise enter into agreements with persons or federal, state, or local governmental agencies for construction, maintenance, operation, or security of any part of the district.

(11) Receive and disburse money.

(12) Lease land and other assets to municipalities, counties, and park boards of municipalities or counties, with the term and annual rental adequate to meet the district's repayment schedule for financing, if any, of the land and other assets leased. Municipalities, counties, and park boards of municipalities or counties may enter into leases without limitations of other statutes regarding the receipt of petitions, the duration of the term of the lease, or the distance of the land and other assets from the corporate boundaries. The municipalities, counties, and park boards may enter into leases:

(A) for terms as long as fifty (50) years;

(B) at locations that the municipalities, counties, and park boards determine would benefit the municipalities or counties; and

(C) upon terms, conditions, and covenants that are fair and reasonable.

The board may pledge the rental income from the lease as revenue for services or property produced incident to the operation of the district.

(13) Perform necessary construction and maintenance work as follows:

(A) Outside the district.

(B) Outside Indiana if:

(i) there is voluntary agreement on the part of persons outside Indiana; and

(ii) the work will confer benefits to the real property in the district in excess of costs and damages to be paid by the district.

As added by P.L.1-1995, SEC.26. Amended by P.L.52-2012, SEC.1.

14-33-6-14

Sec. 14. (a) A board may establish an association of Indiana conservancy districts and have the district become a member. The association must have as purposes the following:

(1) To assist in the assembly and dissemination of information in all aspects of the organization, financing, construction of improvements, operation, and maintenance of districts for the benefit of districts and persons desiring to establish districts.

(2) To inform persons interested in the functions of districts.

(3) Because a district is a statutory entity, to assist in recommending legislation to keep abreast of developing needs.

(b) The commission shall make the initial call to establish the association and may thereafter, together with Purdue University, give the association the reasonable assistance that the association requires.

(c) The association shall determine and elect officers and committees.

(d) Each member district may do the following:
(1) Pay reasonable annual dues.
(2) For the purpose of attending and engaging in the association's functions and affairs:
(A) employ agents and employees; and
(B) pay the expenses of the district's directors.
As added by P.L.1-1995, SEC.26.

Chapter 7. Payment of Expenses

14-33-7

14-33-7-0.1

Sec. 0.1. The amendments made to section 4 of this chapter by P.L.97-2004 apply only to property taxes first due and payable after December 31, 2002.
As added by P.L.220-2011, SEC.300.

14-33-7-1

Sec. 1. (a) All the real property in the district, except the property that is exempt under section 4 of this chapter, constitutes a taxing district for the purpose of levying special benefit taxes to pay for the following:
(1) The expenses of establishing the district.
(2) General preliminary and administrative expenses.
(3) The expenses of preparing the district plan.
(4) The expenses of putting the district plan into operation by constructing the necessary works.
(5) The expenses of operating and maintaining the district.
(b) The special tax:
(1) equals the amount of benefits received; and
(2) must be based on return for the benefits.
As added by P.L.1-1995, SEC.26.

14-33-7-2

Sec. 2. (a) This section applies if:
(1) a petition filed for the establishment of a district states that:
(A) the purpose for establishing the district is providing water supply, including treatment and distribution for domestic, industrial, and public use;
(B) it is the election of the petitioners to accomplish the purpose under IC 14-33-20;
(C) a special benefits tax will not be levied; and
(D) all costs will be paid for by sources other than the levy of a special benefits tax; and
(2) the statements contained in subdivision (1) are incorporated by the court into the order establishing the district.
(b) The board may not levy a special benefits tax for the purpose described in section 1(a)(1) of this chapter. All costs of accomplishing the purpose must be paid for by the following:
(1) Receipt of revenues from the sale of water.
(2) An assessment against each tract of real property served by the resulting water distribution system for the lesser of the following:
(A) Seventy-five dollars ($75).
(B) Five percent (5%) of the estimated average project cost according to the district plan of serving each tract of real property.
(c) In addition, the district may charge a fair and reasonable tap-in fee for water service.
(d) An assessment is due within sixty (60) days after notice of the assessment. The assessment is not considered an exceptional benefit, but the provisions of this article pertaining to exceptional benefits apply to the collection and enforcement of the assessment.
As added by P.L.1-1995, SEC.26.

14-33-7-3

Sec. 3. In all districts described in IC 14-33-9-4, the special benefits tax rate may not exceed six and sixty-seven hundredths cents ($0.0667) on each one hundred dollars ($100) of assessed valuation of property in the taxing district.
As added by P.L.1-1995, SEC.26. Amended by P.L.6-1997, SEC.160.

14-33-7-4

Sec. 4. (a) This section applies to the following tangible property owned by or held in trust for the use of a church or religious society:

(1) A building that is used for religious worship.
(2) A building that is used as a parsonage.
(3) The pews and furniture contained within a building that is used for religious worship.
(4) The land upon which a building that is used for religious worship is situated.
(5) The land, not exceeding fifteen (15) acres, upon which a building that is used as a parsonage is situated.

(b) Property is exempt from the special benefits tax that may be imposed under:

(1) IC 14-33-6-13 and section 1 of this chapter; or
(2) IC 14-33-21-5;

to the extent that the special benefits tax revenue will be used for the construction or improvement of a water impoundment project, including a lake, pond, or dam.

(c) To obtain an exemption for a parsonage, a church or religious society must provide the county auditor with an affidavit at the time the church or religious society applies for the exemption. The affidavit must:

(1) state:
(A) that all parsonages are being used to house one (1) of the church's or religious society's rabbis, priests, preachers, ministers, or pastors; and
(B) that none of the parsonages are being used to make a profit; and
(2) be signed under oath or affirmation by the church's or religious society's head rabbi, priest, preacher, minister, pastor, or designee of the official church body.

As added by P.L.1-1995, SEC.26. Amended by P.L.264-2003, SEC.13.

14-33-7-5

Sec. 5. The expenses and obligations of the district may also be paid from any of the following:

(1) The receipt of gifts from any source.
(2) The receipt of money from the federal or state government.
(3) The receipt of revenue from the sale of services or property produced incident to the accomplishment of a purpose for which the district is established.
(4) The collection of assessments from land that receives exceptional benefits from the operation of the district plan.
(5) The collection of assessments for maintenance and operation of the works of improvement.

As added by P.L.1-1995, SEC.26.

14-33-7-6

Sec. 6. (a) The:

(1) cost of notice, including publication and mailing; and
(2) other costs of the court in the proceedings to establish the district;

are payable out of the general money of the county in which the court is sitting, without an appropriation having been made. The court shall order the county auditor to issue a warrant for the payment.

(b) If the petition is dismissed, the costs shall be:

(1) collected from the petitioners or the sureties of the petitioners; and
(2) repaid to the county.

(c) If the district is established, the board shall repay the county from the first money collected from the levy of a tax or the collection of an assessment.
As added by P.L.1-1995, SEC.26.

14-33-7-7

Sec. 7. (a) To pay the costs of establishing a district, including general, legal, and administrative costs and costs

incident to preparing the district plan, money may be obtained from one (1) or a combination of the following methods:

(1) Gifts, loans, or grants from a state or federal agency, or both.

(2) Gifts from any source.

(3) The collection of the special benefit tax.

(4) Borrowing from private or public sources in anticipation of the collection of the tax.

(5) Advances from the general fund of the county under section 15 of this chapter.

(6) Borrowing from the economic development fund created by IC 5-28-8 for any of the purposes in IC 14-33-1-1.

(7) Borrowing from the flood control revolving fund created by IC 14-28-5 for any of the purposes in IC 14-33-1-1.

(b) All persons, agencies, and departments charged with the administration and supervision of funds such as those created by IC 5-28-8 and IC 14-28-5 may make loans and advances to a district. The procedures, terms, and conditions of the loans must be the same as provided in the statutes establishing the funds but shall be modified and supplemented to fit this article to facilitate the financing of districts.

(c) This section does not preclude the borrowing of money for the following:

(1) Establishing the district.

(2) General, legal, and administrative costs.

(3) Costs incident to preparing the district plan in conjunction with borrowing of money to pay construction costs.

As added by P.L.1-1995, SEC.26. Amended by P.L.4-2005, SEC.127.

14-33-7-8

Sec. 8. The fiscal year of a district is the calendar year.

As added by P.L.1-1995, SEC.26.

14-33-7-9

Sec. 9. If the board is ordered to prepare an amended district plan, the board may use any source of money provided in section 7 of this chapter to defray the expense, which is a proper operating expense. The board may use for this purpose a current operating surplus available in the year the board is ordered to amend the district plan. The board may include the estimated expense of preparing an amended district plan in the budget for operating expenses in the next year.

As added by P.L.1-1995, SEC.26.

14-33-7-10

Sec. 10. (a) The board may apply to the federal Farmers Home Administration, the United States Department of Housing and Urban Development, or any other federal agency authorized to make loans for works of improvement for a long term or short term loan to cover the following:

(1) Expenses of establishing the district.

(2) General, legal, and administrative expenses.

(3) Costs of engineering or other costs of preparing the district plan.

(4) Costs of putting the district plan into effect by the necessary construction, maintenance, and operation of the works of improvement that have been authorized by the approval of the district plan.

(5) Refinancing a loan whose proceeds have been used for any of the purposes described in this subsection.

(b) A loan under this section:

(1) may be evidenced by one (1) installment note or by a series of notes; and

(2) may be secured by:

(A) revenues; or

(B) the collection of the special benefits tax levied on the real property in the district.

If a loan is secured by a pledge of collection of the tax, the loan may be paid in whole or in part by revenues or the collection of assessments.

(c) If the board decides not to evidence the financing with a federal agency by an installment note or series of notes and instead prepares a bond issue, the bond issue may, in whole or in part, be offered for sale to the federal agency without:

(1) a public offering; or
(2) the securing of competitive bids on the bond offering.
(d) Repayment of a loan begins at the time upon which the board and the federal agency agree. The:
(1) amount of interest;
(2) time of making payments of interest; and
(3) interval at which interest must be paid;
are subject to the agreement of the parties.
As added by P.L.1-1995, SEC.26.

14-33-7-11

Sec. 11. (a) Before making firm financial commitments under section 10 of this chapter with a federal agency, the board must file a petition for approval of the proposed action in the court. The petition must state:
(1) the purpose;
(2) the amount; and
(3) the terms;
of the proposed loan.
(b) The court shall set a date for a hearing, giving priority to the hearing in determining the date. However, the court must allow at least twenty-one (21) days for interested persons to file exceptions. The court shall order notice for the hearing as the court considers necessary, but publication must at least be made in each county having land in the district in accordance with IC 5-3-1 as if the notice affected county business. The notice must state in summary form the contents of the petition.
(c) If at the hearing the court finds that:
(1) the loan as proposed in the petition is necessary for the accomplishment of the purpose of the district; and
(2) the terms and conditions are reasonable and probably are as beneficial to the district as would be obtainable in private, competitive financial markets;
the court shall approve the petition and authorize the board to make firm commitments for the loan.
(d) Upon approval by the court, the board may levy the special benefits taxes necessary for the repayment of the loan.
As added by P.L.1-1995, SEC.26.

14-33-7-12

Sec. 12. The board shall include agreements made with a federal agency under section 10 of this chapter in the district plan if agreements have been made at the time of submission of the plan to the commission.
As added by P.L.1-1995, SEC.26.

14-33-7-13

Sec. 13. The levy of the tax for special benefits may be made although an attempt to formulate a district plan has been abandoned because of:
(1) changed conditions;
(2) impracticability; or
(3) other reasons;
if money is necessary to meet valid obligations of the district.
As added by P.L.1-1995, SEC.26.

14-33-7-14

Sec. 14. (a) In anticipation of the money to be received from any source, a board may borrow money by issuing notes. The notes:
(1) must mature in not more than two (2) years; and
(2) may be renewed for periods of not more than two (2) years.
(b) The borrowing may be by direct negotiation with any of the following:
(1) A bank or savings association licensed to do business in Indiana.
(2) An agent of the state or federal government.
As added by P.L.1-1995, SEC.26.

14-33-7-15

Sec. 15. (a) To pay all:

(1) necessary expenses of establishing a district;

(2) general, legal, and administrative costs; and

(3) costs incident to preparing the district plan;

the court may order the auditor of the county in which the court is sitting to issue warrants to the district for money necessary to meet these expenses.

(b) If at least two (2) counties have land in the district, the court shall order the auditor of each other county to reimburse the paying county from the other county's general fund by issuing warrants in amounts that the court estimates will be reasonable in relation to the estimated benefits that the land in each county will receive from the operation of the district.

As added by P.L.1-1995, SEC.26.

14-33-7-16

Sec. 16. (a) The necessary expenses of establishing a district include the following:

(1) Costs of printing, publication, mailing, surveying, and abstracting.

(2) Court costs.

(3) Reasonable attorney's fees for establishing the district.

(4) Reasonable engineering fees for preliminary studies.

(b) General, legal, and administrative costs and costs incident to preparing a district plan include the following:

(1) Payment of directors.

(2) Secretarial services.

(3) Transportation, administrative, engineering, and legal fees.

(4) Printing, mailing, basic supplies, office equipment, and rental of office space.

As added by P.L.1-1995, SEC.26.

14-33-7-17

Sec. 17. A district shall promptly repay any money that is advanced to the district from:

(1) the general fund of a county; or

(2) the economic development fund created by IC 5-28-8;

from money received through the collection of an authorized tax or assessment.

As added by P.L.1-1995, SEC.26. Amended by P.L.4-2005, SEC.128.

Chapter 8. Board of Appraisers

14-33-8

14-33-8-1

Sec. 1. At the time of making the order approving the district plan but not later than thirty (30) days following the completion of construction of the works of improvement provided for in the district plan, and upon petition of the board or of a freeholder whose land is subject to the special benefits tax, the court shall appoint three (3) competent, disinterested persons to constitute the board of appraisers of the district. The board of appraisers has one (1) or both of the following functions as the court in the order appointing the appraisers directs:

(1) To determine the damages or limitation on special benefits to real property in the district resulting from the carrying out of the district plan, including the compensation to be paid the owners and others having an interest in land that is needed by the district, either in fee simple or by subjection to an easement. The land or easement is considered appropriated to the use of the district by the order of the court approving the district plan, which is implemented by construction drawings, specifications, and refined cost estimates on that part of the works of improvement that damage the land. If a district plan is implemented later, the land is considered appropriated to the use of the district by the resolution of the board of directors confirming the adoption of the construction drawings, specifications, and refined cost estimates as provided by IC 14-33-6-10. The board of appraisers shall base the appraisal of damages on the date the land is considered appropriated. Land or easements are considered appropriated by the order of the court or the resolution of the board of directors only

if the owner of the land is notified in the manner provided by IC 14-33-2-12 stating that the district plan or construction drawings and specifications contemplate the appropriation of the owner's land or easement.

(2) To determine the existence and amount of exceptional benefits that accrue to real property in the district due to the execution of the district plan.

As added by P.L.1-1995, SEC.26.

14-33-8-2

Sec. 2. (a) Before beginning the duties, each appraiser must take and subscribe to an oath that the appraiser will faithfully and impartially discharge the duties.

(b) A majority of the board of appraisers constitutes a quorum, and a quorum is sufficient for decisions.

(c) Each appraiser holds office until excused by the court, and the court shall fill all vacancies in the board of appraisers resulting from being excused, resignation, or inability to serve.

(d) The court shall determine and approve the compensation of each of the appraisers and shall base the compensation on the work performed and the professional qualifications of each appraiser. The compensation shall be paid out of district money.

As added by P.L.1-1995, SEC.26.

14-33-8-3

Sec. 3. The board of directors shall furnish necessary assistance to the appraisers, including the services of the attorney, engineer, secretary, and other agents and employees of the board of directors.

As added by P.L.1-1995, SEC.26.

14-33-8-4

Sec. 4. If the board of appraisers has the function of determining damages, the board of directors may continue to make settlement directly with the persons who own or have an interest in all or any real property needed by the district. The board of directors also may acquire any needed real property or easement by eminent domain proceedings according to statute.

As added by P.L.1-1995, SEC.26.

14-33-8-5

Sec. 5. (a) In determining damages, the board of directors shall give the appraisers the description of land needed in fee simple and of land over which an easement is needed. If an easement is designated by the board of directors, the purpose and extent of the easement must be definitely stated.

(b) The appraisers shall do the following:

(1) Appraise the real property and the amount of damages.

(2) Make a report to the court of the findings.

(c) If the board of appraisers does not return an appraisal of damages to real property, that constitutes a finding that damages will not be sustained by that real property.

As added by P.L.1-1995, SEC.26.

14-33-8-6

Sec. 6. If the board of appraisers has the function of determining the existence and amount of exceptional benefits, the appraisers shall become familiar with the details of the district plan and the real property affected by the district plan. In making the determinations, the appraisers must give due consideration and credit to the following:

(1) Any other works of improvement already constructed or under construction.

(2) Contributions that form a useful part of the work of the district according to the district plan.

As added by P.L.1-1995, SEC.26.

14-33-8-7

Sec. 7. (a) In determining the existence and amount of exceptional benefits resulting from the accomplishment of the purpose of:

(1) flood prevention and control;

(2) improving drainage; or

(3) both;

for a district having a district plan incorporating a watershed work plan prepared in cooperation with the United States Secretary of Agriculture under the federal Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.), the appraisers shall be guided in their determination of what real property receives exceptional benefits by the studies of the United States Natural Resources Conservation Service regarding land to be benefited that have been incorporated onto a map of the watershed and made a part of the district plan.

(b) The only other real property that the appraisers may consider as exceptionally benefited is real property that has a higher and better use as an incidental result of the works of improvement.

As added by P.L.1-1995, SEC.26.

14-33-8-8

Sec. 8. (a) In determining the existence and amount of exceptional benefits resulting from the purpose of sewage collection, treatment, and disposal, the appraisers shall consider as exceptionally benefited the following:

(1) Real property that would not pay special benefits taxes for the support of the system.

(2) Real property that requires greater capacity of collecting or treating equipment because of intensive use.

(b) The determination of exceptional benefits from the accomplishment of this purpose is always subject to amendment or supplement as a result of changed land use.

(c) Exceptional benefits may be assessed on an annual basis as long as the exceptional conditions exist.

As added by P.L.1-1995, SEC.26.

14-33-8-9

Sec. 9. The board of appraisers shall make a report of the findings to the court as the court orders. All the findings concerning both damages and exceptional benefits may be made in one (1) report or in separate reports at different times. In addition, the report may be made for damages or exceptional benefits, or both, periodically as the district plan is implemented.

As added by P.L.1-1995, SEC.26.

14-33-8-10

Sec. 10. (a) The report of the board of appraisers must state the following:

(1) The name of the record owner of the real property appraised.

(2) If damages are assessed, the following:

(A) The names of other persons entitled to share in the award.

(B) The best known mailing address of the persons.

(C) A description of the property appraised.

(D) The amount of damages or exceptional benefits, or both.

(b) An error in:

(1) the names or addresses of the owners or other persons; or

(2) the descriptions;

does not invalidate the appraisal or the levy of assessments if a sufficient description is given to identify the land.

(c) A majority of the board of appraisers shall sign the report.

(d) One (1) copy of the report shall be filed in the office of the district.

As added by P.L.1-1995, SEC.26.

14-33-8-11

Sec. 11. The board of appraisers may report, subject to the finding and approval of the court, that an increase in fair market value of real property caused by the installation of a sewer main through or adjacent to the property is an exceptional benefit to the property regardless of the use of the sewer main by the owners or occupiers of the property.

As added by P.L.1-1995, SEC.26.

14-33-8-12

Sec. 12. (a) Upon the filing of each report of the board of appraisers with the court, the court shall set a date for hearing on the report.

(b) The court shall order notice of the hearing on the report of the board of appraisers as follows:

(1) By at least one (1) publication in one (1) newspaper of general circulation in each county having land in

the district at least thirty (30) days before the date of the hearing on the report.

(2) To each freeholder owning land named in the report and to each person who is named in the report by mail at least twenty (20) days before the date of the hearing, first class postage prepaid, according to the records of the county auditor.

(3) By mail to the office of the district at least twenty (20) days before the date of the hearing, first class postage prepaid.

As added by P.L.1-1995, SEC.26.

14-33-8-13

Sec. 13. (a) A freeholder who owns land in the district or any person may accept the appraisal of the board of appraisers of exceptional benefits or damages to real property:

(1) to be taken or used; and

(2) in which the person is an interested person.

(b) The same owner or person may acquiesce in the failure of the board of appraisers to appraise damages in favor of the interested person. The owner or person is considered to have acquiesced in the failure to appraise damages unless, within the time limit prescribed by the notice of hearing on the report of the board of appraisers, the interested person files an exception to the appraisers' report specifying in the exceptions:

(1) the appraisal of exceptional benefits or damages; or

(2) the land or easement to be taken in which the owner or person is an interested person.

As added by P.L.1-1995, SEC.26.

14-33-8-14

Sec. 14. The board of directors may, within the time limit prescribed by the notice of hearing on the report of the board of appraisers, file exceptions to the report of the board of appraisers specifying in the exceptions:

(1) the appraisal of exceptional benefits or damages; or

(2) the land or easement to be taken that the board of directors complains as being excessive.

As added by P.L.1-1995, SEC.26.

14-33-8-15

Sec. 15. The determinations of the board of appraisers is considered prima facie correct. A person excepting is entitled to open and close.

As added by P.L.1-1995, SEC.26.

14-33-8-16

Sec. 16. (a) At the hearing the court may order the report of the board of appraisers amended to conform with the evidence. The court then shall enter an order:

(1) dismissing the report; or

(2) approving the report.

(b) An appeal of the order may be made to the supreme court within thirty (30) days.

As added by P.L.1-1995, SEC.26.

14-33-8-17

Sec. 17. When the report of the board of appraisers regarding damages is approved by the court, the board of directors may do the following:

(1) Pay to the clerk of the court the amount of the appraisal.

(2) Take possession of and hold the interest in the real property appropriated.

As added by P.L.1-1995, SEC.26.

Chapter 9. Budget and Tax Levy Procedures

14-33-9

14-33-9-1

Sec. 1. (a) Except as provided in IC 6-1.1-17-20, the budget of a district:

(1) must be prepared and submitted:

(A) at the same time;
(B) in the same manner; and
(C) with notice;
as is required by statute for the preparation of budgets by municipalities; and
(2) is subject to the same review by:
(A) the county board of tax adjustment; and
(B) the department of local government finance;
as is required by statute for the budgets of municipalities.
(b) If a district is established in more than one (1) county:
(1) except as provided in subsection (c), the budget shall be certified to the auditor of the county in which is located the court that had exclusive jurisdiction over the establishment of the district; and
(2) notice must be published in each county having land in the district. Any taxpayer in the district is entitled to be heard before the county board of tax adjustment and, after December 31, 2008, the fiscal body of each county having jurisdiction.
(c) If one (1) of the counties in a district contains either a first or second class city located in whole or in part in the district, the budget:
(1) shall be certified to the auditor of that county; and
(2) is subject to review at the county level only by the county board of tax adjustment and, after December 31, 2008, the fiscal body of that county.
As added by P.L.1-1995, SEC.26. Amended by P.L.90-2002, SEC.374; P.L.224-2007, SEC.106; P.L.146-2008, SEC.428; P.L.182-2009(ss), SEC.301.

14-33-9-2

Sec. 2. (a) The board shall budget annually the necessary money to meet the probable expenses of operation and maintenance of the district, including the following:
(1) Repairs.
(2) Fees.
(3) Salaries.
(4) Depreciation on all depreciable assets.
(5) Rents.
(6) Supplies.
(b) Subject to any budget review and approval required under this chapter, the board may add not more than ten percent (10%) of the total for contingencies.
As added by P.L.1-1995, SEC.26. Amended by P.L.182-2009(ss), SEC.302.

14-33-9-3

Sec. 3. (a) The board shall deduct from the operation and maintenance expenses estimated under section 2 of this chapter the following:
(1) Any revenue actually received during the current year.
(2) Other money not obligated to paying or protecting the bonds or notes of the district.
(b) The board shall carry forward the balance after making the deduction required by subsection (a).
(c) The board shall next determine the amount of interest due and the principal amount of bonds maturing the second year after the year in which the board is meeting. To this amount the board shall add five percent (5%) in the first year the board meets with bonds outstanding to provide for contingencies. After that time and until all bonds are retired, the board shall add the necessary amount to maintain a five percent (5%) contingency reserve.
(d) If the board has been forced to borrow money for a short term for a legitimate purpose, the board shall also determine the amount of principal and interest due on the loan.
(e) The board shall then total the balance.
(f) From the assessment roll, the board shall then determine the amount of unpaid installments due in the next year on assessments that have been made and deduct this from the total. The board shall then determine the necessary levy of the special benefits tax to provide money to meet the expenses thus calculated.
(g) After review by the department of local government finance as provided in section 1 of this chapter, the board of directors shall certify to the auditor of each county for collection the levy of the tax and the installment of any assessment.

As added by P.L.1-1995, SEC.26. Amended by P.L.90-2002, SEC.375.

14-33-9-4

Sec. 4. (a) This section applies to districts:

(1) established after July 1, 1983; and

(2) containing all or part of a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000).

(b) Each year the board shall submit two (2) copies of the estimated budget formulated by the district for the next budget year to the fiscal body of the county described in subsection (a) at least ten (10) days before the board holds the public hearing on the estimated budget under IC 6-1.1-17-3.

(c) The fiscal body:

(1) shall hold a public hearing on the budget; and

(2) may lower but may not increase any item in the estimated budget.

Notice of the hearing shall be published in accordance with IC 5-3-1, except that notice must be published at least five (5) days before the hearing date.

(d) The county fiscal body shall deliver two (2) copies of the budget approved under subsection (c) to the board at least two (2) days before the date fixed for the public hearing on the budget held by the board under IC 6-1.1-17-3. The board may not approve a total budget in excess of the amount approved by the county fiscal body.

As added by P.L.1-1995, SEC.26.

14-33-9-5

Sec. 5. (a) Upon approval by the department of local government finance, the board of directors shall certify the tax levy to the auditor of each county having land in the district.

(b) The auditor of each county shall have the levy entered on the tax records of the county treasurer for collection.

(c) The county treasurer shall collect the tax at the same time as other property taxes are collected.

(d) After collection, in June and December, the auditor of each county shall issue a warrant on the county treasurer to transfer the money collected to the board of directors.

As added by P.L.1-1995, SEC.26. Amended by P.L.90-2002, SEC.376.

14-33-9-6

Sec. 6. Sections 1 and 5 of this chapter apply to:

(1) budgets;

(2) levy of taxes; and

(3) collection of taxes;

both before and after a district plan is approved.

As added by P.L.1-1995, SEC.26.

14-33-9-7

Sec. 7. The special benefits tax levied by a district is a primary lien on real property in the district equal to other taxes imposed on real property. The same provisions of other taxes regarding collections, penalties, and sale of property for delinquencies apply to this tax.

As added by P.L.1-1995, SEC.26.

14-33-9-8

Sec. 8. A district's property and income are exempt from taxation by the state and political subdivisions of the state.

As added by P.L.1-1995, SEC.26.

14-33-9-9

Sec. 9. A district is not considered a municipal corporation with respect to limitations on the amount of the district's indebtedness irrespective of how that indebtedness is secured in a pledge of the district.

As added by P.L.1-1995, SEC.26.

14-33-9-10

Sec. 10. A conservancy district may require a statement processing charge on a special benefits tax statement. A special benefits tax liability assessed under this chapter of less than ten dollars ($10) on a parcel may be increased to not more than ten dollars ($10). The difference between the actual liability and the amount that appears on the statement is a statement processing charge. The statement processing charge is considered a part of the tax liability.
As added by P.L.6-1997, SEC.243.

Chapter 10. Assessments

14-33-10

14-33-10-1

Sec. 1. (a) If the appraisers have determined that there are exceptional benefits to real property, the board of directors shall prepare an assessment roll from the appraisers' report as approved by the court. The assessment roll consists of the following:

(1) A description of each parcel of real property exceptionally benefited.

(2) The name of the owner as listed on the tax duplicate or described in the appraisers' report as approved by the court.

(3) The amount of the assessment.

(b) The assessment roll shall be distributed as follows:

(1) One (1) copy shall be recorded in the office of the recorder of each county in which real property exceptionally benefited is located.

(2) One (1) copy shall be filed with the auditor of each county in which land of a district exceptionally benefited is located.

(3) One (1) copy shall be kept on file in the office of the district.

(c) Assessments for exceptional benefits are a lien upon each parcel of real property against which the exceptional benefits are assessed from the date that the assessment is approved by the court.
As added by P.L.1-1995, SEC.26.

14-33-10-2

Sec. 2. (a) The board shall give notice by publication at least two (2) times at weekly intervals:

(1) in two (2) newspapers of general circulation in each county having land in the district; or

(2) in one (1) newspaper in the county if there is only one (1) newspaper of general circulation;

that assessments are due and payable within sixty (60) days after the date of the last publication.

(b) Payment of assessments shall be made at:

(1) the office of the board; or

(2) if the court orders, the offices of the treasurers of the counties.

(c) The owners of real property assessed for exceptional benefits are entitled to make payment in full unless exceptional benefits are assessed annually and paid with special benefits taxes to the county treasurer. If payment is made in full, the board shall do the following:

(1) Note the payment in the assessment roll in the board's office.

(2) Give a receipt to the landowner paying the assessment.

(3) Enter satisfaction of the lien of the assessment in the appropriate record in the office of the recorder where the assessment is recorded.

(d) The payment of the assessment does not relieve the real property from being subject to the following:

(1) A special benefits tax.

(2) An annual assessment for maintenance and operation based upon the original exceptional benefit assessment.

As added by P.L.1-1995, SEC.26.

14-33-10-3

Sec. 3. (a) An assessment not paid in full shall be paid in annual installments over the time commensurate with the term of the bond issue or other financing determined by resolution adopted by the board. Interest shall be charged on the unpaid balance at the same rate per year as the interest charged on delinquent property tax payments under IC 6-1.1-37-9(b). All payments of installments, interest, and penalties shall be entered on the assessment roll

in the office of the district.

(b) Upon payment in full of the assessment, including interest and penalties, the board shall have the lien released and satisfied on the records in the office of the recorder of the county in which the real property assessed is located.

(c) The procedure for collecting assessments for maintenance and operation is the same as for the original assessment, except that the assessments may not be paid in installments.

As added by P.L.1-1995, SEC.26. Amended by P.L.67-2006, SEC.13; P.L.113-2010, SEC.96.

14-33-10-4

Sec. 4. (a) An assessment is a lien on the real property assessed equal to taxes levied on the property. If an installment of an assessment is not paid when due, the real property is subject to the same rate of interest and penalty as is provided by statute for delinquent taxes. If an installment or assessment is not paid in the amount and at the time when due, the board shall prepare, certify, and file with the auditor of the county in which the real property assessed is located the amount of the assessment against the real property with the default in payment.

(b) The county auditor shall place the amount, together with interest and penalty, upon the tax duplicate to be collected as state and county taxes are collected at the next date for the semiannual payment of taxes. If the assessment, interest, and penalty are not paid at that time, the real property is subject to sale as is provided by statute for the sale of real property on which there are delinquent taxes. Upon the sale the proceeds shall be prorated equally among the assessment and any delinquent taxes. A sale for a delinquent tax or delinquent assessment does not extinguish the assessment.

As added by P.L.1-1995, SEC.26.

Chapter 11. Bonds

14-33-11

14-33-11-1

Sec. 1. The board may issue bonds to pay the following:

(1) The cost of the works that are provided in the district plan.

(2) Necessary engineering, legal, and administrative fees.

(3) The repayment or refinancing of a loan.

As added by P.L.1-1995, SEC.26.

14-33-11-2

Sec. 2. The total amount of bonds issued may not exceed the cost less the following:

(1) Money on hand from the collection of assessments.

(2) Money on hand or obligated to the district by the state or federal government.

As added by P.L.1-1995, SEC.26.

14-33-11-3

Sec. 3. Bonds may be issued by either of the following methods:

(1) Solely against the revenues expected to be produced by the operation of the district. The board may make proper contractual arrangements to pay the bonds from the net revenues produced.

(2) Against the real property of the district in anticipation of the collection of special benefits taxes. Bonds issued against the real property of the district may be paid in part:

(A) by revenues derived from reasonable charges for services or property produced incident to the operation of the district; or

(B) from the collection of assessments for exceptional benefits.

As added by P.L.1-1995, SEC.26.

14-33-11-4

Sec. 4. (a) Revenue bonds issued for the payment of works of improvement for the collection, treatment, and disposal of sewage and other liquid wastes may provide that the principal and interest shall be paid:

(1) solely from the net revenue of the sewage works, which is gross revenues after deduction only for the reasonable expenses of operation and maintenance; or

(2) from a combination of net revenue and other money available to a district by:
(A) levy;
(B) special benefits taxes; or
(C) assessment of exceptional benefits.

(b) The board may covenant with the holders of the bonds to pay:
(1) a certain percentage of principal and interest from the revenue;
(2) a certain percentage from the other money to maintain a reasonable reserve from the other money that may be used for payment of principal and interest if the revenue is not sufficient; or
(3) both.

As added by P.L.1-1995, SEC.26.

14-33-11-5

Sec. 5. (a) Bonds:
(1) may be issued in any denomination;
(2) may bear interest at any rate, with interest payable on January 1 and July 1;
(3) shall be issued in not less than ten (10) series and not more than fifty (50) series; and
(4) are payable, one (1) series each year, beginning on January 1 of the second year following the date of issue and subject to the following:
(A) If the bond issue is authorized in a year after the regular levymaking period, the first series matures on January 1 of the third succeeding year.
(B) The balance of the issue is payable at annual intervals.
(C) The annual maturities do not have to be in an equal amount.

(b) The bonds issued are exempt from taxation by the state.

As added by P.L.1-1995, SEC.26.

14-33-11-6

Sec. 6. Bonds issued:
(1) must be negotiable;
(2) may be registered; and
(3) shall be advertised and sold in the manner provided by general statutes concerning the sale of bonds.

As added by P.L.1-1995, SEC.26.

14-33-11-7

Sec. 7. (a) This section applies to a district:
(1) that has been established with a few freeholders or even only one (1) freeholder; and
(2) for which the accomplishment of the district's purposes is necessary and desirable primarily for persons purchasing and using the land after subdivision and development.

(b) Notwithstanding other statutes, the board may enter into a contract agreement, before the award of bonds, with a person directly or indirectly interested in bidding on or purchasing the bonds if approval is received from the Indiana utility regulatory commission after a petition is filed by the board containing disclosure of the interest that any of the directors have in the land involved and in the person who is interested in bidding on or purchasing the bonds.

(c) The Indiana utility regulatory commission shall give approval if the Indiana utility regulatory commission finds that:
(1) full disclosure has been made; and
(2) persons who are using or will be using the land will probably receive the benefits from the proposed works of improvement at a fair and reasonable cost comparable to the cost for benefits from the improvements in similar locations and situations.

Profits or loss to the person bidding on the bonds may not be the determining factor in approval.

As added by P.L.1-1995, SEC.26.

14-33-11-8

Sec. 8. (a) Before offering bonds for sale, the board shall give notice in the same manner as is required by IC 6-1.1-20 for the sale of bonds by municipal corporations.

(b) Persons affected are entitled to:

(1) remonstrate against issuance of the bonds (in the case of a preliminary determination made before July 1, 2008, to issue bonds); or

(2) vote on the proposed issuance of bonds in an election on a local public question (in the case of a preliminary determination made after June 30, 2008, to issue bonds).

(c) An action to question the validity of the bonds may not be instituted after the date fixed for sale, and the bonds are incontestable after that time.

As added by P.L.1-1995, SEC.26. Amended by P.L.146-2008, SEC.429.

14-33-11-9

Sec. 9. If the board is denied the right to issue bonds as a result of remonstrance proceedings or an election on a local public question held under IC 6-1.1-20-3.6:

(1) all contracts let by the board for work to be paid from the sale of bonds are void; and

(2) no liability accrues to the district or to the board.

As added by P.L.1-1995, SEC.26. Amended by P.L.146-2008, SEC.430.

Chapter 12. Improvements Benefiting Only Certain Property

14-33-12

14-33-12-1

Sec. 1. This chapter applies if the board determines at the time of the adoption of the district plan that the characteristics of the district are such that the district plan can best be implemented in certain parts by the development of works of improvement that are:

(1) of benefit solely to abutting or proximate properties in the district; and

(2) not of benefit to all the property in the district.

As added by P.L.1-1995, SEC.26.

14-33-12-2

Sec. 2. (a) In a district subject to this chapter:

(1) the district plan must so state; and

(2) notice to this effect shall be made a part of all notices regarding the approval and implementation of the district plan.

(b) At the hearing on the district plan, the court shall make a finding on this question.

As added by P.L.1-1995, SEC.26.

14-33-12-3

Sec. 3. (a) Concurrent with the preparation of detailed construction drawings, specifications, and refined cost estimates necessary to implement the district plan, the board shall employ competent appraisers to do the following:

(1) Appraise the real property that will be benefited by the implementation of the district plan.

(2) Assign to each property the property's proportional share of the estimated cost of the improvement, including necessary engineering and legal fees.

(b) The appraisers shall report the information determined under subsection (a) in written tabular form to the board.

(c) The board shall tentatively adopt the findings of the appraisers in the same resolution by which the detailed construction drawings, specifications, and refined cost estimates are adopted. Notice of the hearing shall be mailed to the owner of each tract of real property found to be benefited.

As added by P.L.1-1995, SEC.26.

14-33-12-4

Sec. 4. (a) Upon confirmation of the resolution, the board shall file the resolution together with the detailed construction drawings, specifications, refined cost estimates, and appraisers' findings in court.

(b) The court shall set a date for a hearing and order notice that the court considers necessary, but publication must at least be made in each county having land in the district in accordance with IC 5-3-1 as if the notice affected county business.

(c) At the hearing the court shall order the resolution approved, rescinded, or modified.
As added by P.L.1-1995, SEC.26.

14-33-12-5

Sec. 5. (a) After approval by the court, the board shall let contracts or otherwise construct the works of improvement as implemented. The board shall exercise the same powers and discharge the same duties concerning the works of improvement as prescribed by statute for the board of public works, the board of finance, and other officers of a municipality concerning the following:

(1) Liens for street improvements.
(2) The payment of street improvement assessments by installments.
(3) The issuance of Barrett Law bonds and coupons to anticipate the collection of assessments.

(b) The duties of the treasurer of a county in which there is real property affected also apply to the following:

(1) The lien.
(2) The collection and enforcement of the lien.
(3) The payment of assessments for the construction of works of improvement under:
(A) this chapter; and
(B) IC 13-3-3-86 (before its repeal).

(c) Statutes concerning:

(1) the enforcement of assessment liens for street improvements in actions of a municipality enforcing the liens and attorney's fees in those actions;
(2) the procedure;
(3) the conduct of sales by the sheriff under decrees of foreclosure;
(4) the execution of certificates and deeds; and
(5) all matters of a similar nature regarding street improvements and collection of assessments in a municipality, including the rights of contractors, assignees, and bondholders;

apply to the enforcement of assessments made for the construction of works of improvement under this chapter or under IC 13-3-3-86 (before its repeal) as well as the collection of bonds or coupons issued under this chapter or under IC 13-3-3-86 (before its repeal).

(d) The board may do the following:

(1) Issue the bonds in anticipation of the collection of assessments and coupons evidencing interest at any rate directly to the contractor at the completion of the work.
(2) Issue directly to engineers and attorneys bonds and coupons in payment of fees incident to the work of improvement.

(e) Notwithstanding other statutes incorporated into this chapter, a person who agrees to pay the person's assessment in installments after the bonds are issued:

(1) must pay interest for the full term of ten (10) years; and
(2) may prepay the principal and remaining interest due.

As added by P.L.1-1995, SEC.26.

14-33-12-6

Sec. 6. (a) The provisions of this chapter concerning:

(1) assessments;
(2) the nature of the resulting lien;
(3) collection; and
(4) issuing bonds and coupons in anticipation of the collection of the assessment;

are mutually exclusive from other sections of this article that relate to the same subject matter.

(b) The construction and incidental engineering and legal fees of that part of works of improvement contained in the district plan shall be paid for and financed according to this chapter and other statutes incorporated into this chapter and not according to other provisions of this article only if all the following conditions are met:

(1) The board determines and states as a part of the district plan that certain parts of the works of improvement will be of benefit solely to abutting or proximate properties and not of benefit to all the property in the district.
(2) Notice of the determination is given as is provided in this chapter.
(3) The court makes an affirmative finding to this effect at the hearing on the district plan.

(c) If the conditions described in subsection (b) are not met, the costs and financing of the construction of the

works of improvement shall be done according to other provisions of this article.
As added by P.L.1-1995, SEC.26.

14-33-12-7

Sec. 7. Other provisions of this article concerning assessments and bond issues do not apply to this chapter. In addition, provisions of this chapter concerning assessments and bond issues do not apply to other chapters of this article.
As added by P.L.1-1995, SEC.26.

Chapter 13. Damages

14-33-13

14-33-13-1

Sec. 1. A person shall not willfully damage or remove bench marks, witness marks, stakes, or other reference marks placed by:

(1) the surveyors or engineers of the district; or
(2) contractors in constructing the work of the district.

As added by P.L.1-1995, SEC.26.

14-33-13-2

Sec. 2. (a) A person is liable for damages done to works of a district by:

(1) the person;
(2) agents of the person;
(3) employees of the person; or
(4) livestock owned by the person.

(b) A person shall not damage the works, improvements, or property of a district. A person who violates this subsection is liable for all damages and costs.
(c) The board may repair damages at the expense of the person committing the damage.
As added by P.L.1-1995, SEC.26.

Chapter 14. Cumulative Maintenance Fund

14-33-14

14-33-14-1

Sec. 1. This chapter applies to a district having channel improvements, levees, and water retarding or impoundment structures.
As added by P.L.1-1995, SEC.26.

14-33-14-2

Sec. 2. This chapter does not apply to the following:

(1) A water supply structure or the water supply part of a multiple purpose structure if provision has been made for maintenance from revenues of a water system.
(2) Sewage works.

As added by P.L.1-1995, SEC.26.

14-33-14-3

Sec. 3. As used in this chapter, "fund" refers to a cumulative maintenance fund established under this chapter.
As added by P.L.1-1995, SEC.26.

14-33-14-4

Sec. 4. A district shall establish a cumulative maintenance fund in the year following commencement of construction or assumption or maintenance of the channel improvements, levees, and water retarding or impoundment structures so that the works of improvement are adequately maintained.

As added by P.L.1-1995, SEC.26.

14-33-14-5

Sec. 5. (a) The board shall budget and appropriate annually to the fund an amount equivalent to ten percent (10%) of the annual cost of maintenance for the works of improvement as the cost is:

(1) stated in the district plan; or

(2) adjusted under section 8 of this chapter.

(b) Money accumulated in the fund may be used for emergency or unusually expensive maintenance of the works of improvement.

As added by P.L.1-1995, SEC.26. Amended by P.L.228-2003, SEC.1.

14-33-14-6

Sec. 6. (a) If an amount equivalent to two (2) times the annual cost of maintenance of the works of improvement, as stated in the district plan or as the cost is adjusted under section 8 of this chapter, has accumulated in the fund, appropriations to the fund shall be suspended until the year that the amount in the fund is not more than equal to the annual cost of maintenance of the works of improvement as stated in the plan or the adjusted annual cost.

(b) The money in the fund may be invested and reinvested in whole or in part in accordance with IC 5-13-9.

As added by P.L.1-1995, SEC.26. Amended by P.L.228-2003, SEC.2.

14-33-14-7

Sec. 7. The appropriation to the fund does not relieve the board of the duty to budget annually the normal maintenance work anticipated during the next fiscal year.

As added by P.L.1-1995, SEC.26.

14-33-14-8

Sec. 8. (a) As used in this section, "cost index source" refers to the Engineering News Record Construction Cost Index, as published by McGraw Hill Construction or its successor.

(b) Before January 1, 2006, the board of a district may elect to adjust the annual cost of maintenance of the works of improvement as stated in the plan, as calculated in subsection (d), if the following conditions are met:

(1) The board has at a meeting adopted a resolution that sets forth:

(A) the annual cost of maintenance of the works of improvement as stated in the plan, and the year when the annual cost was stated in the plan; and

(B) the new, adjusted annual cost of maintenance of the works of improvement.

(2) The calculation under subsection (d) has been verified by either the state conservation engineer for the Natural Resources Conservation Service of the United States Department of Agriculture or a professional engineer licensed under IC 25-31-1.

(3) The board has provided a copy of the resolution to the department of local government finance (established by IC 6-1.1-30-1.1) within sixty (60) days of adoption.

(c) If the board of a district adopts a resolution under section (b)(1), a copy of the resolution must be included in the district's annual report, and a copy of the annual report must be provided to the local circuit court and the department of natural resources.

(d) The annual cost of maintenance of the works of improvement as stated in the plan of a district may be adjusted to an amount not to exceed the amount determined as follows:

STEP ONE: Determine the cost index from the cost index source for the most recent year.

STEP TWO: Determine the cost index from the cost index source for the year that the annual cost of maintenance of the works of improvement was stated in the plan.

STEP THREE: Divide the number determined in STEP ONE by the number determined in STEP TWO.

STEP FOUR: Multiply the result of STEP THREE by the annual cost of maintenance of the works of improvement that is stated in the plan.

As added by P.L.228-2003, SEC.3.

Chapter 15. Dissolution Due to Loss of Benefit

14-33-15

14-33-15-1

Sec. 1. A district may be dissolved by the same procedure used to establish the district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit.
As added by P.L.1-1995, SEC.26.

14-33-15-2

Sec. 2. If:

(1) the board fails to produce within two (2) years satisfactory evidence of progress in the preparation of the district plan; or

(2) federal or state money, or both, contemplated in the petition for the establishment of the district appears to be unavailable;

it is prima facie evidence that the district should be dissolved.
As added by P.L.1-1995, SEC.26.

14-33-15-3

Sec. 3. If the court finds that a district is no longer of benefit, the court shall do the following:

(1) Order the district dissolved.

(2) Order the board to take necessary steps to terminate all activities of the district.

As added by P.L.1-1995, SEC.26.

14-33-15-4

Sec. 4. As the final action the board shall make an accounting to the court and file all records of the district with the court. The court shall then discharge the board.
As added by P.L.1-1995, SEC.26.

14-33-15-5

Sec. 5. The court may not dissolve a district if the district has bonds or notes outstanding. If the court finds that the activities of the district should cease, the court shall order the district to function only for the purpose of:

(1) certifying necessary assessments or taxes; and

(2) collecting the assessments and taxes;

to pay off the financial obligations of the district. When all financial obligations are paid, the court may order the district dissolved.
As added by P.L.1-1995, SEC.26.

Chapter 16. Dissolution Due to Lack of Construction

14-33-16

14-33-16-1

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to a district if construction of works of improvement has not begun within six (6) years after the district plan is approved by the circuit court.

(b) Even if the construction of works of improvement has not begun within six (6) years after the district plan of a district was approved, this chapter does not apply to the district if the circuit court having jurisdiction over the district under IC 14-33-2-9 determines that the board of directors of the district has, since the approval of the district plan, worked diligently and in good faith to resolve the matters that must be resolved before construction can begin.
As added by P.L.1-1995, SEC.26. Amended by P.L.143-1997, SEC.1.

14-33-16-2

Sec. 2. A district may be dissolved by an election under this chapter.
As added by P.L.1-1995, SEC.26.

14-33-16-3

Sec. 3. The freeholders of a district must present a petition to the board. The petition may be circulated and presented in separate parts, although all of the parts constitute a single petition. The petitioning freeholders must

sign the petition, and the person who presents the petition must verify and certify the signatures upon oath. The petition must do the following:

(1) Show the name and residence of each petitioner and the date of signature.

(2) State that the petitioning freeholders desire an election on the question of whether to dissolve the district.

As added by P.L.1-1995, SEC.26.

14-33-16-4

Sec. 4. The board shall determine, in compliance with IC 14-33-2-2 and IC 14-33-2-3, whether the petition bears the same proportion of signatures of freeholders of the district as that section requires to initiate the proceedings to establish a district. If the board finds in the affirmative, the board shall without delay certify that fact to the court.

As added by P.L.1-1995, SEC.26.

14-33-16-5

Sec. 5. (a) Within ten (10) days after the board certifies to the court, the board shall fix the following:

(1) A convenient and suitable place for the election.

(2) The date for the election not less than fifteen (15) and not more than thirty (30) days after the last publication of notice.

(b) The voting place must open at 9 a.m. local time and remain open for balloting continuously until 9 p.m. local time. However, if the district contains freeholds too numerous for freeholder balloting at a single voting place while allowing each freeholder a reasonable time but not exceeding two (2) minutes to cast a ballot, the board shall fix and arrange for multiple voting places as appears necessary to accommodate the freeholders eligible to vote.

(c) Notice of the time, place, and purpose for the election must be given on the same day of each week for two (2) consecutive weeks in an English language newspaper of general circulation published in each county having land in the district.

As added by P.L.1-1995, SEC.26.

14-33-16-6

Sec. 6. (a) The board shall do the following:

(1) Prepare a list of the freeholders of the district.

(2) Have the county auditor certify the list.

(3) Make the list available for the inspection of any freeholder of the district.

(4) Place the list in the permanent files of the district at the conclusion of the election.

(b) A deficiency in the list or omission of the name of a freeholder does not void the election or the election's outcome.

As added by P.L.1-1995, SEC.26.

14-33-16-7

Sec. 7. The board shall prepare and furnish ballots in sufficient number in the following form:

"Shall the _____ Conservancy District be dissolved?"

[ ] Yes [ ] No

As added by P.L.1-1995, SEC.26.

14-33-16-8

Sec. 8. The board shall do the following:

(1) Appoint an assistant secretary.

(2) Provide a voting list at each voting place.

As added by P.L.1-1995, SEC.26.

14-33-16-9

Sec. 9. (a) Before the voting begins, the chairman of the board shall appoint three (3) freeholders of the district as clerks to conduct the election.

(b) Before casting a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the district secretary.

(c) If:

(1) a clerk finds a freeholder's name is omitted from the list; and

(2) all three (3) clerks determine that the freeholder's name should be added to the list;
the clerks shall place the freeholder's name on the list and the freeholder may vote.
As added by P.L.1-1995, SEC.26.

14-33-16-10

Sec. 10. A freeholder of the district may vote absentee by written ballot. A written ballot vote must be signed and mailed or delivered to the district office. Ballots voted by absentees are valid if delivered or received before the scheduled date of the election.
As added by P.L.1-1995, SEC.26.

14-33-16-11

Sec. 11. (a) The secretary of the district shall do the following:
(1) Keep the ballots safe and secure until the end of the voting period.
(2) At the end of the voting period present all ballots cast to the three (3) clerks.
(b) The clerks shall do the following:
(1) Count the ballots.
(2) Report the results of the election to the secretary in writing over the signature of each clerk.
(c) The secretary shall do the following:
(1) Record the results in the records of the district.
(2) Certify the results to the court as promptly as possible.
As added by P.L.1-1995, SEC.26.

14-33-16-12

Sec. 12. A majority of all votes cast determines the issue of dissolution of the district, as long as the total votes cast at least equals the number of freeholders petitioning for the election.
As added by P.L.1-1995, SEC.26.

14-33-16-13

Sec. 13. If a majority favors dissolution of a district, the court shall, upon receiving the certification of the results, order the board to take the necessary steps to terminate all activities of the district other than those activities required to certify and collect assessments or taxes to pay the following:
(1) The remaining financial obligations of the district.
(2) The expenses of liquidating the district's property and winding up the district's affairs.
As added by P.L.1-1995, SEC.26.

14-33-16-14

Sec. 14. Costs of the election, including legal fees approved by the court, shall be paid from district money.
As added by P.L.1-1995, SEC.26.

14-33-16-15

Sec. 15. (a) When a district's financial obligations and the expenses of winding up the district's affairs are paid, the court shall order the board to do the following:
(1) Make a final accounting to the court.
(2) File all records of the district with the court.
(b) The court shall then discharge the board and decree that the district is dissolved.
As added by P.L.1-1995, SEC.26.

Chapter 16.5. Dissolution of Smaller District and Assumption of Operations, Obligations, and Assets by Larger District

14-33-16.5

14-33-16.5-1

Sec. 1. This chapter applies to any two (2) conservancy districts that:
(1) are contiguous; and

(2) share at least one (1) common purpose set forth in IC 14-33-1-1.
As added by P.L.189-2005, SEC.7.

14-33-16.5-2

Sec. 2. As used in this chapter:

(1) "freeholder" means an owner of real property, as reflected in the real property tax records of the county auditor;

(2) "larger district" means, of the two (2) districts referred to in section 1 of this chapter, the one (1) that has the larger number of freeholders; and

(3) "smaller district" means, of the two (2) districts referred to in section 1 of this chapter, the one (1) that has the smaller number of freeholders.

As added by P.L.189-2005, SEC.7.

14-33-16.5-3

Sec. 3. (a) The freeholders of a smaller district may initiate dissolution proceedings under this chapter by filing a petition with the county auditor of the county in which most of the smaller district's area is located. The petition must be signed by at least the lesser of:

(1) fifty (50); or

(2) five percent (5%);

of the smaller district's freeholders.

(b) A petition under subsection (a) may be circulated and presented in separate parts. All the parts of the petition constitute a single petition.

(c) The petitioning freeholders must sign the petition, showing:

(1) the name and address of each petitioner; and

(2) the date of the signature.

(d) A petition must state that the petitioners desire an election on the question of whether:

(1) the smaller district will dissolve and become part of the larger district; and

(2) the larger district will assume the smaller district's operation, obligations, and assets.

(e) A person who presents a petition from the smaller district's freeholders under this section to the county auditor must verify and certify the signatures on the petition upon oath.
As added by P.L.189-2005, SEC.7.

14-33-16.5-4

Sec. 4. (a) Not later than thirty (30) days after a petition is filed with the county auditor under section 3 of this chapter, the county auditor shall:

(1) prepare and certify a list of freeholders of the smaller district;

(2) make the list available for inspection by any person; and

(3) determine and certify whether the petition:

(A) was signed by the number of freeholders required under section 3(a) of this chapter; and

(B) otherwise meets the requirements of this chapter.

(b) A deficiency in the list of the smaller district's freeholders or an omission of the name of a freeholder does not void the election or the election's outcome.

(c) If the county auditor determines that a petition filed under section 3 of this chapter meets the requirements of this chapter, the auditor shall, not later than forty (40) days after receiving the petition, forward a notice to the board of directors of the larger district by personal delivery or by certified mail. The notice must:

(1) inform the larger district that a petition was filed under section 3 of this chapter by the freeholders of the smaller district; and

(2) ask if the larger district is willing and able to assume the smaller district's operation, obligations, and assets if the smaller district's freeholders vote to dissolve the smaller district.

(d) Not later than thirty (30) days after receiving the notice from the county auditor under subsection (c), the board of directors of the larger district may pass a resolution stating that:

(1) the larger district is willing and able to assume the smaller district's operation, obligations, and assets; and

(2) upon becoming part of the larger district, the freeholders of the smaller district will:

(A) become full and equal freeholders of the larger district; and

(B) pay the same special benefits taxes and user charges generally charged by the larger district.

(e) If the board of directors of the larger district passes a timely resolution under subsection (d):

(1) the board of directors of the larger district must forward a true and accurate copy of the resolution to the county auditor by personal delivery or by certified mail not later than ten (10) business days after the board passes the resolution; and

(2) the board of directors of the smaller district must hold a dissolution and assumption election of the smaller district's freeholders under this chapter.

(f) If the board of directors of the larger district:

(1) does not pass a timely resolution under subsection (d); or

(2) passes a timely resolution under subsection (d), but does not timely forward a copy of the resolution under subsection (e)(1);

the dissolution proceedings that began with the filing of a petition under section 3 of this chapter are ended.
As added by P.L.189-2005, SEC.7.

14-33-16.5-5

Sec. 5. Not later than ten (10) days after the county auditor receives a resolution from the board of directors of the larger district under section 4 of this chapter, the county auditor shall, by personal delivery or by certified mail, notify the board of directors of the smaller district that the board of directors of the smaller district must hold the election referred to in section 4(e)(2) of this chapter.
As added by P.L.189-2005, SEC.7.

14-33-16.5-6

Sec. 6. (a) Not later than ten (10) days after receipt of a notice under section 5 of this chapter, the board of directors of the smaller district shall fix the following:

(1) A convenient and suitable place for the smaller district's election.

(2) The date for the election that is at least sixty (60) days after the date on which the county auditor notifies the smaller district's board under section 5 of this chapter.

(b) The voting place must open at 9 a.m. local time and remain open for balloting continuously until 9 p.m. local time. If the number of freeholders in the smaller district is too great for balloting at a single voting place while allowing each freeholder a reasonable time to cast a ballot, the board shall arrange for the number of voting places necessary to accommodate the freeholders eligible to vote.

(c) Notice of the date, time, place, and purpose of the election must be given for two (2) consecutive weeks in an English language newspaper of general circulation published in each county having land in the smaller district, with the last publication:

(1) not less than fifteen (15) days; and

(2) not more than thirty (30) days;

before the date of the election.

(d) The board of directors of the smaller district shall also cause individual notice of the election to be given to all the smaller district's freeholders by first class mail.

(e) The notice published under subsection (c) and the individual freeholder notice mailed under subsection (d) must be in the following form:

Notice of a Dissolution and Assumption Election
to the Freeholders of the _____
(insert smaller district) Conservancy District

1. You are a freeholder (i.e. a real property owner) of the _____ (insert smaller district) Conservancy District. As a freeholder, you are one of the owners of the _____ (insert smaller district) Conservancy District.

2. A legally required number of the freeholders of the _____ (insert smaller district) Conservancy District has filed a petition with the _____ (insert county name) County Auditor requesting that the _____ (insert smaller district) Conservancy District be dissolved, and that the operation, obligations, and assets of the _____ (insert smaller district) Conservancy District be assumed by the _____ (insert larger district) Conservancy District.

3. The _____ (insert larger district) Conservancy District is contiguous to, has the same purpose as, and has a greater number of freeholders than the _____ (insert smaller district) Conservancy District.

4. The Board of Directors of the _____ (insert larger district) Conservancy District has passed a resolution stating:

A. That the _____ (insert larger district) Conservancy District is willing to assume the operation, obligations, and assets of the _____ (insert smaller district) Conservancy District; and

B. That upon becoming part of the _____ (insert larger district) Conservancy District, the freeholders of the _____ (insert smaller district) Conservancy District will become full and equal freeholders of the _____ (insert larger district) Conservancy District and be subject to and pay the same special benefits taxes and user charges generally charged by the (insert larger district) Conservancy District.

5. An election of the freeholders of the _____ (insert smaller district) Conservancy District is set for the day of _____, ____, from 9:00 a.m. to 9:00 p.m., at the following location(s): _____.

6. The question presented for the election is whether the _____ (insert smaller district) Conservancy District should be dissolved, and whether the _____ (insert larger district) Conservancy District should assume the operations, obligations, and assets of the _____ (insert smaller district) Conservancy District.

7. A majority of the votes cast at the election will determine the question of whether the _____ (insert smaller district) Conservancy District should be dissolved, and whether the _____ (insert larger district) Conservancy District should assume the operations, obligations, and assets of the _____ (insert smaller district) Conservancy District.

8. As a freeholder of the _____ (insert smaller district) Conservancy District, you are entitled to and encouraged to vote at the election.

/ss/ Board of Directors, _____
(insert smaller district) Conservancy District

(f) If the board of directors of the smaller district fails to hold the election as required by this chapter, the county auditor of the county in which the smaller district's petition was filed shall:

(1) conduct the election as required by this chapter; and

(2) bill the board of directors of the smaller district for the county auditor's costs incurred for the election.

(g) The board of directors of the smaller district shall promptly pay a bill submitted to the smaller district under subsection (f).

As added by P.L.189-2005, SEC.7.

14-33-16.5-7

Sec. 7. After receiving a notice under section 5 of this chapter, the board of directors of the smaller district shall prepare and furnish ballots in sufficient number in the following form:

"Shall the _____ (insert smaller district) Conservancy District be dissolved and its operations, obligations, and assets be assumed by the _____ (insert larger district) Conservancy District?

[ ] Yes [ ] No"

As added by P.L.189-2005, SEC.7.

14-33-16.5-8

Sec. 8. After receiving a notice under section 5 of this chapter, the board of directors of the smaller district shall do the following:

(1) Appoint an assistant secretary.

(2) Provide a voting list at each voting place.

As added by P.L.189-2005, SEC.7.

14-33-16.5-9

Sec. 9. (a) Before the voting begins under this chapter, the board of directors of the smaller district shall appoint three (3) freeholders of the district as clerks to conduct the dissolution and assumption election.

(b) Before casting a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the district secretary.

(c) If:

(1) a clerk finds a freeholder's name is omitted from the list; and

(2) all three (3) clerks determine that the freeholder's name should be added to the list;

the clerks shall place the freeholder's name on the list and the freeholder may vote.
As added by P.L.189-2005, SEC.7.

14-33-16.5-10

Sec. 10. (a) After an election is held under this chapter, the assistant secretary of the smaller district shall do the following:

(1) Keep the ballots safe and secure until the end of the voting period.

(2) At the end of the voting period, present all ballots cast to the three (3) clerks.

(3) Record the election results in the records of the smaller district.

(4) Certify the results of the election to the county auditor and the circuit court having supervisory jurisdiction over the smaller district as promptly as possible.

(b) The clerks of the smaller district shall do the following:

(1) Count the ballots.

(2) Report the results of the election to the secretary in writing over the signature of each clerk.

As added by P.L.189-2005, SEC.7.

14-33-16.5-11

Sec. 11. In an election held under this chapter, a majority of all votes cast by the freeholders of the smaller district determines the question of the dissolution of the smaller district and the larger district's assumption of the smaller district's operations, obligations, and assets.
As added by P.L.189-2005, SEC.7. Amended by P.L.1-2006, SEC.232.

14-33-16.5-12

Sec. 12. The costs of a smaller district's election held under this chapter shall be paid by the smaller district.
As added by P.L.189-2005, SEC.7.

14-33-16.5-13

Sec. 13. (a) In an election held under this chapter, if a majority of the freeholders of the smaller district votes to dissolve the smaller district, not later than sixty (60) days after the election, as the final action of the board of directors of the smaller district, the board shall:

(1) make a full and final accounting to the circuit court having supervisory jurisdiction over the smaller district; and

(2) file all records of the smaller district with the court.

(b) If the smaller district's board of directors fails to timely comply with subsection (a), the circuit court having supervisory jurisdiction over the smaller district shall order the board to comply or suffer a finding of contempt of court.

(c) The larger district shall take custody and control of the smaller district's operations, obligations, and assets on the earlier of:

(1) the date the smaller district's board of directors complies with subsection (a)(1); or

(2) the sixtieth day after the election.

(d) The larger district is directly responsible for payment of the smaller district's bonds or notes outstanding upon the larger district taking custody and control of the smaller district's operations, obligations, and assets.

(e) When the smaller district's board of directors complies with subsection (a), the circuit court shall issue an order:

(1) dissolving the smaller district; and

(2) discharging the board of directors of the smaller district.

As added by P.L.189-2005, SEC.7.

Chapter 17. Merger of Districts

14-33-17

14-33-17-1

Sec. 1. This chapter applies to two (2) districts:

(1) where at least part of the external boundaries of the two (2) districts coincide;

(2) that are located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and
(3) where the territory of each district contains part of the same town.
As added by P.L.1-1995, SEC.26.

14-33-17-2

Sec. 2. Freeholders residing in the two (2) districts who desire the merger of the districts must initiate proceedings by filing a petition in the office of the clerk of the circuit court for the county containing the most land in the proposed merged district.
As added by P.L.1-1995, SEC.26.

14-33-17-3

Sec. 3. (a) A petition must be signed by not less than five percent (5%) of the freeholders owning land in each of the existing districts.
(b) The court shall, before conducting an election under section 6 of this chapter, determine whether the petition bears the necessary signatures. If the petition does not bear the necessary signatures, the court shall dismiss the petition. The court may not dismiss a petition with the requisite signatures because of alleged defects without permitting amendments to correct errors in form or content.
(c) IC 14-33-2-16(c) and IC 14-33-2-16(d) apply to the petition.
As added by P.L.1-1995, SEC.26.

14-33-17-4

Sec. 4. (a) The petitioners must post a bond sufficient to pay the cost of notice and all costs of the court connected with the petition and election.
(b) If:
(1) the court dismisses the petition; or
(2) the majority of freeholders vote against merger;
the petitioners shall pay all costs associated with the proceedings and the election.
(c) If a merger does take place under this chapter, the costs associated with the proceedings and the election shall be paid out of the general money of the county where the court is located. The district shall repay the county from the first money collected from the levy of a tax or the collection of an assessment.
As added by P.L.1-1995, SEC.26.

14-33-17-5

Sec. 5. (a) Except as provided in section 17 of this chapter:
(1) IC 14-33-2-3(1);
(2) IC 14-33-2-3(2);
(3) IC 14-33-2-3(3);
(4) IC 14-33-2-3(5);
(5) IC 14-33-2-4; and
(6) IC 14-33-2-6;
apply to the petition filed under section 2 of this chapter.
(b) The petition must also state that the petitioners desire an election in the districts on the question of merger.
As added by P.L.1-1995, SEC.26.

14-33-17-6

Sec. 6. Within ten (10) days after receiving a petition that has met the requirements of sections 3 through 5 of this chapter, the court shall fix a convenient place and time for the election within each district to determine if the districts should merge. The election must be held not less than thirty (30) days after the date the election is set.
As added by P.L.1-1995, SEC.26.

14-33-17-7

Sec. 7. The petitioners shall give notice of the time, place, and purpose for the election as follows:
(1) By publication on the same day of each week for two (2) consecutive weeks in an English language newspaper of general circulation published in the county.

(2) By mail at least twenty (20) days before the date of the election, first class postage prepaid, to each freeholder who has not signed the petition and who owns land in the proposed district according to the records of the county auditor.

As added by P.L.1-1995, SEC.26.

14-33-17-8

Sec. 8. (a) The petitioners shall do the following:

(1) Prepare a list of the freeholders of the district.

(2) Have the county auditor do the following:

(A) Certify the list.

(B) Make the list available for the inspection of a freeholder of the district.

(C) Place the list in the permanent files of the district at the conclusion of the election.

(b) A deficiency in the list or omission of the name of the freeholder does not void the election or the election's outcome.

As added by P.L.1-1995, SEC.26.

14-33-17-9

Sec. 9. The court shall prepare and furnish ballots in sufficient number, in the following form:

"Shall _____ Conservancy District and _____ Conservancy District be merged to form a single district?"

[ ] Yes [ ] No

As added by P.L.1-1995, SEC.26.

14-33-17-10

Sec. 10. Before the voting begins, the court shall do the following:

(1) Appoint three (3) freeholders of the districts as clerks to conduct the election.

(2) Appoint an assistant secretary.

(3) Provide a voting list at each voting place.

As added by P.L.1-1995, SEC.26.

14-33-17-11

Sec. 11. The voting place must open at 9 a.m. local time and remain open for balloting continuously until 9 p.m. local time. However, if the district contains freeholds too numerous for freeholder balloting at a single voting place while allowing each freeholder a reasonable time but not exceeding two (2) minutes to cast a ballot, the court shall fix and arrange for multiple voting places as necessary to accommodate the freeholders eligible to vote.

As added by P.L.1-1995, SEC.26.

14-33-17-12

Sec. 12. (a) Before casting a vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of:

(1) the district secretary;

(2) the financial clerk; or

(3) a person designated by the district secretary or financial clerk.

(b) If:

(1) a clerk finds a freeholder's name is omitted from the list; and

(2) all three (3) clerks determine that the freeholder's name should be added to the list;

the clerks shall place the freeholder's name on the list and the freeholder may vote.

As added by P.L.1-1995, SEC.26.

14-33-17-13

Sec. 13. A freeholder of the district may vote an absentee ballot. An absentee ballot:

(1) must be signed;

(2) must be mailed or delivered to the court; and

(3) is valid if delivered or received before the scheduled date of the election.

As added by P.L.1-1995, SEC.26.

14-33-17-14

Sec. 14. (a) The secretary of each district shall do the following:

(1) Keep the ballots safe and secure until the end of the voting period.

(2) Present all ballots cast to the three (3) clerks.

(b) The clerks shall do the following:

(1) Count the ballots.

(2) Report the results of the election to the secretary in writing over the signature of the clerks.

(c) The secretary shall do the following:

(1) Record the results in the records of the district.

(2) Certify the results to the court as promptly as possible.

As added by P.L.1-1995, SEC.26.

14-33-17-15

Sec. 15. A majority of total votes cast in both districts determines the issue of merger of the districts.

As added by P.L.1-1995, SEC.26.

14-33-17-16

Sec. 16. (a) Notwithstanding IC 14-33-5-1 and IC 14-33-5-11, if a majority of those voting favors merger of the districts, the court shall, upon receiving certification of the results, appoint an initial board. The initial board consists of seven (7) members, with one (1) member from each of the areas of the new district established as provided in section 17 of this chapter.

(b) A director on the initial board:

(1) must be:

(A) a freeholder of the area the director represents; or

(B) an officer or a nominee of a corporate freeholder of the area the director represents; and

(2) does not have to be a petitioner to qualify for appointment.

(c) In selecting the initial board, the court shall appoint four (4) of the initial directors as follows:

(1) Two (2) directors who have had prior experience as a director on the board of one (1) of the two (2) districts that were merged.

(2) Two (2) directors who have had prior experience as a director on the board of the other district that was merged.

(d) The terms of the initial directors are as provided in IC 14-33-5-11.

As added by P.L.1-1995, SEC.26.

14-33-17-17

Sec. 17. (a) Notwithstanding:

(1) section 5 of this chapter; and

(2) IC 14-33-2-4;

the new district shall be composed of seven (7) areas established by the court. Each area must contain approximately the same number of freeholders.

(b) The board consists of seven (7) members, one (1) member from each of the areas of the new district.

(c) After the appointment of the initial directors, the subsequent directors shall be elected as provided in IC 14-33-5-2 through IC 14-33-5-9, except that freeholders may vote only for the nominees representing the area of the freeholder. In addition:

(1) a director must be:

(A) a freeholder of the area the director represents; or

(B) an officer or a nominee of a corporate freeholder of the area the director represents; and

(2) nominations for a director may only be made by the freeholders of the director's area.

As added by P.L.1-1995, SEC.26.

14-33-17-18

Sec. 18. The initial board of the merged district shall upon appointment prepare and submit a new district plan as provided in the initial formation of a single district. The same procedures provided for the initial submission of a

district plan must be complied with for the submission of a district plan for a merged district.
As added by P.L.1-1995, SEC.26.

14-33-17-19

Sec. 19. Effective upon approval of a new district plan, the court shall do the following:

(1) Order the board of each of the merged districts dissolved.

(2) Order the two (2) districts to merge into one (1) single district.

(3) Order the transfer of all of the assets and obligations, including bonded indebtedness, of the merged districts to the new districts.

(4) Designate the time of the annual meeting of the merged district, which must be before March 1 each year.

As added by P.L.1-1995, SEC.26.

14-33-17-20

Sec. 20. The circuit court of the county in the merged district having the most land has exclusive jurisdiction over the merger and over all further hearings in connection with the district.
As added by P.L.1-1995, SEC.26.

14-33-17-21

Sec. 21. A district formed from the merger of two (2) districts as provided under:

(1) this chapter; or

(2) IC 13-3-3-96.5 (before its repeal);

is considered a district for purposes of this article.
As added by P.L.1-1995, SEC.26.

Chapter 18. Subdistricts

14-33-18

14-33-18-1

Sec. 1. A subdistrict of land in the district may be established by the same procedure by which the original district was established. The petition shall be addressed to the court having jurisdiction over the district. A subdistrict may be established for any purpose for which a district may be established, but a subdistrict may not be established for any of the same purposes for which the district has been established.
As added by P.L.1-1995, SEC.26.

14-33-18-2

Sec. 2. A director of the district may not also be a director of the subdistrict.
As added by P.L.1-1995, SEC.26.

14-33-18-3

Sec. 3. (a) The district plan under which the subdistrict operates may not interfere with the accomplishment of a purpose for which the district was established.

(b) If the board of the district determines that operations of the subdistrict interfere with the accomplishment of a purpose of the district, the board may petition the court to make necessary findings and issue necessary orders to the board of the subdistrict to stop the interference.
As added by P.L.1-1995, SEC.26.

14-33-18-4

Sec. 4. A subdistrict operates in the same manner as a district, and the board of a subdistrict has the same powers and duties.
As added by P.L.1-1995, SEC.26.

14-33-18-5

Sec. 5. (a) A subdistrict also may be established under this chapter for a purpose for which the district has been established if the board passes a resolution to that effect defining the territory of the subdistrict and each purpose.

The resolution must be filed in the court having jurisdiction of the district.

(b) The court shall hold a hearing after ordering notice to be given as follows:

(1) By publication at least thirty (30) days before the hearing at least one (1) time in one (1) newspaper of general circulation in each county having land in the district.

(2) By mail to each freeholder in the proposed subdistrict.

(c) If at the hearing a remonstrance against the establishment of the subdistrict is filed with the court signed by:

(1) thirty percent (30%) of the freeholders in the proposed subdistrict; or

(2) thirty percent (30%) of all freeholders in the district;

the court shall dismiss the resolution. IC 14-33-2-3 applies to the remonstrance.

(d) If the court at the hearing finds that the proposed subdistrict has a particular need for the accomplishment of the purpose proposed, the court shall establish the subdistrict for the purpose. After the court establishes the purpose, the purpose is not a purpose of the district.

As added by P.L.1-1995, SEC.26.

Chapter 19. Levee Districts and Associations

14-33-19

14-33-19-1

Sec. 1. This chapter applies to a levee district or levee association existing under:

(1) Acts 1911, c.127;

(2) Acts 1911, c.280;

(3) Acts 1911, c.103;

(4) Acts 1913, c.165;

(5) Acts 1917, c.105;

(6) Acts 1919, c.26;

(7) Acts 1927, c.38;

(8) Acts 1933, c.42;

(9) Acts 1937, c.42;

(10) Acts 1937, c.186;

(11) Acts 1937, c.233;

(12) Acts 1941, c.159;

(13) Acts 1947, c.284;

(14) Acts 1947, c.187;

(15) Acts 1947, c.249;

(16) Acts 1959, c.52; or

(17) Acts 1959, c.374;

all of which were repealed by IC 19-3-2-106 (recodified as IC 13-2-19.5-9 before its repeal, and later recodified as IC 14-27-3-19).

As added by P.L.1-1995, SEC.26.

14-33-19-2

Sec. 2. A levee district or levee association may become a district under this article in accord with this chapter.

As added by P.L.1-1995, SEC.26.

14-33-19-3

Sec. 3. The elected levee committee of a levee district or board of directors of a levee association must do the following to become a district under this article:

(1) Adopt a resolution to accept this article.

(2) File a petition in court.

As added by P.L.1-1995, SEC.26.

14-33-19-4

Sec. 4. A petition filed under section 3 of this chapter must be filed as follows:

(1) For a levee district, in the court establishing the levee district.
(2) For an incorporated levee association formed under Acts 1913, c.165, in the circuit court of the county in which the principal offices of the incorporated levee association are located.
As added by P.L.1-1995, SEC.26.

14-33-19-5

Sec. 5. A petition filed under section 3 of this chapter must state the following:
(1) Acceptance of this article.
(2) The division of the district into areas, with the areas corresponding to the number of levee committee members or directors.
(3) The number of and names of the elected levee committee members or directors.
(4) The expiration dates of the terms of the committee members or directors.
As added by P.L.1-1995, SEC.26.

14-33-19-6

Sec. 6. (a) Upon receipt of a petition, the court shall do the following:
(1) Set a date for a hearing.
(2) Have a copy of the petition and notice of the time and place of the hearing given at least twenty (20) days before the hearing date as follows:
(A) By publication at least one (1) time in one (1) newspaper of general circulation in each county in which lies land affected by the levee district, levee association, or pending proceedings.
(B) By United States mail to each freeholder affected, postage prepaid, using the residence address shown on the record of transfer of the auditor of the counties involved.
(b) Proof of publication of the notice, verified by the publisher of each newspaper involved, shall be filed with the court on or before the date of hearing.
(c) The person mailing the notice to freeholders shall file an affidavit on or before the date of hearing showing the following:
(1) The names of the persons to whom notice was sent.
(2) The address to which the notice was sent.
(3) The date on which the notice was mailed.
As added by P.L.1-1995, SEC.26.

14-33-19-7

Sec. 7. At the hearing the court shall do the following:
(1) Determine the areas into which the district will be divided.
(2) Determine the date of the annual meeting of the district.
(3) Extend the terms of the levee committee members or board of directors to the annual meeting date set by the court.
As added by P.L.1-1995, SEC.26.

14-33-19-8

Sec. 8. Notwithstanding other provisions of this article, a levee district or levee association that constructed a levee before March 10, 1967, shall raise the annual revenue for maintenance and operation by either of the following:
(1) A combination of the following:
(A) A special benefits tax.
(B) A percentage assessment of the original assessments made and confirmed by the court in the original proceedings establishing and constructing the levee.
(2) A percentage assessment of the original assessments.
As added by P.L.1-1995, SEC.26.

Chapter 20. Water Supply Systems

14-33-20

14-33-20-1

Sec. 1. (a) This chapter applies only to furnishing water supply for domestic, industrial, and public use.

(b) This chapter does not apply to the accomplishment of any other purpose:

(1) for which a district has been established; or

(2) that is added to the purposes of the district after establishment.

As added by P.L.1-1995, SEC.26.

14-33-20-2

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

As added by P.L.1-1995, SEC.26.

14-33-20-3

Sec. 3. As used in this chapter, "water facilities" and "water supply" include the following:

(1) Source of supply.

(2) Treatment facilities.

(3) Purifying and storage facilities.

(4) Distribution systems.

(5) Appurtenant equipment.

(6) Materials and supplies.

(7) Land, easements, and rights-of-way.

(8) Buildings.

(9) All other facilities for the administration, operation, and maintenance of the items described in subdivisions (1) through (8).

As added by P.L.1-1995, SEC.26.

14-33-20-4

Sec. 4. (a) A district established for the purpose of furnishing water supply for domestic, industrial, and public use may elect to furnish water supply under this chapter if:

(1) the district plan; or

(2) a part of or an amendment to the district plan;

so states.

(b) A district that adds the purpose of furnishing water supply for domestic, industrial, and public use may elect in the manner provided by subsection (a) to furnish water supply under this chapter.

As added by P.L.1-1995, SEC.26.

14-33-20-5

Sec. 5. (a) A district electing to come under this chapter is considered, with regard to activities relating to furnishing water supply for domestic, industrial, and public use, to be a legal entity for the following purposes:

(1) Contracting with individuals, associations, corporations, municipal corporations, conservancy districts, the state, and the United States for the acquisition of property.

(2) The borrowing of money, including security for indebtedness so incurred.

(3) The purchase and sale of water.

(b) A district:

(1) may sue and be sued for the purposes described in subsection (a); and

(2) has the rights and powers granted by this article to the extent consistent with this chapter.

As added by P.L.1-1995, SEC.26.

14-33-20-6

Sec. 6. An order of the court:

(1) establishing a district; or

(2) adding the purpose of furnishing water supply for domestic, industrial, and public use;

grants to the district territorial authority to provide the service of water supply within the district. Territorial authority includes the power to acquire, maintain, and operate a source of water outside the district.

As added by P.L.1-1995, SEC.26.

14-33-20-7

Sec. 7. If a district proposes in:

(1) the district plan;

(2) a part of or an amendment to the district plan; or

(3) implementation of the district plan;

to provide water supply to users outside of the territory to which the district has been granted territorial authority, the district must petition the commission for territorial authority to serve the additional users.

As added by P.L.1-1995, SEC.26.

14-33-20-8

Sec. 8. Upon the filing of a petition with the commission under section 7 of this chapter, the commission shall do the following:

(1) Set the petition for public hearing.

(2) Give notice of the time and place of the hearing by publication one (1) time in at least one (1) newspaper printed and published in each county in which the district proposes to carry on operations relating to furnishing water supply. The publication must be at least ten (10) days before the date set for hearing. The district shall pay the cost of the publication at the time of filing the petition.

As added by P.L.1-1995, SEC.26.

14-33-20-9

Sec. 9. Any interested person may:

(1) appear at the hearing under section 8 of this chapter either in person or by attorney; and

(2) oppose the petition.

As added by P.L.1-1995, SEC.26.

14-33-20-10

Sec. 10. (a) The commission shall, after hearing the evidence introduced at the hearing under section 8 of this chapter, enter a finding that the convenience and necessity of the public proposed to be served in the area in which the additional users are located:

(1) will; or

(2) will not;

be served by the district.

(b) If the finding is in the affirmative, the commission shall enter an order granting territorial authority for the area. The district shall attach a copy of the order to:

(1) the district plan; or

(2) a part of, an amendment to, or the implementation of the district plan;

before the district plan is submitted for approval.

(c) If the finding is in the negative, the commission shall enter an order denying the approval to serve the additional users in the area.

As added by P.L.1-1995, SEC.26.

14-33-20-11

Sec. 11. If:

(1) a district is established for the purpose of furnishing water supply for domestic, industrial, and public use or that purpose is added to a district; and

(2) there is within the boundaries of the district a municipality or public utility providing water supply to part of the territory within the boundaries;

the order of the court establishing the district or adding that purpose is territorial authority only for that territory within the boundaries not served by the municipality or public utility.

As added by P.L.1-1995, SEC.26.

14-33-20-12

Sec. 12. (a) IC 14-33-4-2 does not apply to the addition of territory to a district in any county for the purpose of supplying water to additional users outside the territorial boundaries of the district. The commission has exclusive

jurisdiction over the granting to a district of territorial authority to serve additional water users.

(b) For the purposes of:

(1) granting territorial authority to a district to serve additional water users under subsection (a); and

(2) exercising the commission's jurisdiction for changes in the rates and charges of a district under section 14 of this chapter;

the commission shall recoup its expenses under IC 8-1-2-70. For purposes of this subsection, a district that has the purpose of water supply and that operates under this chapter is considered a municipal utility.

As added by P.L.1-1995, SEC.26.

14-33-20-13

Sec. 13. (a) A district coming under this chapter shall furnish reasonably adequate services and facilities. The charge made by the district for a service provided or to be provided, either directly or indirectly, must be nondiscriminatory, reasonable, and just. Every discriminatory, unjust, or unreasonable charge for service is unlawful. A reasonable and just charge for services is a charge that produces sufficient revenue to pay all the legal and other necessary expenses incident to the operation of the water facilities:

(1) including maintenance costs, operating charges, upkeep, repairs, and interest charges on bonds, notes, or other evidences of indebtedness;

(2) providing a sinking fund for the liquidation of bonds, notes, or other evidence of indebtedness;

(3) providing adequate money to be used as working capital, as well as money for making extensions and replacements; and

(4) paying taxes, if any, that are assessed against the water facilities.

(b) The rates may include a reasonable profit on the investment, so that the charges produce an income sufficient to maintain the water facilities in a sound physical and financial condition to provide adequate and efficient service. A rate too low to meet these requirements is unlawful.

(c) A district and the district's board, officers, and employees:

(1) shall enforce the collection of the rates and charges; and

(2) if necessary, may discontinue water service to a water user for the nonpayment of rates and charges.

(d) A district shall make a charge against the property in the district for fire protection furnished by the water facilities, separate from rates and charges for water supplied to users. The receipts from fire protection charges are considered revenues of the water facilities.

As added by P.L.1-1995, SEC.26.

14-33-20-14

Sec. 14. A district coming under this chapter shall file the initial schedule of rates and charges to patrons of the district with the commission. If changes in rates and charges are necessary, the district is subject to the jurisdiction of the commission in the same manner as provided by statute for the regulation of rates and charges of municipal water utilities.

As added by P.L.1-1995, SEC.26.

14-33-20-15

Sec. 15. (a) As used in this section, "net revenues" means gross revenues less the reasonable cost of operation and maintenance.

(b) A district coming under this chapter may pay the costs, including incidental expenses, of constructing or otherwise acquiring all the works of improvement necessary to furnish water supply for domestic, industrial, and public use by issuing bonds, notes, or other evidences of indebtedness to be payable from revenues in the manner provided by this article. The bonds, notes, or other evidences of indebtedness of the district for water purposes are payable solely from the net revenues of the water facilities. All bonds, notes, contracts, warrants, debentures, and pledges entered into by a district for the purposes of:

(1) this chapter; or

(2) IC 13-3-4 (before its repeal);

do not constitute an obligation payable from the collection of a special benefits tax.

As added by P.L.1-1995, SEC.26.

14-33-20-16

Sec. 16. All bonds, notes, or other evidences of indebtedness payable from revenues may be authorized only by resolution of the board. The resolution, as well as the bonds, notes, or other evidences of indebtedness issued under the resolution, is a contract with all holders of the bonds, notes, or other evidences of indebtedness.
As added by P.L.1-1995, SEC.26.

14-33-20-17

Sec. 17. (a) All bonds, notes, or other evidences of indebtedness that are authorized by the resolution must be in one (1) or more series and may:

(1) bear the date;
(2) mature at a time not exceeding fifty (50) years from the date of issuance;
(3) bear interest at any rate;
(4) be in a denomination;
(5) be in a form, either coupon or registered;
(6) carry registration and conversion privileges;
(7) be executed in the manner;
(8) be payable in the medium of payment, at the place;
(9) be subject to terms of redemption, with or without a premium;
(10) be declared or become due before the maturity date;
(11) provide for the replacement of mutilated, destroyed, stolen, or lost bonds, notes, or other evidences of indebtedness;
(12) be authenticated in a manner and upon compliance with conditions; and
(13) contain other terms and covenants;

that are provided by resolution of the board.

(b) Notwithstanding the form or tenor, and in the absence of an express recital on the face that the bond, note, or other evidence of indebtedness is nonnegotiable, the bonds, notes, or other evidences of indebtedness are negotiable instruments for all purposes.
As added by P.L.1-1995, SEC.26.

14-33-20-18

Sec. 18. (a) The bonds, notes, or other evidences of indebtedness shall be executed in the name of the district by the chairman of the board and attested by the secretary. Interest coupons may be executed by placing the facsimile signature of the chairman on the coupons.

(b) The bonds, notes, or other evidences of indebtedness are valid and binding obligations of the district for all purposes provided by this chapter and in the resolution, even if before delivery any of the persons whose signatures appear on the bonds, notes, or other evidences of indebtedness have ceased to be officers of the district.
As added by P.L.1-1995, SEC.26.

14-33-20-19

Sec. 19. The validity of the authorization and issuance of the bonds, notes, or other evidences of indebtedness is not dependent on or affected in any way by the following:

(1) Proceedings taken for the improvement for which the bonds, notes, or other evidences of indebtedness are to be issued.
(2) Contracts made in connection with the improvement.

As added by P.L.1-1995, SEC.26.

14-33-20-20

Sec. 20. A resolution authorizing bonds, notes, or other evidences of indebtedness payable from revenues must provide that a bond, note, or other evidence of indebtedness payable from revenues contain a recital that the bond, note, or other evidence of indebtedness is issued under this article or under IC 13-3-3 (before its repeal). A bond, note, or other evidence of indebtedness containing the recital under authority of such a resolution is conclusively considered:

(1) to be valid; and
(2) to have been issued in conformity with this article or IC 13-3 (before its repeal).

As added by P.L.1-1995, SEC.26.

14-33-20-21

Sec. 21. The bonds, notes, or other evidences of indebtedness payable from revenues:

(1) shall, except as provided in subdivision (4), be sold at public sale as provided by general statutes concerning the sale of bonds;

(2) may be sold at different times or an entire issue or series may be sold at one (1) time;

(3) may be sold:

(A) in part; or

(B) in part in installments at different times or at one (1) time; and

(4) may be sold or issued to the United States or the state without a public offering.

As added by P.L.1-1995, SEC.26.

14-33-20-22

Sec. 22. All bonds, notes, or other evidences of indebtedness of the same issue shall be equally and ratably secured, without priority because of:

(1) number or date of issue;

(2) sale;

(3) execution; or

(4) delivery;

by a lien upon the revenues in accordance with this chapter and the resolution authorizing issuance.

As added by P.L.1-1995, SEC.26.

14-33-20-23

Sec. 23. This chapter does not authorize the board to do anything that would result in the creation of an instrument that constitutes a bond or debt within the meaning of the constitutional restriction relating to:

(1) the creation or incurring of a debt or indebtedness; or

(2) the issuance of an instrument constituting a bond or debt.

As added by P.L.1-1995, SEC.26.

14-33-20-24

Sec. 24. (a) The bonds, notes, or other evidences of indebtedness, including interest, are not any of the following:

(1) A debt of the district or the board.

(2) A charge, lien, or encumbrance, legal or equitable, upon:

(A) property of the district; or

(B) income, receipts, or revenues of the district other than the revenues of the water facilities that have been pledged to payment.

(b) Every bond, note, or other evidence of indebtedness must recite in substance the following:

(1) That the bond, note, or other evidence of indebtedness, including interest, is payable solely from the revenues pledged to payment.

(2) That the board is not under an obligation to pay the bond, note, or other evidence of indebtedness except from those revenues.

As added by P.L.1-1995, SEC.26.

14-33-20-25

Sec. 25. Bonds, notes, or other evidences of indebtedness may be issued for refunding outstanding bonds, notes, or other evidences of indebtedness of the district in the discretion of the board. However, refunding may not contradict the terms of a resolution that the board has passed authorizing the issuance of bonds, notes, or other evidence of indebtedness sought to be refunded.

As added by P.L.1-1995, SEC.26.

14-33-20-26

Sec. 26. (a) A district coming under this chapter may borrow money for a term not to exceed two (2) years, which may be renewed for a term of two (2) years, from a bank organized under state or federal statutes or from a state or federal agency in anticipation of the receipt of money from any source, including the following:

(1) Grants and loans from state or federal agencies.
(2) Money from the sale of bonds, notes, or other evidences of indebtedness proposed to be issued under this chapter.

(b) The district may pledge the money to be received to the repayment of the principal and interest of the borrowing.

(c) The interim financing may also be repaid from the sale of bonds, notes, or other evidences of indebtedness without designating the bonds, notes, or other evidences of indebtedness as refunding obligations. The proceeds of interim financing may be used in whole or part for the following:
(1) The acquisition of real, personal, or mixed property, or options on real, personal, or mixed property.
(2) Services reasonably necessary to provide water supply for domestic, industrial, and public use.

(d) Interim financing may be negotiated and consummated directly between the district and the state or federal bank or state or federal agency without public offering. The district may make covenants to the lender and the lender has the rights and remedies that are authorized by this article.

As added by P.L.1-1995, SEC.26.

14-33-20-27

Sec. 27. The:
(1) bonds, notes, or other evidences of indebtedness;
(2) proceeds from and the interest on the bonds, notes, or other evidences of indebtedness;
(3) water property and facilities of the district; and
(4) revenues received from the furnishing of water and providing fire protection;

are exempt from taxation by the state.

As added by P.L.1-1995, SEC.26.

14-33-20-28

Sec. 28. (a) To adequately secure the payment of the bonds, notes, or other evidences of indebtedness, including interest, payable from revenues, the board and the board's officers, agents, and employees shall do the following:
(1) Pay punctually the principal of every bond, note, or other evidence of indebtedness, including interest:
(A) on the date;
(B) at the place;
(C) in the manner; and
(D) out of the money mentioned in the bonds, notes, other evidences of indebtedness, and coupons;
in accordance with the resolution authorizing issuance.
(2) Preserve and protect the security of the bonds, notes, or other evidence of indebtedness and the rights of the holders, and warrant and defend those rights against all claims and demands of all persons.
(3) Hold in trust the revenues pledged to the payment of the bonds, notes, or other evidence of indebtedness for the benefit of the holders and apply those revenues:
(A) only as provided by the resolution authorizing issuance; or
(B) if the resolution is modified in the manner provided in:
(i) the bonds, notes, or other evidence of indebtedness; or
(ii) this chapter;
only as provided in the resolution as modified.
(4) Keep proper books of record and accounts of the water facilities, separate from all other records and accounts:
(A) in which complete and correct entries shall be made of all transactions relating to the water facilities and any part of the water facilities for which the revenues are pledged; and
(B) that, together with all other books and papers of the board, are at all times subject to the inspection of the holder of the bonds, notes, or other evidences of indebtedness then outstanding or a representative of the holder authorized in writing.

(b) This section does not require the board to expend money other than revenues received or receivable from the water facilities.

As added by P.L.1-1995, SEC.26.

14-33-20-29

Sec. 29. (a) The board may insert, in a resolution authorizing the issuance of bonds, notes, or other evidences of indebtedness payable from revenues, provisions that then comprise a part of the contract with the holders of the bonds, notes, or other evidences of indebtedness concerning the following:

(1) Limitations on the purpose to which the proceeds of sale of an issue of bonds, notes, or other evidences of indebtedness payable from revenues issued to finance the improving of the water facilities may be applied.

(2) Limitations on the issuance of additional bonds, notes, or other obligations to finance the improving of the water facilities and on the lien of the water facilities.

(3) Limitations on the right of the board to restrict and regulate the use of the water facilities.

(4) The amount and kind of insurance to be maintained on the water facilities and the use and disposition of insurance money.

(5) Pledging all or a part of the revenues of the water facilities to which the board's right exists.

(6) Covenanting against pledging all or a part of revenues of the water facilities to which the board's right exists.

(7) Events of default and terms and conditions upon which any of the bonds, notes, or other evidences of indebtedness become or may be declared due before maturity, including the terms and conditions upon which the declaration and the consequences of the declaration may be waived.

(8) The rights, liabilities, powers, and duties arising if the board breaches any covenants, conditions, or obligations.

(9) A procedure by which the terms of:

(A) a resolution authorizing bonds, notes, or other evidences of indebtedness payable from revenues; or

(B) any other contract with the holders;

may be amended or abrogated, including the amount of bonds, notes, or other evidences of indebtedness to which the holders must consent and the manner in which the consent may be given.

(10) The execution of all instruments necessary or convenient in the following:

(A) The exercise of the powers granted by this chapter.

(B) The performance of the duties of the board and the board's officers, agents, and employees.

(11) Refraining from pledging or in any manner claiming or taking the benefit or advantage of a stay or extension statute that affects the duties or covenants of the board in relation to the following:

(A) The bonds, notes, or other evidences of indebtedness.

(B) The performance of or the lien of the bonds, notes, or other evidences of indebtedness.

(12) The:

(A) purchase out of any money available for the purchase, including the proceeds of bonds, notes, or other evidences of indebtedness payable from revenues, of outstanding bonds, notes, or other evidences of indebtedness; and

(B) price at which and the manner in which the purchases may be made.

(13) Other acts that:

(A) are desirable to secure the bonds, notes, or other evidences of indebtedness; or

(B) may tend to make the bonds, notes, or other evidences of indebtedness more marketable.

(b) This section does not authorize the board to:

(1) make any covenants; or

(2) perform any act;

requiring the expenditure of money other than revenues received or receivable from the water facilities.

As added by P.L.1-1995, SEC.26.

14-33-20-30

Sec. 30. If:

(1) the:

(A) board defaults in the payment of the principal or interest on any of the bonds, notes, or other evidences of indebtedness payable from revenues after the bonds, notes, or other evidences of indebtedness have become due, whether at maturity or upon call for redemption; and

(B) default continues for a period of thirty (30) days; or

(2) the board or the board's officers, agents, or employees:

(A) fail or refuse to comply with this chapter; or

(B) default in an agreement made with the holders of the bonds, notes, or other evidences of indebtedness; any holder or a trustee of a holder may apply to the circuit court with jurisdiction in the county in which the district is primarily situated for the appointment of a receiver of the water facilities, whether or not the holder or trustee is seeking or has sought to enforce any other right or remedy in connection with the bonds, notes, or other evidences of indebtedness.
As added by P.L.1-1995, SEC.26.

14-33-20-31

Sec. 31. Upon an application the circuit court:
(1) may appoint; and
(2) shall appoint, if the application is made by the holders or a trustee of the holders of twenty-five percent (25%) in principal amount of the bonds, notes, or other evidences of indebtedness then outstanding;
a receiver of the water facilities.
As added by P.L.1-1995, SEC.26.

14-33-20-32

Sec. 32. A receiver appointed under this chapter:
(1) shall directly or by the receiver's agents and attorneys enter upon and take possession of the water facilities for which the revenues are pledged; and
(2) may exclude:
(A) the board;
(B) the board's officers, agents, and employees; and
(C) all persons claiming under the board or the board's officers, agents, or employees.
As added by P.L.1-1995, SEC.26.

14-33-20-33

Sec. 33. A receiver appointed under this chapter shall do the following:
(1) Have, hold, use, operate, manage, and control the facilities.
(2) In the name of the board or otherwise, exercise all rights and powers of the board with respect to the water facilities as the board might do.
(3) Maintain, restore, and insure the water facilities and periodically make all proper repairs to the facilities.
(4) Subject to the jurisdiction of the commission, establish, levy, maintain, and collect fees, tolls, rentals, and other charges in connection with the water facilities as are proper and reasonable.
(5) Collect and receive all revenues, deposit the revenues in a separate account, and apply the revenues collected and received in the manner that the court directs.
As added by P.L.1-1995, SEC.26.

14-33-20-34

Sec. 34. (a) Whenever:
(1) all that is due:
(A) upon the bonds, notes, or other evidences of indebtedness payable from revenues, including interest; and
(B) upon other notes, bonds, or other obligations, including interest, having a charge, lien, or encumbrance on the revenues of the water facilities;
under the terms of covenants or agreements with the holders have been paid or deposited as provided; and
(2) all defaults have been cured;
the court may, after notice and hearing that the court considers reasonable and proper, direct the receiver to surrender possession of the facilities to the board.
(b) The same right of the holders of the bonds, notes, or other evidences of indebtedness to secure the appointment of a receiver exists upon a subsequent default as provided in this chapter.
As added by P.L.1-1995, SEC.26.

14-33-20-35

Sec. 35. (a) A receiver appointed under this chapter:

(1) shall, in the performance of the powers conferred upon the receiver, act under the supervision of the court making the appointment;
(2) is at all times subject to the orders of the court; and
(3) may be removed by the court.
(b) The court may enter other orders that the court considers appropriate for the exercise by the receiver of functions specifically set forth in this chapter.
As added by P.L.1-1995, SEC.26.

14-33-20-36

Sec. 36. Subject to contractual limitations binding upon the holders or trustees for the holders of an issue of bonds, notes, or other evidences of indebtedness payable from revenues, including restrictions on the exercise of a remedy to a specified proportion of holders, a holder or trustee of bonds, notes, or other evidences of indebtedness may, for the equal benefit and protection of all holders similarly situated, do the following:
(1) By mandamus or other action:
(A) enforce the rights of the holder or trustee against the board and the board's officers, agents, and employees; and
(B) require the board or officers, agents, or employees to perform:
(i) duties and obligations under this chapter; and
(ii) contracts with the holders.
(2) By action require the board to account as if the board was the trustee of an express trust.
(3) By action enjoin any acts or things that:
(A) are unlawful; or
(B) in violation of the rights of the holders.
(4) Bring suit upon the bonds, notes, or other evidences of indebtedness.
As added by P.L.1-1995, SEC.26.

14-33-20-37

Sec. 37. (a) A remedy conferred by this chapter upon a holder or trustee for a holder of bonds, notes, or other evidences of indebtedness payable from revenues:
(1) is in addition to every other remedy; and
(2) may be exercised without exhausting and without regard to any other remedy conferred by:
(A) this chapter; or
(B) any other statute.
(b) A waiver of a default or breach of duty or contract, whether by a holder or a trustee for a holder of bonds, notes, or other evidences of indebtedness payable from revenues, does not do any of the following:
(1) Extend to or affect a subsequent default or breach of duty or contract.
(2) Impair any rights or remedies.
(c) A delay or an omission of a holder or a trustee for a holder of bonds, notes, or other evidences of indebtedness does not do any of the following:
(1) Extend to or affect a subsequent default or breach of duty or contract.
(2) Impair any rights or remedies.
(d) A delay or an omission of a holder or a trustee for a holder of bonds, notes, or other evidences of indebtedness in exercising a right or power accruing upon default:
(1) does not impair a right or power; and
(2) may not be construed to be a waiver of the default or acquiescence in the default.
(e) Every substantive right and every remedy conferred upon the holders of bonds, notes, or other evidences of indebtedness payable from revenues may be enforced and exercised periodically and as often as is expedient. If action to enforce a right or exercise a remedy:
(1) is brought and then discontinued; or
(2) is determined adversely to the holder or trustee;
the board and the holder or trustee shall be restored to their former positions as if an action had not been brought.
As added by P.L.1-1995, SEC.26.

14-33-20-38

Sec. 38. (a) Notwithstanding any other provision of this chapter, a district may do the following:
(1) Borrow money from the state in accordance with other statutes.
(2) Evidence the indebtedness upon terms and conditions that are provided in the statutes or that the state requires.
(b) A district may:
(1) pay and discharge the indebtedness from the proceeds of bonds, notes, or other evidences of indebtedness issued under:
(A) this chapter; or
(B) IC 13-3-4 (before its repeal); or
(2) refund the indebtedness to the state;
in accordance with this chapter.
As added by P.L.1-1995, SEC.26.

14-33-20-39

Sec. 39. This chapter shall be liberally construed to facilitate the financing of water supply systems of districts.
As added by P.L.1-1995, SEC.26.

Chapter 21. Cumulative Improvement Fund

14-33-21

14-33-21-1

Sec. 1. As used in this chapter, "fund" refers to a cumulative improvement fund established under this chapter.
As added by P.L.1-1995, SEC.26.

14-33-21-2

Sec. 2. A district may establish a cumulative improvement fund under IC 6-1.1-41 to provide money for the construction, additional construction, or repair of the works of improvement the district:
(1) is authorized to construct; and
(2) states in the district plan, or part of or amendment to the plan, is a purpose of the fund.
As added by P.L.1-1995, SEC.26. Amended by P.L.17-1995, SEC.14.

14-33-21-3

Sec. 3. (a) The board of a district that determines to establish a fund shall state this determination in the district plan or in any part or amendment to the plan. Notice to this effect shall be made a part of all notices concerning approval of the district plan or a part of or amendment to the plan, including implementation of the plan. The plan must specify the:
(1) works of improvement;
(2) additions to the works of improvement; or
(3) repair of the works of improvement;
that are to be financed by the fund.
(b) When:
(1) the district plan;
(2) part of the district plan; or
(3) an amendment to the district plan;
is approved by the court having jurisdiction of the district, the fund is established.
As added by P.L.1-1995, SEC.26.

14-33-21-4

Sec. 4. (a) To provide money for the fund, the board may place in the fund the following:
(1) Gifts or grants from a person or state or federal agency.
(2) Receipts of revenue from the sale of services or property produced incident to the accomplishment of the purpose for which the district is organized.
(3) Any other form of miscellaneous receipt, including tap-in fees and connection fees.
(4) Levy of a special benefits tax in accordance with sections 5 through 10 of this chapter.

(5) Collection of the exceptional benefits assessments or installments of the assessments, but only in accordance with section 11 of this chapter.

(b) The board shall state in the district plan or part of or amendment to the plan the source or combination of sources that will finance the fund.

As added by P.L.1-1995, SEC.26.

14-33-21-5

Sec. 5. The board may levy a special benefits tax in compliance with IC 6-1.1-41 in an amount not to exceed three and thirty-three hundredths cents ($0.0333) on each one hundred dollars ($100) of real property in the district, except the property that is exempt under IC 14-33-7-4. The board shall file with the district plan or part of or amendment to the plan:

(1) the approval of the department of local government finance; and

(2) any action taken to reduce or rescind the tax levy.

As added by P.L.1-1995, SEC.26. Amended by P.L.17-1995, SEC.15; P.L.6-1997, SEC.161; P.L.90-2002, SEC.377.

14-33-21-6 Repealed

14-33-21-6 (Repealed by P.L.17-1995, SEC.45.)

14-33-21-7 Repealed

14-33-21-7 (Repealed by P.L.17-1995, SEC.45.)

14-33-21-8 Repealed

14-33-21-8 (Repealed by P.L.17-1995, SEC.45.)

14-33-21-9

Sec. 9. The approval of the department of local government finance:

(1) does not have to be filed with the district plan or part of or amendment to the plan at the time of the submission to the commission; and

(2) only has to be filed with the court having jurisdiction of the district.

As added by P.L.1-1995, SEC.26. Amended by P.L.17-1995, SEC.16; P.L.90-2002, SEC.378.

14-33-21-10

Sec. 10. A tax levy under section 5 of this chapter may be reduced or rescinded by an approved amendment to the district plan.

As added by P.L.1-1995, SEC.26. Amended by P.L.17-1995, SEC.17.

14-33-21-11

Sec. 11. (a) If the board determines to collect exceptional benefit assessments or installments of the assessments to provide for the fund in whole or in part, the board shall file with the district plan or part of or amendment to the plan the description of the land that the board has determined to be exceptionally benefited by the:

(1) works of improvement;

(2) addition to the works of improvement; or

(3) repair of the works of improvement.

(b) The board shall have written notice mailed first class postage prepaid to the owners of record of the land to the effect that the financing of the fund has been determined. The notice must state the time and place of the court hearing on the determination.

(c) Notwithstanding this section:

(1) the determination by the board of the land to be exceptionally benefited; and

(2) the notice on the determination;

does not bind the determination with regard to the existence and amount of exceptional benefits of appraisers appointed under IC 14-33-8.

As added by P.L.1-1995, SEC.26.

14-33-21-12

Sec. 12. If:

(1) there is a savings resulting from the cost of the works of improvement that are provided in the district plan, including the necessary engineering, legal, and administrative fees, being less than the proceeds of a bond issue or other borrowing to pay the costs;

(2) the district plan is amended to provide that the excess money may be placed in the fund for further necessary works of improvement or additions to those works constructed with those proceeds; and

(3) the use of the excess money is not restricted by the terms of the bond issue or other borrowing;

the excess money may be placed in the fund for the purposes described in subdivision (2).

As added by P.L.1-1995, SEC.26.

14-33-21-13 Repealed

14-33-21-13 (Repealed by P.L.17-1995, SEC.45.)

14-33-21-14

Sec. 14. If a federal or state agency, according to statute or contractual obligation, demands immediate or prompt action by the district in construction of, adding to, or repairing works of improvement, the district:

(1) may not defend that not enough money for the work has accumulated in the fund; and

(2) shall use the accumulation of money in the fund, including the proceeds of:

(A) borrowing;

(B) the collection of tax or assessments; or

(C) both borrowing and the collection of tax or assessments;

to discharge the obligation.

As added by P.L.1-1995, SEC.26.

Chapter 22. Rates or Charges for Sewerage System Service in Marion County

14-33-22

14-33-22-1

Sec. 1. This chapter applies only to a district located in whole or in part in a county having a consolidated city.

As added by P.L.1-1995, SEC.26.

14-33-22-2

Sec. 2. As used in this chapter, "sewage" means the water carried wastes:

(1) created in; and

(2) carried or to be carried away from;

residences, hotels, schools, hospitals, industrial establishments, and other private or public buildings.

As added by P.L.1-1995, SEC.26.

14-33-22-3

Sec. 3. (a) As used in this chapter, "sewerage system" means plants, works, systems, facilities, or properties used or having the capacity for use in connection with the:

(1) collection;

(2) carrying away;

(3) treating;

(4) neutralizing;

(5) stabilizing; or

(6) disposing;

of sewage, industrial waste, or other wastes and any integral part of the wastes.

(b) The term includes the following:

(1) Disposal fields, lagoons, pumping stations, drainage ditches, surface water intercepting sewers, lateral sewers, force mains, pipes, pipelines, conduits, equipments, and appurtenances.

(2) All properties, rights, easements, and franchises relating to the system considered necessary or convenient by the board.

As added by P.L.1-1995, SEC.26.

14-33-22-4

Sec. 4. As used in this chapter, "user" means a person or governmental entity that is the owner or occupant of real property, a part of which is connected to a sewerage system operated by a district.
As added by P.L.1-1995, SEC.26.

14-33-22-5

Sec. 5. As used in this chapter, "works" means a sewage treatment plant, intercepting sewers, main sewers, submain sewers, local and lateral sewers, outfall sewers, force mains, pumping stations, ejector stations, and other appurtenances that are:

(1) necessary or useful and convenient for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, sludge, night soil, and industrial waste; and

(2) owned, operated, and maintained under the control of a board.

As added by P.L.1-1995, SEC.26.

14-33-22-6

Sec. 6. A user, all or a part of whose real property is subject to no tax other than the special benefits tax imposed under this article, may file with the county assessor and the board a request for assessment of the user's real property under this chapter. A request for a change in assessment must be filed before November 2 of the year preceding the March 1 assessment date for which the change in assessment is requested. Every request applies only to the following:

(1) Real property specified in the request and subject to no tax other than the special benefits tax imposed under this article.

(2) The past year specified in the request for which assessment is requested under this chapter and all future years until further notice.

As added by P.L.1-1995, SEC.26.

14-33-22-7

Sec. 7. For each assessment date to which a request filed under section 6 of this chapter applies, the county assessor shall assess the real property specified in the request at an amount that, when multiplied by the tax rate for the district for the taxes due and payable in the year of the assessment date, equals the just and equitable rate to the user as determined by the board as of the most recent December 1 under section 11 of this chapter.
As added by P.L.1-1995, SEC.26.

14-33-22-8

Sec. 8. (a) The board shall establish a schedule of just and equitable rates or charges for the use of and the service provided by the works to be paid by a user who:

(1) owns or occupies real property that is partially or entirely exempt from general taxation and:

(A) is connected with and uses the works by or through any part of the sewerage system; or

(B) that in any way uses or is served by the works; and

(2) files a request for determination as provided in section 6 of this chapter.

(b) The board may change the schedule periodically.
As added by P.L.1-1995, SEC.26.

14-33-22-9

Sec. 9. (a) A schedule may be established or changed only after a public hearing at which:

(1) all persons using the works or owning real property served or to be served by the works; and

(2) other interested persons;

have an opportunity to be heard concerning the proposed schedule.

(b) After adoption of a resolution fixing the schedule and before the resolution is put into effect, notice of the hearing shall be given by one (1) publication in a newspaper having general circulation in the district at least ten (10) days before the date fixed in the notice for the hearing. The hearing may be adjourned as needed.
As added by P.L.1-1995, SEC.26.

14-33-22-10

Sec. 10. After a hearing held under section 9 of this chapter, the resolution establishing the schedule, either as originally passed or as modified and amended, shall be passed and put into effect. A copy of the schedule must be kept on file in the office of the board and must be open to inspection to all interested parties. A change or readjustment of the schedule may be made at any time in the same manner as the schedule was originally established.
As added by P.L.1-1995, SEC.26.

14-33-22-11

Sec. 11. (a) The board:
(1) shall, before December 2 of the year in which a request is filed, fix the just and equitable rate for each user filing a request under section 6 of this chapter according to the schedule adopted; and
(2) may change the rate prospectively before December 2 of a future year to reflect changes in the user's use of the sewerage system.
(b) The board shall promptly notify:
(1) the county assessor; and
(2) the affected user;
of the rate as originally fixed and as changed periodically.
As added by P.L.1-1995, SEC.26.

14-33-22-12

Sec. 12. The schedule of rates or charges for the treatment and disposal of sewage may be fixed and determined by the board on the basis of any of the following:
(1) A flat charge for each sewer connection.
(2) The amount of water used on the premises and discharged into the sewerage system.
(3) The number and size of water outlets on the premises.
(4) The amount, strength, and character of sewage discharged into the sewers.
(5) The size of sewer connections.
(6) Any combination of these factors or other factors.
As added by P.L.1-1995, SEC.26.

14-33-22-13

Sec. 13. (a) If only a part of:
(1) a tract or lot of land; or
(2) a building;
connected to the sewerage system is exempt from general taxation, the rates and charges established under this chapter shall be reduced by a fraction.
(b) The fraction to be used under subsection (a) is established by using:
(1) the assessed valuation of the part subject to tax as the numerator; and
(2) the total assessed value as the denominator.
As added by P.L.1-1995, SEC.26.

Chapter 23. General Provisions

14-33-23

14-33-23-1

Sec. 1. (a) The following persons may enter land in the district and other land near the district as is necessary for district purposes:
(1) The board of directors.
(2) The board of appraisers.
(3) The staffs of both boards.
(4) All other persons employed or contracted with.
(b) In exercising the right granted by subsection (a), all reasonable effort must be made to notify the freeholder or tenant before entry.

As added by P.L.1-1995, SEC.26.

14-33-23-2

Sec. 2. The county auditor, county treasurer, and other officers of the county shall take all proper steps to:

(1) collect and transmit money; and

(2) perform other duties;

necessary to carry out this article.

As added by P.L.1-1995, SEC.26.

14-33-23-3

Sec. 3. (a) This section applies to a district established for the purpose of providing water supply, including treatment and distribution for domestic, industrial, and public use.

(b) A public utility engaged in the production, transmission, or distribution of water may:

(1) initiate water service; or

(2) expand the public utility's water service area;

within the boundaries of a district described in subsection (a) if the public utility has received an order from the Indiana utility regulatory commission, after notice and hearing, that public convenience and necessity requires the additional service.

(c) For the purposes of this section, the area of a district includes the additional area in which the district may serve users under IC 14-33-20.

As added by P.L.1-1995, SEC.26.

14-33-23-4

Sec. 4. (a) This section applies to:

(1) a sewer;

(2) a sewage disposal plant or installation; or

(3) a storm water drain;

that is installed by a district in and serves an area that subsequently comes within the corporate limits of a municipality that is not a part of the district.

(b) The municipality may purchase that part of the sewage disposal works or storm drainage system with approval of the court and agreement with the district. The district shall protect the district's own operations and obligations.

As added by P.L.1-1995, SEC.26.

14-33-23-5

Sec. 5. (a) This section applies to a water line or water supply installation installed by a district serving an area that subsequently comes within the corporate limits of a municipality that:

(1) is not a part of the district; and

(2) owns and operates a waterworks serving the municipality.

(b) The water line or water supply installation may become the property of the municipality at the option of the municipality, with agreement of the district and approval of the court.

(c) The municipality must reimburse the district at a figure equaling the district's verified cost. If the municipality and the district fail to agree upon the compensation, the municipality and district shall submit the matter to the Indiana utility regulatory commission for determination. The district shall protect the district's own operations and obligations.

As added by P.L.1-1995, SEC.26.

14-33-23-6

Sec. 6. (a) This article shall be liberally construed to accomplish the purpose of creating districts by which local water management problems can best be solved.

(b) Failure of notice, duly ordered, does not void a proceeding provided for in this article that is otherwise valid.

As added by P.L.1-1995, SEC.26.

16-19-3-4

Sec. 4. (a) The executive board may, by an affirmative vote of a majority of its members, adopt reasonable rules

on behalf of the state department to protect or to improve the public health in Indiana.

(b) The rules may concern but are not limited to the following:

(1) Nuisances dangerous to public health.

(2) The pollution of any water supply other than where jurisdiction is in the water pollution control board and department of environmental management.

(3) The disposition of excremental and sewage matter.

(4) The control of fly and mosquito breeding places.

(5) The detection, reporting, prevention, and control of diseases that affect public health.

(6) The care of maternity and infant cases and the conduct of maternity homes.

(7) The production, distribution, and sale of human food.

(8) Except as provided in section 4.4 of this chapter, the conduct of camps.

(9) Standards of cleanliness of eating facilities for the public.

(10) Standards of cleanliness of sanitary facilities offered for public use.

(11) The handling, disposal, disinterment, and reburial of dead human bodies.

(12) Vital statistics.

(13) Sanitary conditions and facilities in public buildings and grounds, including plumbing, drainage, sewage disposal, water supply, lighting, heating, and ventilation, other than where jurisdiction is vested by law in the fire prevention and building safety commission or other state agency.

(14) The design, construction, and operation of swimming and wading pools. However, the rules governing swimming and wading pools do not apply to a pool maintained by an individual for the sole use of the individual's household and house guests.

As added by P.L.2-1993, SEC.2. Amended by P.L.83-2007, SEC.6.

16-19-3-8

Sec. 8. The state department may enforce all laws and rules concerning the character and location of plumbing, drainage, water supply, disposal of sewage, lighting, heating, and ventilation and all sanitary features of all public buildings and institutions.

As added by P.L.2-1993, SEC.2.

16-19-3-16

Sec. 16. The state department may conduct hearings, issue orders, and take action on behalf of the state for the enforcement of orders as necessary to regulate the use of existing or proposed sanitary systems that do not meet or would not meet health standards established by the state department under law or rule as means, by the use of the state department's police power, to abate or prevent the pollution of streams, rivers, lakes, and other bodies of water.

As added by P.L.2-1993, SEC.2.

16-20-5-1

Sec. 1. (a) If a multiple county sewer, water, wastewater, or similar district has been established under IC 13-26 or IC 13-3-2 (before its repeal), the affected counties may by concurrent resolution of each county executive establish an area board of health for the sole purposes of administering and enforcing, consistent with environmental management laws (as defined in IC 13-11-2-71), all state and local environmental statutes, rules, and ordinances relative to the maintenance of a high quality environmental level in the district.

(b) Area boards of health created under this chapter have jurisdiction with the board established under IC 13-13-8 and the department of environmental management within the uniform inspection and enforcement area established under section 5 of this chapter.

As added by P.L.2-1993, SEC.3. Amended by P.L.1-1996, SEC.74; P.L.133-2012, SEC.182.

Chapter 22. Health, Sanitation, and Safety: Mass Gatherings

16-41-22

16-41-22-1

Sec. 1. (a) This chapter does not apply to a regularly established, permanent place of worship, a stadium, an athletic field, an arena, an auditorium, a coliseum, or other similar permanently established place of assembly for

assemblies that do not exceed by more than two hundred fifty (250) people the maximum seating capacity of the structure where the assembly is held.

(b) This chapter does not apply to government sponsored fairs held on regularly established fairgrounds or to assemblies required to be licensed by other statutes or ordinances.

(c) This chapter does not apply to local or regional festivals, celebrations, or events that are held on an annual or regular basis and that were observed or celebrated at least two (2) times before January 1, 1973.

(d) This chapter does not apply to assemblies that are held on land owned or leased by the state or the federal government.

As added by P.L.2-1993, SEC.24.

16-41-22-2

Sec. 2. As used in this chapter, "assembly" means a collection of individuals gathered together at any location at any one (1) time for any purpose.

As added by P.L.2-1993, SEC.24.

16-41-22-3

Sec. 3. As used in this chapter, "governing body" means the following:

(1) County executive of a county.
(2) City-county fiscal and legislative body of a consolidated city.
(3) Fiscal and legislative body of a city.
(4) Town fiscal and legislative body.

As added by P.L.2-1993, SEC.24.

16-41-22-4

Sec. 4. As used in this chapter, "unit" means a city, town, or county.

As added by P.L.2-1993, SEC.24.

16-41-22-5

Sec. 5. A person may not:

(1) permit;
(2) maintain;
(3) promote;
(4) conduct;
(5) advertise;
(6) act as entrepreneur;
(7) undertake;
(8) organize;
(9) manage; or
(10) sell or give tickets to;

an actual or a reasonably anticipated assembly of at least five thousand (5,000) people that continues or can reasonably be expected to continue for at least eighteen (18) consecutive hours, whether on public or private property, unless a license to hold the assembly has first been issued by the appropriate law enforcement official of the unit in which the assembly is to gather. A license to hold an assembly issued to one (1) person permits any person to engage in any lawful activity in connection with the holding of the licensed assembly.

As added by P.L.2-1993, SEC.24.

16-41-22-6

Sec. 6. A separate license is required for each day and each location in which at least five thousand (5,000) people assemble or can reasonably be anticipated to assemble and can reasonably be expected to continue for at least eighteen (18) consecutive hours.

As added by P.L.2-1993, SEC.24.

16-41-22-7

Sec. 7. The fee for each license is one hundred dollars ($100), payable to the state.

As added by P.L.2-1993, SEC.24.

16-41-22-8

Sec. 8. A license permits the assembly of only the maximum number of people stated in the license. The licensee may not sell tickets to or permit to assemble at the licensed location more than the maximum permissible number of people.

As added by P.L.2-1993, SEC.24.

16-41-22-9

Sec. 9. The licensee may not permit the sound of the assembly to carry unreasonably beyond the boundaries of the location of the assembly.

As added by P.L.2-1993, SEC.24.

16-41-22-10

Sec. 10. (a) Before an applicant may be issued a license, the applicant must comply with this section.

(b) The applicant must determine the maximum number of people that will be assembled or admitted to the location of the assembly. The maximum number may not exceed the maximum number that can reasonably assemble at the location of the assembly. If the assembly is to continue overnight, the maximum number is not more than is allowed to sleep within the boundaries of the location of the assembly by zoning or health ordinances of the unit.

(c) The applicant must provide proof of the following:

(1) Food concessions will be in operation on the grounds with sufficient capacity to accommodate the number of persons expected to be in attendance.

(2) The applicant, at the applicant's own expense, before the assembly commences, will do the following:

(A) Furnish potable water that meets the following conditions:

(i) Meets all federal and state requirements for purity.

(ii) Is sufficient to provide drinking water for the maximum number of people to be assembled at the rate of at least one (1) gallon per person per day and water for bathing at the rate of at least ten (10) gallons per person per day.

(B) Furnish separate, enclosed toilets for males and females that meet the following conditions:

(i) Meet all state and local specifications.

(ii) Are conveniently located throughout the grounds.

(iii) Are sufficient to provide facilities for the maximum number of people to be assembled, at the rate of at least one (1) toilet for every one hundred fifty (150) females and at least one (1) toilet for each two hundred (200) males.

(C) Furnish a lavatory with running water under pressure and a continuous supply of soap and paper towels with each toilet.

(D) Provide, together with the toilets, an efficient, sanitary means of disposing of waste matter deposited in compliance with all state and local laws and rules.

(E) Provide a sanitary method of disposing of solid waste, in compliance with state and local laws and rules, sufficient to dispose of the solid waste production of the maximum number of people to be assembled, at the rate of at least two and one-half (2 1/2) pounds of solid waste per person per day.

(F) Provide a plan for holding and collecting all solid waste at least one (1) time each day of the assembly and provide sufficient trash cans with tight fitting lids and personnel to perform the task.

(G) Provide physicians and nurses licensed to practice in Indiana, at the rate of at least one (1) physician for every ten thousand (10,000) people and at least one (1) nurse for every five thousand (5,000) people anticipated to be assembled, with one-half (1/2) of the physicians and nurses to be on the site for which the license has been issued and the other one-half (1/2) to be readily available.

(H) Provide an enclosed covered structure where treatment may be provided containing a separately enclosed treatment room for each physician.

(I) Provide at least one (1) emergency ambulance available at all times.

(J) If the assembly is to continue during hours of darkness, provide illumination sufficient to light the entire area of the assembly at the rate of at least five (5) foot candles. However, the illumination may not shine unreasonably beyond the boundaries of the location of the assembly.

(K) Provide a free parking area inside the assembly grounds sufficient to provide parking space for the

maximum number of people to be assembled, at the rate of at least one (1) parking space for every four (4) persons.
(L) Provide telephones connected to outside lines sufficient to provide for the maximum number of people to be assembled, at the rate of at least one (1) separate line and receiver for each one thousand (1,000) people.
(M) If the assembly is to continue overnight, provide camping facilities in compliance with all state and local requirements, sufficient to provide camping accommodations for the maximum number of people to be assembled.
(N) Provide security guards:
(i) who are either regularly employed, duly sworn, off duty law enforcement officers or private guards licensed in Indiana; and
(ii) sufficient to provide adequate security for the maximum number of people to be assembled, at a rate of at least one (1) security guard for each seven hundred fifty (750) people.
(O) Provide fire protection that meets the following conditions:
(i) Includes alarms, extinguishing devices, fire lanes, and escapes.
(ii) Is sufficient to meet all state and local standards for the location of the assembly.
(iii) Includes sufficient emergency personnel to operate efficiently the required equipment.
(P) Take all reasonably necessary precautions to ensure that the sound of the assembly will not carry unreasonably beyond the enclosed boundaries of the location of the assembly.
(Q) File a bond with the clerk of the unit in which the assembly is to gather. The bond must meet the following conditions:
(i) Be either in cash or underwritten by a surety agent licensed to do business in Indiana.
(ii) Be issued at the rate of four dollars ($4) per person for the maximum number of people permitted to assemble.
(iii) Indemnify and hold harmless the unit or the unit's agents, officers, or employees from any liability or causes of action that might arise by reason of granting the license and from any cost incurred in cleaning up any waste material produced or left by the assembly.
(iv) Guarantee the state the payment of any taxes that accrue as a result of the gathering.
(v) Guarantee reimbursement of ticketholders if the event is canceled.
(vi) Guarantee repayment to any unit for actual expenses of repair or replacement of property owned by the unit or for which the unit is responsible.
As added by P.L.2-1993, SEC.24.

16-41-22-11

Sec. 11. Application for a license to hold an actual or anticipated assembly of at least five thousand (5,000) persons that can reasonably be expected to continue for at least eighteen (18) consecutive hours must be made in writing to the chief of police of the municipality or sheriff of the county at least sixty (60) days in advance of the assembly. The application must be accompanied by the bond required by section 10(c)(2)(Q) of this chapter and the license fee required by section 7 of this chapter.
As added by P.L.2-1993, SEC.24.

16-41-22-12

Sec. 12. (a) The chief of police or the sheriff to whom the application is made shall on the same day forward the application with the chief of police's or sheriff's recommendations to the local health department.

(b) The local health department shall examine the application and make the investigation that the local health department considers necessary and either approve or disapprove the application not more than fifteen (15) days after receipt. Immediately after making a determination, the local health department shall return the application, marked approved or disapproved, to the sheriff or chief of police who submitted the application.

(c) The sheriff or chief of police shall notify the applicant within five (5) days that the application has been disapproved or that the sheriff or chief of police will issue the license. The sheriff or chief of police may issue the license provided for in this chapter.
As added by P.L.2-1993, SEC.24. Amended by P.L.142-1995, SEC.24.

16-41-22-13

Sec. 13. The application must contain a statement made upon oath or affirmation that the statements contained in the application are true and correct to the best knowledge of the applicant. The statement must be signed and sworn to or affirmed by the following:

(1) The individual for an individual.
(2) All officers for a corporation.
(3) All partners for a partnership.
(4) All officers of an unincorporated association, a society, or a group.
(5) All members of an association, a society, or a group if there are no officers.

As added by P.L.2-1993, SEC.24.

16-41-22-14

Sec. 14. The application must disclose the following:

(1) The name, age, residence, and mailing address of each person required to sign the application by section 13 of this chapter and, in the case of a corporation, a certified copy of the articles of incorporation together with the name, age, residence, and mailing address of each person holding at least ten percent (10%) of the stock of the corporation.
(2) The address and legal description of all property on which the assembly is to be held, together with the name, residence, and mailing address of the record owner or owners of all the property.
(3) Proof of ownership of all property on which the assembly is to be held, or a statement made upon oath or affirmation by the record owner or owners of all property that the applicant has permission to use the property for an assembly of at least five thousand (5,000) persons.
(4) The nature or purpose of the assembly.
(5) The total number of days or hours during which the assembly is to last.
(6) The maximum number of persons that the applicant will permit to assemble at any time, not to exceed the maximum number that can reasonably assemble at the location of the assembly, in consideration of the nature of the assembly, or the maximum number of persons allowed to sleep within the boundaries of the location of the assembly by the zoning ordinances of the unit if the assembly is to continue overnight.
(7) The maximum number of tickets to be sold, if any.
(8) The plans of the applicant to limit the maximum number of people permitted to assemble.
(9) The plans for supplying potable water, including the source, amount available, and location of outlets.
(10) The plans for providing toilet and lavatory facilities, including the source, number, location, and type and the means of disposing of waste deposited.
(11) The plans for holding, collecting, and disposing of solid waste materials.
(12) The plans to provide for medical facilities, including the names, addresses, and hours of availability of physicians and nurses, and provisions for emergency ambulance service.
(13) The plans, if any, to illuminate the location of the assembly, including the source, amount of power, and the location of lamps.
(14) The plans for parking vehicles, including size and location of lots, points of highway access, interior roads, and routes between highway access and parking lots.
(15) The plans for telephone service, including the source, number, and location of telephones.
(16) The plans for camping facilities, if any, including facilities and the locations of the facilities.
(17) The plans for security, including the number of guards, the guards' employment, names, addresses, credentials, and hours of availability.
(18) The plans for fire protection, including the number, type, and location of all protective devices including alarms and extinguishers, and the number of emergency fire personnel available to operate the equipment.
(19) The plans for sound control and sound amplification, if any, including the number, location, and power of amplifiers and speakers.
(20) The plans for food concessions and concessionaires who will be allowed to operate on the grounds, including the names and addresses of all concessionaires and the concessionaires' license or permit numbers.

As added by P.L.2-1993, SEC.24.

16-41-22-15

Sec. 15. An application for a license under this chapter must be processed not more than twenty (20) days after receipt and must be issued if all conditions are met.

As added by P.L.2-1993, SEC.24.

16-41-22-16

Sec. 16. A license issued under this chapter may be revoked by the governing body of the unit issuing the license at any time if any of the conditions necessary for the issuing of or contained in the license are not met or if any condition previously met ceases to be met.
As added by P.L.2-1993, SEC.24.

16-41-22-17

Sec. 17. A person aggrieved by the denial or revocation of a license under this chapter may appeal to the circuit court of the county in which the assembly was to gather. The appeal must be taken not more than fifteen (15) days after the denial or revocation. The appeal is privileged.
As added by P.L.2-1993, SEC.24.

16-41-22-18

Sec. 18. This chapter may be enforced by injunction, and the injunction has statewide application.
As added by P.L.2-1993, SEC.24.

16-41-22-19

Sec. 19. The holding of an assembly in violation of a provision or condition contained in this chapter constitutes a public nuisance.
As added by P.L.2-1993, SEC.24.

16-41-22-20

Sec. 20. When the licensing authority determines that the public health, safety, or welfare is or may be affected, or where damage or obstruction may occur, the authority may close an access road to or from the site of the assembly or otherwise control or limit traffic.
As added by P.L.2-1993, SEC.24.

16-41-22-21 Version a

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 21. A person who knowingly violates section 5 of this chapter or violates a condition on which the person is granted a license commits a Class D felony.
As added by P.L.2-1993, SEC.24.

16-41-22-21 Version b

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 21. A person who knowingly violates section 5 of this chapter or violates a condition on which the person is granted a license commits a Level 6 felony.
As added by P.L.2-1993, SEC.24. Amended by P.L.158-2013, SEC.246.

16-41-22-22

Sec. 22. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.
As added by P.L.2-1993, SEC.24.

Chapter 24. Health, Sanitation, and Safety: Water Supplies

16-41-24

16-41-24-1

Sec. 1. A person may not deposit or cause or permit to be deposited in the waters of Indiana a substance that meets any of the following conditions:

(1) Is deleterious to the public health or to the prosecution of any industry or lawful occupation in which the water may be lawfully used.
(2) Adversely affects any agricultural, floricultural, or horticultural pursuit.
(3) Lessens or impairs any livestock industry or the use of the water for domestic animals.
(4) Lessens, impairs, or materially interferes with the use of the water by the state or any political subdivision of the state.
(5) Destroys or jeopardizes any beneficial animal, fish, or vegetable life in the water.
As added by P.L.2-1993, SEC.24.

16-41-24-2

Sec. 2. (a) A person who has suffered or is threatened with damage because of pollution of water by any person may bring a suit to abate the pollution or threatened pollution.
(b) A suit under this section must originate in a superior or circuit court in the jurisdiction in which the pollution occurs or is threatened.
As added by P.L.2-1993, SEC.24.

16-41-24-3

Sec. 3. A person, firm, or corporation may not offer for sale for public consumption any drinking water, bottled water, or mineral water that shows a bacteriological or chemical content deleterious to public health. The state department shall prohibit the further distribution or consumption of the unfit water.
As added by P.L.2-1993, SEC.24.

16-41-24-4

Sec. 4. At intervals designated by the state department, a person offering for sale for public consumption any drinking water, bottled water, or mineral water shall submit to the state department samples of the drinking water, bottled water, or mineral water, natural or treated, for analysis to determine the water's potability and suitability for the purpose for which the water is intended.
As added by P.L.2-1993, SEC.24.

16-41-24-5

Sec. 5. For each sample of water analyzed and tested each year, the state department shall collect a fee of not more than ten dollars ($10) to be paid into the state general fund.
As added by P.L.2-1993, SEC.24.

16-41-24-6

Sec. 6. The state department shall enforce this chapter and the statutes relating to pollution of waters and public water supply, except where jurisdiction is vested in the water pollution control board and the department of environmental management.
As added by P.L.2-1993, SEC.24.

16-41-24-7

Sec. 7. All municipalities may provide the means for paying the cost of constructing a plant for purifying the discharge of public sewers and drains by assessing the cost of the plant against all of the several parcels of real property situated within the corporate limits and make each assessment in an amount as great as but not greater than the value of the benefits received by each parcel respectively as the result of the construction of the plant.
As added by P.L.2-1993, SEC.24.

16-41-24-8

Sec. 8. Statutes for the construction of public sewers and assessing the cost of the sewers against real property in the municipalities apply to the construction of sewage treatment plants and the assessing of the cost of the plant against the real property benefited.
As added by P.L.2-1993, SEC.24.

16-41-24-9

Sec. 9. At the option of the owner assessed, the assessment may be paid in ten (10) equal annual installments as

in the case of assessments for other sewers.
As added by P.L.2-1993, SEC.24.

16-41-24-10

Sec. 10. (a) For testing a sample of water for a private person, firm, or corporation not offering drinking water, bottled water, or mineral water for sale for public consumption, the state department shall charge and collect a fee of not more than ten dollars ($10). In addition, the state department may charge a mailing and shipping charge to defray the costs of mailing and shipping.

(b) A fee and the mailing and shipping charges collected under this section shall be deposited in a revolving fund to the credit of the state department and used to defray the expenses.

(c) The state department may adopt rules under IC 4-22-2 to set a fee under this section. The fee must equal an amount necessary to cover the cost of the test.
As added by P.L.2-1993, SEC.24.

16-41-24-11

Sec. 11. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.
As added by P.L.2-1993, SEC.24.

Chapter 25. Health, Sanitation, and Safety: Residential Septic Systems

16-41-25

16-41-25-1

Sec. 1. (a) The state department shall adopt rules under IC 4-22-2 that provide for a reasonable period not exceeding forty-five (45) days in which a plan review and permit for residential septic systems must be approved or disapproved.

(b) This subsection applies to a county with a population of more than seventy-seven thousand (77,000) but less than eighty thousand (80,000). As used in this subsection, "fill soil" means soil transported and deposited by humans or soil recently transported and deposited by natural erosion forces. A rule that the state department adopts concerning the installation of residential septic systems in fill soil may not prohibit the installation of a residential septic system in fill soil on a plat if:

(1) before the effective date of the rule, the plat of the affected lot was recorded;

(2) there is not an available sewer line within seven hundred fifty (750) feet of the property line of the affected lot; and

(3) the local health department determines that the soil, although fill soil, is suitable for the installation of a residential septic system.

As added by P.L.2-1993, SEC.24. Amended by P.L.167-1999, SEC.1; P.L.170-2002, SEC.110; P.L.119-2012, SEC.144.

16-41-25-2

Sec. 2. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with rules adopted under section 1 of this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.
As added by P.L.2-1993, SEC.24. Amended by P.L.150-1996, SEC.1.

16-41-25-3

Sec. 3. (a) This section applies only to residential septic systems that are installed after July 1, 1996, and that use a raiser that is more than six (6) inches in diameter and opens to ground level.

(b) Each opening to an underground tank of a residential septic system that allows access from ground level must be covered with a lid or top that is securely fastened.

(c) Below a residential septic system's lid or top described in subsection (b), the tank of the residential septic system must have a cap or plug.

(d) A person who installs a residential septic system after June 30, 1996, commits a Class B infraction if the

residential septic system does not meet the requirements of this section.

(e) Each local health department established within a county under IC 16-20-2-2 shall enforce this section in the county.

As added by P.L.150-1996, SEC.2.

16-41-25-4

Sec. 4. (a) Before a local health department may act on an application for a residential septic system permit, the local health department shall inform the applicant for a residential septic system permit if the property is located in the service district of a regional sewage district.

(b) An employee of a local health department may conduct an onsite soil evaluation concerning the repair or replacement of a failed residential onsite sewage system (as defined in IC 13-11-2-144.8) if:

(1) the employee was hired by the local health department before January 1, 2013;

(2) the local health board has determined that the employee has the necessary knowledge of the principles of soil science as acquired by professional education;

(3) the employee uses guidelines set forth in the soil manuals, technical bulletins, and handbooks of the Natural Resources Conservation Service of the United States Department of Agriculture; and

(4) the employee files a written report with the local health department for each onsite soil evaluation conducted by the employee.

As added by P.L.97-2012, SEC.17. Amended by P.L.10-2013, SEC.1.

Chapter 26. Health, Sanitation, and Safety: Agricultural Labor Camps

16-41-26

16-41-26-1

Sec. 1. As used in this chapter, "agricultural labor camp" includes at least one (1) building or structure, tent, trailer, or vehicle, including the land, established, operated, or used as living quarters for at least five (5) adult seasonal or temporary workers engaged in agricultural activities, including related food processing.

As added by P.L.2-1993, SEC.24.

16-41-26-2

Sec. 2. A person operating or maintaining an agricultural labor camp shall comply with this chapter and rules adopted under this chapter.

As added by P.L.2-1993, SEC.24.

16-41-26-3

Sec. 3. (a) Except as provided in subsection (b), a person may not directly or indirectly operate an agricultural labor camp until the person has obtained from the state department a permit to operate the camp and unless the permit is in full force and effect and is posted and kept posted in the camp to which the permit applies at all times during maintenance and operation of the camp.

(b) A person may operate at least one (1) living unit of an agricultural labor camp under a permit issued under section 4 of this chapter.

As added by P.L.2-1993, SEC.24.

16-41-26-4

Sec. 4. (a) In addition to a permit issued under section 6 of this chapter, the state department may issue a permit that is limited to at least one (1) specific living unit of an agricultural labor camp. The state may issue more than one (1) permit under this section to a person operating an agricultural labor camp.

(b) Rules adopted under this chapter apply to permits issued under this section.

As added by P.L.2-1993, SEC.24.

16-41-26-5

Sec. 5. The state department may issue a permit under section 4 of this chapter only if:

(1) all mobile homes used as shelters and equipped with an operable toilet, shower, lavatory, and hot and cold water under pressure, provide a minimum floor space of sixty (60) square feet for each resident; and

(2) all other shelters provide a minimum floor space of eighty (80) square feet for each resident.
As added by P.L.2-1993, SEC.24.

16-41-26-6

Sec. 6. (a) An application to operate an agricultural labor camp must be made to the state department in writing on a form and under rules prescribed by the state department.

(b) The state department shall issue a permit for the operation of an agricultural labor camp if the state department is satisfied, after investigation or inspection, that the camp meets the minimum standards of construction, sanitation, equipment, and operation required by rules adopted under section 8 of this chapter.

(c) A permit is valid from the date of issuance through May 1 of the following year unless the permit is revoked.

(d) A labor camp must be inspected and a permit issued before the labor camp is occupied.

(e) The annual inspection must occur during the sixty (60) days before the first occupation by agricultural laborers each year.

(f) A permit is not transferable.

(g) If an applicant is refused a permit, the state department shall, upon request, afford the applicant a fair hearing in accordance with IC 4-21.5-3.
As added by P.L.2-1993, SEC.24.

16-41-26-7

Sec. 7. The state department may, after reasonable notice and opportunity for a fair hearing in accordance with IC 4-21.5-3, revoke a permit authorizing the operation of an agricultural labor camp if the state department finds that the holder of the permit has failed to comply with a provision of this chapter or a rule or an order issued under this chapter.
As added by P.L.2-1993, SEC.24.

16-41-26-8

Sec. 8. (a) Except as provided in subsection (b), the state department shall adopt rules under IC 4-22-2 necessary to protect the health, safety, and welfare of persons living in agricultural labor camps, prescribing standards for living quarters at agricultural labor camps, including provisions relating to construction of camps, sanitary conditions, light, air, safety protection from fire hazards, equipment, maintenance and operation of the camp, sewage disposal through septic tank absorption fields, and other matters appropriate for the security of the life and health of occupants.

(b) The water pollution control board shall adopt rules under IC 4-22-2 pertaining to water supplies and sewage disposal systems other than septic tank absorption fields required for agricultural labor camps.

(c) In the preparation of rules, the state department:

(1) shall consult with and request technical assistance from other appropriate state agencies; and

(2) may appoint and consult with committees of technically qualified persons and of representatives of employers and employees.

(d) If a conflict exists between rules adopted under this chapter and rules adopted by the fire prevention and building safety commission, the rules authorized in this section apply.

(e) A copy of every rule adopted under this chapter shall be sent to each health officer in Indiana and to the heads of other state agencies with specific or related responsibility affecting agricultural labor camps and to any person requesting the rules. The rules affecting agricultural labor camps adopted under this chapter shall be published periodically in the manner the state department determines.
As added by P.L.2-1993, SEC.24.

16-41-26-9

Sec. 9. (a) The state department may initiate an action under IC 4-21.5-3-6 or IC 4-21.5-3-8 to enforce this chapter and rules adopted under this chapter.

(b) The state department and the state department's authorized representatives may enter and inspect agricultural labor camps at reasonable hours and may question the persons and investigate the facts, conditions, and practices or matters that the state department considers necessary or appropriate to determine whether a person has violated a provision of this chapter or to aid in the enforcement of this chapter or in the adoption of rules under this chapter. The state department may, to the extent appropriate, utilize the services of any other state department or agency of

the government for assistance in the inspections and investigations.
As added by P.L.2-1993, SEC.24.

16-41-26-10

Sec. 10. (a) A person aggrieved by an order of the state department denying or revoking a permit to operate an agricultural labor camp may, in accordance with IC 4-21.5-5, petition the circuit or superior court for a review of the order asking that the order be modified or set aside.

(b) A person aggrieved by a rule adopted under section 8 of this chapter by the state department may, not more than thirty (30) days after the rule becomes effective, petition the circuit or superior court to modify or set aside the rule in whole or in part, but only on the ground that the rule is unlawful or unreasonable.

(c) A copy of a petition filed under subsection (a) or (b) shall be served on the state health commissioner. The state department shall keep and, on notice of filing of the petition, shall certify and file in the court a full record in the proceeding on which the action complained of is based.

(d) The review authorized in subsection (a) or (b) is limited to questions of law. Findings of fact by the state department, if supported by substantial evidence, are conclusive.

(e) The jurisdiction of the court is exclusive and the court's judgment is final, except that the judgment is subject to review by the supreme court.
As added by P.L.2-1993, SEC.24.

16-41-26-11

Sec. 11. To adequately place and care for workers and the workers' families housed in an agricultural labor camp, the state department shall serve notice of an action initiated under section 13 of this chapter to the following:

(1) The county agricultural extension educator.

(2) The representative of the nearest office of the public employment service whose duty it is to aid in placing such workers in suitable employment.

(3) The county department of public welfare.

As added by P.L.2-1993, SEC.24. Amended by P.L.40-1993, SEC.52.

16-41-26-12

Sec. 12. The state department may designate an agent who may, on presentation of proper credentials, enter on private or public property to inspect for and investigate possible violations of this chapter or a rule adopted under this chapter.
As added by P.L.2-1993, SEC.24.

16-41-26-13

Sec. 13. (a) The state department shall adopt rules under IC 4-22-2 that establish a schedule of civil penalties that may be levied in an action to enforce the provisions of the following:

(1) This chapter.

(2) The rules of the state department.

(b) A penalty included in the schedule of civil penalties adopted under subsection (a) may not exceed five hundred dollars ($500) per violation per day.

(c) The state department may issue an order of compliance, impose a civil penalty included in the schedule of civil penalties adopted under subsection (a), or both, against a person who:

(1) fails to comply with this chapter or a rule adopted under this chapter; or

(2) interferes with or obstructs the state department or the state department's designated agent in the performance of duties under this chapter.

(d) An order of compliance may be issued under IC 4-21.5-3-6, IC 4-21.5-3-8, or IC 4-21.5-4. A civil penalty may be imposed only in a proceeding under IC 4-21.5-3-8.

(e) A proceeding commenced to impose a civil penalty may be consolidated with any other proceeding commenced to enforce this chapter or a rule adopted under this chapter.
As added by P.L.2-1993, SEC.24.

16-41-26-14

Sec. 14. The owner or operator of an agricultural labor camp may under 29 U.S.C. 1821(c) impose a penalty on

an agricultural laborer who knowingly or intentionally destroys or damages property on the premises of an agricultural labor camp.
As added by P.L.2-1993, SEC.24.

Chapter 27. Health, Sanitation, and Safety: Mobile Homes

16-41-27

16-41-27-1

Sec. 1. This chapter recognizes mobile homes and manufactured homes as suitable and necessary dwelling units in Indiana. The state department may do the following:

(1) Require reasonable standards of health, sanitation, and safety in using the dwelling units.

(2) Require:

(A) persons dwelling in mobile homes and manufactured homes; and

(B) mobile home community operators;

to comply with the standards.

(3) Authorize local boards to enforce the standards adopted.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.4.

16-41-27-2 Repealed

16-41-27-2 (Repealed by P.L.144-1996, SEC.15.)

16-41-27-3

Sec. 3. As used in this chapter, "local board" means a local agency of government authorized to enforce the standards of health and sanitation prescribed for:

(1) mobile homes and manufactured homes; and

(2) mobile home communities by the state department.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.5.

16-41-27-3.5

Sec. 3.5. As used in this chapter, "manufactured home" has the meaning set forth in IC 22-12-1-16.
As added by P.L.87-2005, SEC.6.

16-41-27-4

Sec. 4. As used in this chapter, "mobile home" means a dwelling, including the equipment sold as a part of the dwelling, that:

(1) is factory assembled;

(2) is transportable;

(3) is intended for year-round occupancy;

(4) is designed for transportation on its own chassis; and

(5) was manufactured before the effective date of the federal Manufactured Housing Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et seq.).

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.7.

16-41-27-5

Sec. 5. (a) As used in this chapter, "mobile home community" means one (1) or more parcels of land:

(1) that are subdivided and contain individual lots that are leased or otherwise contracted;

(2) that are owned, operated, or under the control of one (1) or more persons; and

(3) on which a total of at least five (5) mobile homes or manufactured homes are located for the purpose of being occupied as principal residences.

(b) The term includes the following:

(1) All real and personal property used in the operation of the mobile home community.

(2) A single parcel of land.

(3) Contiguous but separately owned parcels of land that are jointly operated.

(4) Parcels of land:

(A) that are separated by other parcels of land; and
(B) that are:
(i) jointly operated; and
(ii) connected by a private road.
(5) One (1) or more parcels of land, if at least two (2) of the mobile homes or manufactured homes located on the land are:
(A) accessible from a private road or interconnected private roads;
(B) served by a common water distribution system; or
(C) served by a common sewer or septic system.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.8; P.L.1-2007, SEC.140.

16-41-27-6 Repealed
16-41-27-6 (Repealed by P.L.87-2005, SEC.40.)

16-41-27-7 Repealed
16-41-27-7 (Repealed by P.L.87-2005, SEC.40.)

16-41-27-8
Sec. 8. (a) Except as provided in subsection (b), the state department may adopt rules under IC 4-22-2 to carry out this chapter, including rules for the following:
(1) Health, sanitation, and safety.
(2) Sewage collection.
(3) Sewage disposal through septic tank absorption fields.
(b) The water board shall adopt rules under IC 4-22-2 concerning the following:
(1) Public water supplies required for mobile home communities.
(2) Sewage disposal systems other than septic tank absorption fields.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.9.

16-41-27-9
Sec. 9. A mobile home community must be in the personal charge of an adult attendant or caretaker designated by the owner or operator of the mobile home community at the times when mobile homes and manufactured homes in the mobile home community are occupied by tenants. The caretaker present at the time of a violation of this chapter is equally responsible with the owner or operator of the mobile home community for a violation of this chapter.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.10.

16-41-27-10
Sec. 10. A mobile home community shall provide a water supply through the use of a public water system if the water supply is reasonably available within a reasonable distance from the mobile home community. A mobile home community is not required to use a public water system if the water system is more than two thousand (2,000) feet from the mobile home community. If a public water system is not available, water shall be provided by a system approved by the environmental commissioner under rules adopted by the water pollution control board.
As added by P.L.2-1993, SEC.24. Amended by P.L.184-2002, SEC.27; P.L.87-2005, SEC.11.

16-41-27-11
Sec. 11. (a) A mobile home community shall dispose of sewage through the use of a public sewerage system if the sewerage system is available within a reasonable distance from the mobile home community. If a public sewerage system is not available, sewage may be disposed of in accordance with rules adopted under section 8 of this chapter. A water carriage system of collecting sewage shall be used. The mobile home community operator shall require the owner of a mobile home to provide a watertight and odor-tight connection of a type acceptable to the state department under rules adopted by the state department.
(b) All occupied mobile homes and manufactured homes shall be connected to the sewerage system of the mobile home community at all times. All sewer connections not in use must be closed in a manner that does not:
(1) emit odor; or
(2) cause a breeding place for flies.

(c) Sewerage systems other than water carriage systems may not be approved for a mobile home community, except nonwater carriage systems may be provided for emergency use only during a temporary failure of a water or an electric system.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.12.

16-41-27-12

Sec. 12. Suitable garbage containers or a garbage disposal system and trash containers shall be made available in a sanitary manner to each occupied mobile home and manufactured home. The garbage and trash of the mobile home community must be disposed of in a manner approved by the state department.
As added by P.L.2-1993, SEC.24. Amended by P.L.142-1995, SEC.25; P.L.87-2005, SEC.13.

16-41-27-13 Repealed

16-41-27-13 (Repealed by P.L.142-1995, SEC.32.)

16-41-27-14 Repealed

16-41-27-14 (Repealed by P.L.142-1995, SEC.32.)

16-41-27-15

Sec. 15. Streets must be at least ten (10) feet wide and sufficiently wide to prevent vehicular and pedestrian traffic problems. Adequate area must be provided for the parking of vehicles. All roads in a mobile home community shall be maintained to be dust proof. Each mobile home and manufactured home in a mobile home community shall have ready and free access to the road in a community.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.14.

16-41-27-16

Sec. 16. Domestic animals and house pets may not be permitted to run at large or commit a nuisance within the limits of a mobile home community.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.15.

16-41-27-16.6

Sec. 16.6. (a) Each year during National Fire Prevention Week, the operator of a mobile home community is encouraged to provide a written reminder to the owners of all manufactured homes in the mobile home community to replace the batteries in all weather radios and smoke detectors contained in their manufactured homes.

(b) Any reminder, assistance, or instructions provided by an operator of a mobile home community concerning the function of a weather radio or smoke detector contained in a manufactured home shall not subject the operator or an owner or employee of the mobile home community to liability for the functionality of that weather radio or smoke detector.
As added by P.L.31-2007, SEC.1.

16-41-27-17

Sec. 17. Every part of a mobile home community must be lighted at night.
As added by P.L.2-1993, SEC.24. Amended by P.L.142-1995, SEC.26; P.L.87-2005, SEC.16.

16-41-27-18

Sec. 18. A mobile home community may not be operated without obtaining a license from the state department.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.17.

16-41-27-19

Sec. 19. A license to operate a mobile home community shall be issued for four (4) years and expires at midnight on December 31.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.18.

16-41-27-20

Sec. 20. (a) An application for a license to operate a mobile home community must be made to the state department on a form prescribed and furnished by the state department, only after plans for the mobile home community have been approved.

(b) If an operator does not apply for the renewal of a license before the date the license expires:
(1) the license expires on that date; and
(2) the operator must pay the penalty fee set forth in section 24(b) of this chapter to obtain a new license.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.19.

16-41-27-21

Sec. 21. The state department may license a temporary mobile home community for a period of six (6) months and waive the requirements of this chapter if:
(1) the failure to comply with this chapter is:
(A) for a temporary period of time; and
(B) required by public convenience; and
(2) the operation of the mobile home community will not jeopardize the health and welfare of the occupants of the mobile home community or the public.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.20.

16-41-27-22

Sec. 22. (a) The construction of a new mobile home community or alteration of an existing mobile home community shall be made only after plans for the proposed construction or alteration have been forwarded to and approved by the state department.
(b) A public water system may not be constructed or altered in a new or existing mobile home community until plans for the construction or alteration have been forwarded to and approved by the environmental commissioner under rules adopted by the water board.
(c) A sewage collection and disposal system may not be constructed or altered in a new or existing mobile home community until:
(1) plans for construction or alteration of the sewage collection system and any septic tank absorption field have been forwarded to and approved by the state department under rules adopted by the state department; and
(2) plans for construction or alteration of any sewage disposal system other than a septic tank absorption field have been forwarded to and approved by the environmental commissioner under rules adopted by the water board.
As added by P.L.2-1993, SEC.24. Amended by P.L.184-2002, SEC.28; P.L.87-2005, SEC.21.

16-41-27-23

Sec. 23. The state department or the environmental commissioner shall, not more than ninety (90) days after filing, approve plans filed under section 22 of this chapter that comply with this chapter and rules adopted under this chapter.
As added by P.L.2-1993, SEC.24.

16-41-27-24

Sec. 24. (a) An inspection fee must be submitted to the state department with each license application. The fee is two hundred dollars ($200) for a total of not more than fifty (50) mobile home and manufactured home sites and one hundred fifty dollars ($150) for each increment of not more than fifty (50) additional sites. Units of state and local government are exempt from the fee.
(b) This subsection does not apply to an application made after an enforcement action. A penalty fee of two hundred dollars ($200) for a total of not more than fifty (50) mobile home and manufactured home sites and one hundred fifty dollars ($150) for each increment of not more than fifty (50) additional sites may be imposed by the state department for an application for license renewal filed after the license has expired.
As added by P.L.2-1993, SEC.24. Amended by P.L.168-2003, SEC.2; P.L.87-2005, SEC.22.

16-41-27-25

Sec. 25. (a) The state department shall adopt a schedule of civil penalties that may be levied in an action to enforce the following:
(1) This chapter.
(2) The rules of the state department.
(3) The rules adopted under this chapter by the water board.

(b) A penalty included in the schedule of civil penalties adopted under subsection (a) may not exceed one thousand dollars ($1,000) per violation per day.

(c) The state department may issue an order of compliance, impose a civil penalty included in the schedule of civil penalties adopted under subsection (a), or both, against a person who:

(1) fails to comply with this chapter or a rule adopted under this chapter; or

(2) interferes with or obstructs the state department or the state department's designated agent in the performance of duties under this chapter.

(d) An order of compliance may be issued under IC 4-21.5-3-6, IC 4-21.5-3-8, or IC 4-21.5-4. A civil penalty may be imposed only in a proceeding under IC 4-21.5-3-8.

(e) A proceeding to impose a civil penalty may be consolidated with any other proceedings to enforce any of the following:

(1) This chapter.

(2) The rules of the state department.

(3) The rules adopted under this chapter by the water pollution control board.

As added by P.L.2-1993, SEC.24.

16-41-27-26

Sec. 26. (a) The state department shall provide a written notice to a mobile home community operator of the following:

(1) The revocation of the operator's license.

(2) The denial of the operator's application for a license.

(3) The denial of the approval of the construction or alteration of a mobile home community.

(b) The notice under subsection (a) must contain the following:

(1) A statement of the manner in which the operator has failed to comply with the law or rules of the state department.

(2) The length of time available to correct the violation.

(c) The state department may order an operator to comply with this chapter or rules adopted under this chapter. If an operator fails to comply within the time specified by the order, the state department may initiate proceedings to force compliance in the circuit court in the county of the operator's residence or in the county where the mobile home community is located. The court may grant appropriate relief to ensure compliance with this chapter and rules adopted under this chapter.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.23.

16-41-27-27

Sec. 27. The state department or a person designated by the state department may at any reasonable time inspect the premises and take necessary and reasonable steps in a mobile home community to determine whether or not a mobile home community is in compliance with this chapter and rules adopted under section 8 of this chapter.

As added by P.L.2-1993, SEC.24. Amended by P.L.144-1996, SEC.6; P.L.87-2005, SEC.24.

16-41-27-28

Sec. 28. The state department shall comply with IC 4-21.5-3 in a hearing upon the revocation of a license or the refusal to grant a license.

As added by P.L.2-1993, SEC.24.

16-41-27-29

Sec. 29. (a) Subject to subsection (b), the owner, operator, or caretaker of a mobile home community has a lien upon the property of a guest in the same manner, for the same purposes, and subject to the same restrictions as an innkeeper's lien or a hotel keeper's lien.

(b) With regard to a lienholder:

(1) if the property has a properly perfected secured interest under IC 9-17-6-7; and

(2) the lienholder has notified the owner, operator, or caretaker of the mobile home community of the lienholder's lien by certified mail;

the maximum amount of the innkeeper's lien may not exceed the actual late rent owed for not more than a maximum of sixty (60) days immediately preceding notification by certified mail to the lienholder that the owner of the

property has vacated the property or is delinquent in the owner's rent.

(c) If the notification to the lienholder under subsection (b) informs the lienholder that the lienholder will be responsible to the owner, operator, or caretaker of the mobile home community for payment of rent from the time the notice is received until the mobile home or manufactured home is removed from the mobile home community, the lienholder is liable for the payment of rent that accrues after the notification.

As added by P.L.2-1993, SEC.24. Amended by P.L.182-1993, SEC.1; P.L.87-2005, SEC.25.

16-41-27-30

Sec. 30. The owner, operator, or caretaker of a mobile home community may eject a person from the premises for any of the following reasons:

(1) Nonpayment of charges or fees for accommodations.

(2) Violation of law or disorderly conduct.

(3) Violation of a rule of the state department relating to mobile home communities.

(4) Violation of a rule of the mobile home community that is publicly posted within the mobile home community.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.26.

16-41-27-31

Sec. 31. Each mobile home community operator shall maintain a register open for inspection by the township assessor or county assessor responsible for assessing mobile homes and manufactured homes located in the mobile home community under IC 6-1.1-7 and by the state department or the state department's representatives. The register must contain the following for each mobile home and manufactured home in a mobile home community:

(1) The names and ages of all occupants.

(2) The name of the owner of the mobile home or manufactured home.

As added by P.L.2-1993, SEC.24. Amended by P.L.144-1996, SEC.7; P.L.87-2005, SEC.27; P.L.203-2013, SEC.18.

16-41-27-32

Sec. 32. (a) A governmental body other than the state department of health may not license or regulate mobile home communities, except for the following:

(1) Local boards may enforce the standards of health and sanitation prescribed for mobile homes, manufactured homes, and mobile home communities by the state department.

(2) County and municipal authorities within their respective jurisdictions have jurisdiction regarding zoning and building codes and ordinances pertaining to mobile home communities.

(3) Local boards may regulate the construction and operation of groups of a combined total of not more than four (4) mobile homes and manufactured homes, in accordance with standards that are compatible with standards set by the state department for mobile home communities.

(b) A governmental body other than the state department of health may not regulate mobile homes or manufactured homes regarding habitability or minimum housing conditions unless the regulation is applicable in the same manner to other forms of residential housing in the jurisdiction.

(c) A governmental body may not regulate or restrict the use, occupancy, movement, or relocation of a mobile home or manufactured home based upon the age of the mobile home or manufactured home.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.28.

16-41-27-33

Sec. 33. A license to engage in the operation of a mobile home community is transferable only with the consent of the state department. The state department may, upon application, cancel a license issued for the operation of a mobile home community and issue a new license to the transferee for the balance of the license period.

As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.29.

16-41-27-34

Sec. 34. A person who maintains or operates a mobile home community:

(1) without a license; or

(2) after the revocation of a license;

commits a Class B misdemeanor.
As added by P.L.2-1993, SEC.24. Amended by P.L.87-2005, SEC.30.

21-47-2-3

Sec. 3. (a) The survey shall do the following:

(1) Provide geologic information about the energy, mineral, and ground water resources and geologic related hazards of Indiana.

(2) Provide services that include:

(A) the archiving of rock cores, well cuttings, other subsurface geologic information, and other physical and chemical data on geologic materials; and

(B) the collection and storage of data.

(3) Provide public service, information, and educational programs.

(4) Engage in research.

(5) Participate in cooperative studies and contractual projects with the department of natural resources and other agencies of state and federal government.

(6) Participate in cooperative studies and contractual projects with state educational institutions and private educational institutions.

(7) Disseminate published maps and reports.

(b) The survey may also do the following through contractual agreements:

(1) Provide the department of natural resources with information on the geologic occurrence of ground water and the vulnerability of this resource to contamination.

(2) Provide to the department of natural resources and other state agencies geologic information needed for the effective regulation of the mineral, water, and energy resources of Indiana.

(3) At the request of the department of natural resources, perform geotechnical investigations for a variety of mine reclamation programs.

(4) Provide general geotechnical consultation and assistance as may be needed from time to time.

As added by P.L.2-2007, SEC.288.

Chapter 1. Regulation of Plumbers; Creation of Commission; Licensing

25-28.5-1

25-28.5-1-1

Sec. 1. It is hereby declared to be the policy of the State of Indiana that, in order to safeguard the life, health, and public welfare of its citizens, the business of plumbing construction and improvements is a matter affecting the public interest, and any person engaging in the business as herein defined should be required to establish his competency and qualifications to be licensed as herein provided.
(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-2

Sec. 2. As used in this chapter:

(1) "Plumbing" means the practice of and the materials and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

(A) Sanitary drainage or storm drainage facilities, the venting system, and the public or private water supply systems, within or adjacent to any building or structure.

(B) The practice and materials used in the installation, maintenance, extension, or alteration of the stormwater, liquid waste, or sewerage, and water supply systems of any premises to the private property line or to their connection with any point of public disposal or other acceptable terminal.

The term does not include the planning, designing, and installation of sanitation and water systems in vehicles commonly known as mobile homes, the drilling of wells, the installation of pumps, pressure tanks, and piping incidental to the drilling or repair of a well system, the sale or installation of water softening equipment and apparatuses and services of the same, or the business of manufacturing or selling plumbing fixtures; appliances, equipment, or hardware; the installation of automatic sprinklers, the overhead or underground water supplies or

standpipes when connected to an automatic sprinkler system or to their related devices or appurtenances connecting thereto; nor does the term include the work referred to in section 32(i) of this chapter; nor does the term include the planning or design of water supply or sewage systems which would ordinarily be performed as "the practice of engineering", as defined in IC 25-31-1, or the "practice of architecture", as defined in IC 25-4-1.

(2) "Plumbing contractor" means any person who, for compensation, undertakes to, or submits a bid to, or does himself or herself or by others, construct, repair, alter, remodel, add to, subtract from, or improve plumbing and who is responsible for substantially all the plumbing within the entire project, or one who fabricates units or plumbing substantially completed and ready for installation.

(3) "Journeyman plumber" means a person who engages or offers to engage in, as an occupation or trade, the construction, installation, alteration, maintenance, repair, remodeling, or removal and replacement of plumbing under the supervision, direction, and responsibility of a licensed plumbing contractor.

(4) "Maintenance man" means a person who is employed on a permanent basis to keep the premises of a business establishment in good repair.

(5) "Contracting" means, except as exempted in this chapter, engaging in a business as a contractor.

(6) "Person" means a natural person, except in the case of a plumbing contractor, in which case it may mean the partners or members of a partnership, limited partnership, or any form of unincorporated enterprise, owned by two (2) or more persons, and as applied to "corporation" in addition to the corporate entity means the officers or directors and employees thereof.

(7) "Commission" means the Indiana plumbing commission created by this chapter.

(8) "License" means a certificate issued by the commission established by this chapter which confers upon the holder the privilege to act as a plumbing contractor or a journeyman plumber as defined in this chapter.

(9) "Farmstead" means a farm dwelling together with other buildings, structures, equipment, piping, and other plumbing materials and supplies, located upon a parcel of real estate used primarily for agricultural purposes located outside the corporate limits of a municipality and not connected to a public water supply.

(10) "Licensing agency" means the Indiana professional licensing agency established under IC 25-1-5-3.

(11) "Apprentice plumber" means an individual who:

(A) is learning the plumbing trade; and

(B) is under the direction and immediate supervision of a licensed plumbing contractor or a licensed journeyman plumber.

(12) "Registration" means the granting of a certificate by the commission that authorizes an individual to act as an apprentice plumber.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.202; P.L.132-1984, SEC.36; P.L.248-1985, SEC.1; P.L.1-2006, SEC.469.

25-28.5-1-3

Sec. 3. The Indiana plumbing commission is hereby created. The commission shall have general charge of the administration and enforcement of this chapter.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1980, P.L.166, SEC.1.

25-28.5-1-4

Sec. 4. (a) The commission shall consist of six (6) members to be appointed by the governor. Each member appointed shall be a citizen and resident of this state. Two (2) of the members shall be actively engaged in the plumbing contracting business for not less than five (5) years immediately prior to his appointment or shall have had ten (10) years experience in the plumbing contracting business. Two (2) of the members shall be persons who for not less than five (5) years immediately prior to their appointment have been employed as journeymen plumbers. One (1) member shall be the commissioner of the state department of health or a member of the commissioner's professional staff. One (1) member, appointed to represent the general public, may never have been associated with plumbing in any way other than as a consumer. The term of all members of the commission shall be for three (3) years and until their successors are appointed and qualified.

(b) Members appointed by the governor to fill vacancies shall hold office for the unexpired term. At no time shall there be more than four (4) members of the same political faith on the commission. No person, other than the representative of the state department of health, shall act as a member of the commission while holding another elective or appointive office either state or federal.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.203; Acts 1982, P.L.113,

SEC.68; P.L.8-1984, SEC.120; P.L.20-1991, SEC.6; P.L.2-1992, SEC.778.

25-28.5-1-5

Sec. 5. The members of the commission shall receive no salary, but are entitled to reimbursement for traveling and other expenses as provided in the state travel policies and procedures, established by the department of administration and approved by the state budget agency.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1980, P.L.166, SEC.2.

25-28.5-1-6

Sec. 6. The commission shall annually organize and select one (1) of the members as chairman and one (1) of the members to serve as secretary, both to serve for a term of one (1) year. The commission, through the licensing agency, shall keep a record of all its proceedings, transactions, communications, official acts, and records and shall perform said other duties as required by law.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.204; P.L.132-1984, SEC.37.

25-28.5-1-7

Sec. 7. The commission shall do the following:

(1) Adopt a seal with the words "Indiana Plumbing Commission" and such other device as may be selected by which it shall authenticate the acts of the commission. Copies of all records and papers, when certified by the secretary and issued under the seal of the commission, shall be received in evidence in all cases equally and with like effect as the original commission records.

(2) Prescribe the form of licenses and issue the same under its seal. All such licenses, while in force, shall be under the supervision and control of the commission.

(3) Issue licenses as plumbing contractors and journeymen plumbers, to any person who qualifies and complies with the provisions of this chapter and pay required license fees.

(4) Adopt rules in accordance with IC 4-22-2 which establish standards for the competent practice of plumbing.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.205; P.L.132-1984, SEC.38; P.L.2-2005, SEC.66.

25-28.5-1-8

Sec. 8. The commission may:

(1) Adopt and promulgate rules and regulations for its guidance and for the regulation of its business and procedure consistent with the provisions of this chapter and in the manner provided in IC 4-22-2.

(2) Enter into such other contracts and authorize expenditures as its duties require, subject to the provisions of this chapter and IC 25-1-6.

(3) Do all things necessary for carrying into effect the provisions of this chapter.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.206; P.L.2-2005, SEC.67.

25-28.5-1-9

Sec. 9. The secretary shall call all meetings of the commission as directed by the chairman or upon request in writing by two (2) members, and at such time and places, within the state of Indiana as the commission business may require. Sufficient notice shall be given to permit members to attend all meetings. The presence of four (4) members of the commission in attendance at a commission meeting subject to notice as herein required, shall constitute a quorum for the transaction of commission business. Meetings of the commission may be held pursuant to written waiver of notice signed by all the members of the commission. A record shall be kept of all proceedings at meetings and of the vote taken on each act or transaction of the commission and a majority vote of all members shall be required to bind the commission.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.207.

25-28.5-1-10

Sec. 10. (a) The department of administration shall provide office space, furniture, and necessary supplies and the office files, records, and property of the commission.

(b) The licensing agency shall provide the board with employees necessary to administer the provisions of this chapter.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.208; P.L.132-1984, SEC.39.

25-28.5-1-11

Sec. 11. It shall be unlawful for any person to act in the capacity of a plumbing contractor or journeyman plumber within this state without first obtaining a license as a plumbing contractor or journeyman plumber from the commission. This chapter however does not apply to helpers, laborers, registered apprentices, and other employees of a plumbing contractor or journeyman plumber, who do not in any manner hold themselves out to the public as being plumbers.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.209; P.L.248-1985, SEC.2.

25-28.5-1-12

Sec. 12. (a) Except as otherwise provided in this chapter, a natural person over the age of eighteen (18) years who resides in Indiana and any corporation which satisfies the further requirements of this chapter may be licensed by the commission as a plumbing contractor. Except as otherwise provided by this chapter, a natural person over the age of eighteen (18) years may be licensed by the commission as journeyman plumber.

(b) A person who desires to be licensed as a plumbing contractor or journeyman plumber is eligible for such a license upon the successful taking of the examination provided in section 15 of this chapter.

(c) To qualify for a journeyman plumber examination under subsection (b), an applicant who is an Indiana resident must provide evidence that the applicant has completed at least four (4) years in an apprenticeship program approved by the commission or present to the commission a notarized statement providing evidence that the applicant has at least four (4) years of experience in the plumbing trade in employment as set forth in section 32(2), 32(6), or 32(7) of this chapter. To qualify for a plumbing contractor license examination under subsection (b), an applicant who is an Indiana resident must provide evidence that the applicant has completed at least four (4) years in an apprenticeship program approved by the commission or present to the commission a notarized statement providing evidence that the applicant has at least four (4) years of experience in the plumbing trade in employment as set forth in section 32(2), 32(6), or 32(7) of this chapter, or has worked in a plumbing business under the direction of a licensed plumbing contractor for at least four (4) years.

(d) An applicant who is not an Indiana resident may qualify to take an examination under subsection (b) in the following manner:

(1) If the applicant holds a license in a state that does not have a reciprocity agreement with Indiana, the applicant must present the license to the commission to be eligible to take the examination.

(2) If the applicant resides in a state that does not have licensing requirements, the applicant before taking the examination must meet the appropriate requirements of subsection (b).

(e) If the applicant holds a license in a state that has a reciprocity agreement with Indiana, the appropriate license shall be issued automatically.
(Formerly: Acts 1972, P.L.188, SEC.1; Acts 1973, P.L.252, SEC.13.) As amended by Acts 1981, P.L.222, SEC.210; P.L.20-1991, SEC.7; P.L.194-2005, SEC.69.

25-28.5-1-13

Sec. 13. (a) A person wishing to be licensed as a plumbing contractor or journeyman plumber must file with the commission a written application, on a form provided by the commission, that contains information the commission considers necessary to determine the qualifications of the applicant.

(b) All members of a firm, a copartnership, or an association who engage in the activities defined in this chapter as those of a plumbing contractor must be individually licensed as a plumbing contractor. In the case of a limited partnership, only the general partner must be licensed under this chapter.

(c) In the case of a corporation engaged in the business of a plumbing contractor, the corporation must be licensed as a plumbing contractor and must file with the commission an application as provided for in this chapter. A corporation may not be licensed as a plumbing contractor unless one (1) of the officers or employees of the corporation holds a valid license as a plumbing contractor issued by the commission. Where a license is issued to a corporation, at least one (1) officer or employee of the corporation must be:

(1) licensed as a plumbing contractor;

(2) designated in the application; and

(3) named in the license.

(d) An officer or employee of a corporation desiring to act as a plumbing contractor in connection with the

business of the corporation must take out a separate plumbing contractor's license in the officer's or employee's own name.

(e) An application must be signed by the applicant, or the applicant's duly authorized officer or officers. The applicant must make a statement that the applicant has not been convicted of:

(1) an act that would constitute a ground for disciplinary sanction under IC 25-1-11; or

(2) a felony that has a direct bearing on the applicant's ability to practice competently.

(f) A business that provides plumbing services and is required to file a certificate of assumed business name under IC 23-15-1 must register the name, address, and telephone number of the business with the commission.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.211; Acts 1982, P.L.113, SEC.69; P.L.241-1989, SEC.1; P.L.143-1990, SEC.4; P.L.214-1993, SEC.60.

25-28.5-1-14

Sec. 14. Upon the filing of an application, the commission may investigate the statements contained therein and, if it finds the statements to be untrue, may refuse to examine or license the applicant.
(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-15

Sec. 15. (a) Except as otherwise provided, individual applicants for a license as a plumbing contractor or journeyman plumber must pass an examination. The contents of the examination must, for each license category, test the current level of skills required of persons to be licensed in that category.

(b) Examinations may be conducted at times and locations the commission may prescribe.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by P.L.241-1989, SEC.2.

25-28.5-1-16

Sec. 16. The commission or the commission's designee shall prepare and administer examinations for each license category. The subject matter to be covered and the passing grade for licensing shall be established and made known to the applicants prior to the date of the examination.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by P.L.241-1989, SEC.3.

25-28.5-1-17

Sec. 17. (a) An applicant who fails the applicant's first examination for a license as a plumbing contractor or journeyman plumber may be reexamined.

(b) Reexamination of an applicant who fails the examination after two (2) attempts may be conditioned on the satisfactory completion of additional study or training as prescribed by the commission.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by P.L.241-1989, SEC.4.

25-28.5-1-18 Repealed

25-28.5-1-18 (Repealed by Acts 1981, P.L.222, SEC.296.)

25-28.5-1-18.1

Sec. 18.1. (a) An individual age seventeen (17) years or older wanting to be registered by the commission as an apprentice plumber shall, on a form provided by the commission, make application for registration. The applicant shall also provide to the commission a statement signed by a licensed plumbing contractor or journeyman plumber who is the employer of the applicant that the prospective apprentice is the employer's employee and will work under the direct and immediate personal supervision of a licensed contractor or journeyman plumber.

(b) If the commission approves the application for registration, it shall issue a certificate of registration as an apprentice plumber to the applicant.
As added by P.L.248-1985, SEC.3.

25-28.5-1-18.3

Sec. 18.3. A plumbing contractor's license expires upon the death of the individual to whom it was issued.
As added by P.L.248-1985, SEC.4.

25-28.5-1-18.5

Sec. 18.5. Notwithstanding section 12 of this chapter, the commission may issue a temporary plumbing

contractor's license to an applicant who has an ownership interest in or is an officer of a contracting business if the plumbing contractor licensee operating the business has died or is physically or mentally unable to operate the business. The commission may issue the license for the period needed to dispose of the contracting business or to otherwise meet the emergency giving rise to the need for the license. However, a temporary contractor's license may not be issued for a period, including all renewals, exceeding two (2) years.
As added by P.L.248-1985, SEC.5.

25-28.5-1-19

Sec. 19. Upon the payment of the required fee, an applicant who is a plumbing contractor or journeyman plumber licensed or registered in another state, territory, country, or province, shall without examination, be granted a license as a plumbing contractor or journeyman plumber by the Indiana Plumbing Commission:
Provided, That

(a) No such applicant shall be granted a license in a category he is not licensed in another state.

(b) The individual applicant for a license as a plumbing contractor or a journeyman plumber shall be at least eighteen (18) years of age.

(c) The requirements for the licensing or registration of plumbing contractors or journeyman plumbers in such other state, territory, country, or province, were, at the date of the applicant's last registration or licensing, substantially equal to the requirements in force in this state; and: Provided, That the same privilege of registration or licensing is accorded by said state, territory, country or province to licensees of the State of Indiana.
(Formerly: Acts 1972, P.L.188, SEC.1; Acts 1973, P.L.252, SEC.14.) As amended by Acts 1981, P.L.222, SEC.212.

25-28.5-1-20

Sec. 20. (a) Nonresident applicants for a license to act as a plumbing contractor or journeyman plumber in Indiana shall file a written application with the commission on a form to be provided by the commission. The nonresident applicant shall also file a certified copy of his license, or certificate of registration as a plumbing contractor or journeyman plumber in the state wherein he resides.

(b) In addition, every nonresident applicant to be licensed as a plumbing contractor or journeyman plumber shall file an irrevocable appointment of the secretary of the commission as his agent for service of process within this state.

(1) All process served upon the secretary of the commission as agent for a nonresident plumbing contractor or journeyman plumber shall be served in duplicate. One (1) copy shall be filed in the office of the commission and one (1) copy shall be forwarded to the nonresident licensee or registrant by the secretary by certified mail, return receipt requested.

(2) Service of process upon the secretary, as provided in this section shall be equivalent to personal service within the state upon the nonresident licensee or registrant.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.213.

25-28.5-1-21 Repealed

25-28.5-1-21 (Repealed by P.L.260-1987, SEC.3.)

25-28.5-1-22

Sec. 22. (a) Every license or certificate of registration issued under this chapter expires on a date established by the licensing agency under IC 25-1-6-4 and shall be renewed biennially thereafter upon payment of the required renewal fees.

(b) Applications for renewal shall be filed with the commission in the form and manner provided by the commission. The application shall be accompanied by the required renewal fee. The commission, upon the receipt of the application for renewal and the required renewal fee, shall issue to the renewal applicant a license or certificate of registration in the category said applicant has previously held. Unless a license is renewed, a license issued by the commission expires on the date specified by the licensing agency under IC 25-1-6-4.

(c) A license or certificate of registration lapses without any action by the commission if an application for renewal has not been filed and the required fee has not been paid by the established biennial renewal date.

(d) If a license or certificate of registration has been expired for not more than three (3) years, the license or certificate of registration may be reinstated by the commission if the holder of the license or certificate of

registration meets the requirements of IC 25-1-8-6(c).

(e) If a license or certificate of registration has been expired for more than three (3) years, the license or certificate of registration may be reinstated by the commission if the holder of the license or certificate of registration meets the requirements for reinstatement under IC 25-1-8-6(d).

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.214; Acts 1982, P.L.113, SEC.70; P.L.194-2005, SEC.70; P.L.105-2008, SEC.55.

25-28.5-1-23

Sec. 23. The fees to be charged by and paid to the commission by licensees for all licenses and license renewals shall be established by the commission under IC 25-1-8.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1976, P.L.120, SEC.1; Acts 1981, P.L.222, SEC.215; Acts 1982, P.L.113, SEC.71; P.L.84-1998, SEC.26; P.L.194-2005, SEC.71.

25-28.5-1-24

Sec. 24. (a) All fees collected by the commission shall be deposited with the treasurer of state to be deposited by the treasurer in the state general fund.

(b) All expenses of the commission shall be paid from the state general fund upon appropriation being made therefor in the manner provided by law for the making of such appropriations.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1976, P.L.119, SEC.22; P.L.194-2005, SEC.72.

25-28.5-1-25 Repealed

25-28.5-1-25 (Repealed by Acts 1978, P.L.2, SEC.2570.)

25-28.5-1-26 Repealed

25-28.5-1-26 (Repealed by Acts 1978, P.L.2, SEC.2570.)

25-28.5-1-27

Sec. 27. Subject to IC 25-1-7, the commission may, upon its own motion and shall, upon the verified complaint in writing of any person setting forth specifically the wrongful act or acts complained of, investigate any action or business transaction of any licensee in accordance with IC 25-1-11. Approval by a majority of all members of the commission shall be required for any action to be taken.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1977, P.L.172, SEC.44; Acts 1981, P.L.222, SEC.216; P.L.214-1993, SEC.61.

25-28.5-1-27.1 Repealed

25-28.5-1-27.1 (Repealed by P.L.214-1993, SEC.91.)

25-28.5-1-28

Sec. 28. (a) Proceedings before the commission for the suspension or revocation of any license shall be conducted in the manner provided by IC 4-21.5-3.

(b) Any person aggrieved by any action of the commission in suspending or revoking his license or certificate of registration may seek judicial review by following IC 4-21.5-5.

(c) Any person aggrieved by the commission's action in failing to issue or renew a license or certificate of registration may seek judicial review by following IC 4-21.5-5.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by P.L.7-1987, SEC.126.

25-28.5-1-29

Sec. 29. (a) The record of the commission (or a duly certified copy thereof), shall be admissible in any proceedings at law or in equity in any court of competent jurisdiction in this or any other state in which the applicant, licensee or certificate of registration holder charged or under investigation is a party, and where the issues of an act involved in the proceedings are pertinent to the inquiry before the commission and the verdict of the jury or judgment of the court in any action at law or the decree of the court in any proceeding in equity shall be prima facie as the facts at issue in the proceedings and necessarily adjudicated therein.

(b) The verdict of the court or jury in any criminal prosecution in a court of record of this or any other state in which the applicant, licensee, or certificate of registration holder charged shall have been the defendant shall be

conclusive as to the facts charged and at issue in such prosecution.
(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-30 Repealed

25-28.5-1-30 (Repealed by Acts 1981, P.L.222, SEC.296.)

25-28.5-1-31

Sec. 31. (a) A person who acts or advertises as a plumbing contractor or journeyman plumber without first obtaining a license from the commission or who continues to act as a plumbing contractor or journeyman plumber after the person's license has been suspended, revoked, or otherwise restricted under IC 25-1-11 commits a Class A misdemeanor.

(b) A person who fails to renew the person's license and continues to act as a plumbing contractor or journeyman plumber after the license has expired commits a Class B misdemeanor.

(c) It is unlawful for a plumbing contractor to fail to include one (1) of the following names on written or printed advertising for plumbing services and on vehicles that are used to provide plumbing services:

(1) The plumbing contractor's name.

(2) The name of the business with which the plumbing contractor is associated.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2547; Acts 1981, P.L.222, SEC.218; P.L.241-1989, SEC.5; P.L.214-1993, SEC.62.

25-28.5-1-32

Sec. 32. This chapter does not apply to the following:

(1) Contractors in work on bridges, roads, streets, highways, railroads, or utilities and services incidental to the work.

(2) An authorized employee of the United States, the state, or a political subdivision of the state if the employee does not profess to be for hire and is acting within the scope of the employee's employment.

(3) An officer appointed by a court when the officer is acting within the scope of the officer's office as defined by law or court order. When construction projects are not underway at the time of the appointment of the officer by the court, and the nature of the officer's appointment requires that plumbing must be done, the officer must employ or contract with a registered plumbing contractor or journeyman plumber.

(4) Public utilities with respect to construction, maintenance, and development work performed by their own forces and incidental to their business.

(5) The owner occupant of a dwelling of eight (8) or less residential units when the owner occupant is installing, altering, or repairing the plumbing system of the residential units.

(6) Construction, alteration, improvement, or repair of a plumbing system, located on a site, the title of which is in the name of the United States of America, or to construction, alteration, improvement, or repair on a project where federal law supersedes this article.

(7) An individual who is employed or acts as a maintenance person at the individual's place of employment.

(8) Farmsteads, except for buildings built on the farmstead for the purpose of public or commercial use.

(9) A sewer contractor, sewage disposal contractor, or an excavation contractor or utility contractor who generally engages in the business of installing, altering, or repairing sewers, private or public sewage disposal systems, and water distribution or drainage lines outside the foundation walls of a building.

(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1980, P.L.166, SEC.4; Acts 1981, P.L.222, SEC.219; P.L.241-1989, SEC.6.

25-28.5-1-33

Sec. 33. Nothing in this chapter shall limit the power of political subdivision to regulate the quality and character of work performed by plumbing contractors through the enforcement of building codes and inspections, but no political subdivision shall require any licensee under this chapter to submit to any other form of licensing: Provided, however, That any political subdivision of this state may require any person licensed as a plumbing contractor under the provisions of this chapter to register with some public official of said political subdivision in order that the plumbing inspection officials of such political subdivision may have the records necessary to inspect the work of persons licensed hereunder. Nothing herein contained shall prohibit any political subdivision from charging a reasonable fee for such registration. Failure to register as required by a political subdivision, upon certification of

said failure to the commission, at the discretion of the commission may constitute a basis for suspension of any plumbing contractor's license issued under the provisions of this chapter. Repeated and intentional violation of any such registration requirements may at the discretion of the commission constitute a basis for the revocation of a plumbing contractor's license, said proceeding for suspension or revocation to be had under the provisions of section 26 of this chapter.
(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-34 Repealed

25-28.5-1-34 (Repealed by Acts 1981, P.L.222, SEC.296.)

25-28.5-1-35

Sec. 35. (a) A plumbing contractor licensee shall prominently display the licensee's license in the licensee's principal business office. In the case of a partnership or corporation, the license of at least one (1) partner, member, or officer of the corporation, or the corporate license, must be displayed.

(b) The license number of a licensed plumbing contractor must be recognizably displayed in all forms of written or printed advertising for plumbing services and on all vehicles that are used to provide plumbing services.

(c) A plumbing contractor, partnership, or corporation must maintain a register listing:

(1) the name and license number of every plumbing contractor currently employed there;

(2) the name and license number of every journeyman plumber currently employed there; and

(3) the name and registration number of every apprentice plumber currently employed there.

The register must be available for public inspection upon request.

(d) A plumbing contractor, journeyman plumber, or apprentice plumber shall carry a facsimile of that person's license or certificate of registration on a job location where the person is engaged in plumbing contracting or the trade of plumbing. The plumbing contractor, journeyman plumber, or apprentice plumber shall display that person's license or certificate of registration upon the demand of a state inspector or local building or plumbing inspector in Indiana within that inspector's local jurisdiction or upon a customer's request.
(Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1981, P.L.222, SEC.220; P.L.248-1985, SEC.7; P.L.241-1989, SEC.7.

25-28.5-1-36

Sec. 36. No action or suit shall be instituted in any court of this state to recover compensation for plumbing contracting services, or for wages for work done which under the provisions of this chapter constitutes plumbing, by a person who is not licensed or registered under the provisions of this chapter.
(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-37

Sec. 37. The commission conducting a hearing in any particular case shall have power to subpoena and order production of books and papers. In any hearing, the process issued by the commission shall extend to all parts of the state and the process shall be served either in like manner as are served writs of subpoena in the circuit court or by any person designated by the commission for that purpose. The person serving the process shall receive such compensation as may be allowed by the commission not to exceed the fee prescribed by law for similar services in the circuit courts and the fees shall be paid in the same manner as provided in this chapter for fees of witnesses subpoenaed at the instance of the commission. All witnesses who shall be subpoenaed and who appear in any proceeding before the commission shall receive the same fees and mileage as allowed by law to witnesses in the circuit courts, which amount shall be paid by the party at whose instance the subpoena was issued or upon whose behalf the witness has been called. When any witness who has not been subpoenaed at the instance of any party to the proceeding shall be subpoenaed at the instance of the commission the fees and mileage of the witness shall be paid from the funds appropriated to the use of the commission in the same manner as other expenses of the commission are paid.

Where in any proceeding before the commission, any witness shall fail or refuse to attend upon subpoena issued by the commission or any of their representatives, or appearing, shall refuse to testify or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of his testimony and the production of the books and papers required shall be enforced by any circuit court of this state.

(Formerly: Acts 1972, P.L.188, SEC.1.)

25-28.5-1-38

Sec. 38. The Indiana Plumbing Commission is hereby authorized and empowered to adopt, fix and establish all rules and regulations necessary for the proper administration and enforcement of the provisions of this chapter. (Formerly: Acts 1972, P.L.188, SEC.1.) As amended by Acts 1980, P.L.166, SEC.5.

25-28.5-1-39

Sec. 39. (a) As used in this section, "person" means an individual, a corporation, a partnership, or other legal entity.

(b) If a person submits a written competitive bid for a project involving the:

(1) alteration;
(2) construction;
(3) conversion;
(4) improvement;
(5) modernization;
(6) rehabilitation;
(7) remodeling;
(8) renovation;
(9) repair; or
(10) replacement of plumbing;

and that bid is not accepted because another person knowingly violated this chapter, a person described in subsection (c) may bring a civil action to enjoin the person who violated this chapter from performing any activity under the competitive bid.

(c) The following persons may bring an action for injunctive relief under subsection (b):

(1) The person who did not receive the bid.
(2) An organization or association that represents plumbers.

As added by P.L.20-1991, SEC.8.

Chapter 2. Plumbers Recovery Fund

25-28.5-2

25-28.5-2-1

Sec. 1. (a) The plumbers recovery fund is established for the purpose set out in this chapter. The fund shall be administered by the plumbing commission.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund, except as provided in section 2.2 of this chapter.

As added by P.L.260-1987, SEC.1. Amended by P.L.143-1990, SEC.5.

25-28.5-2-2

Sec. 2. (a) If the total amount in the plumbers recovery fund (including principal and interest) plus estimated revenues from the fee assessed under section 2.1 of this chapter from July 1 of the current year through June 30 of the next year will be less than three hundred thirty thousand dollars ($330,000) on June 30 in an odd-numbered year after the payment of all claims and expenses, the plumbing commission shall assess a surcharge according to the following formula in order to maintain the fund at an approximate level of four hundred thousand dollars ($400,000):

STEP ONE: Determine the amount remaining in the fund on June 30 of the current year after all expenses and claims have been paid.

STEP TWO: Add to the amount determined under STEP ONE the amount of revenue estimated from the fee assessed under section 2.1 of this chapter from July 1 of the current year through June 30 of the next year.

STEP THREE: Subtract the amount determined under STEP TWO from four hundred thousand dollars ($400,000).
STEP FOUR: Determine the number of plumbing contractors who had licenses in effect on June 30 of the current year.
STEP FIVE: Divide the number determined under STEP THREE by the number determined under STEP FOUR.

(b) The plumbing commission shall assess the surcharge described in subsection (a) against each plumbing contractor who:

(1) receives an initial license; or

(2) receives a renewal license.

(c) The plumbing commission shall assess the surcharge described in subsection (a) for the two (2) year period beginning on July 1 of the current year through June 30 of the next odd-numbered year.

(d) The surcharge assessed under this section is in addition to any other fee under this article.

As added by P.L.260-1987, SEC.1. Amended by P.L.143-1990, SEC.6.

25-28.5-2-2.1

Sec. 2.1. (a) At the time of initial licensure under this article, each licensee shall pay the fees established by the commission under IC 25-1-8-2 for the following:

(1) A plumbing contractor.

(2) A journeyman plumber.

(b) Fees collected under subsection (a) shall be placed in the plumbers recovery fund.

(c) The fee assessed under this section is in addition to any other fee under this article.

As added by P.L.143-1990, SEC.7. Amended by P.L.194-2005, SEC.73.

25-28.5-2-2.2

Sec. 2.2. If the total amount in the plumbing recovery fund (including principal and interest) exceeds five hundred fifty thousand dollars ($550,000) at the end of a state fiscal year after the payment of all claims and expenses, the amount in excess of five hundred fifty thousand dollars ($550,000) reverts to the state general fund.

As added by P.L.143-1990, SEC.8.

25-28.5-2-3

Sec. 3. Any interest earned on investment of money in the plumbers recovery fund shall be credited at least annually to the fund. No money may be appropriated from the state general fund for payment of any expenses incurred under this chapter, and none of these expenses may be charged against the state.

As added by P.L.260-1987, SEC.1.

25-28.5-2-4

Sec. 4. (a) If any aggrieved person obtains a final judgment in any court against any plumbing contractor to recover damages for a violation under IC 25-1-11 or the plumbing codes of the state (with or without a finding by the Indiana plumbing commission) that results in an actual cash loss to the aggrieved person, the person may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application with the plumbing commission for an order directing payment out of the plumbers recovery fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the plumbers recovery fund may not exceed twenty thousand dollars ($20,000) per judgment and an aggregate lifetime limit of fifty thousand dollars ($50,000) with respect to any one (1) licensee.

(b) This section applies only to a final judgment that awards damages for an act by the plumbing contractor described in subsection (a) that arises directly out of any transaction:

(1) that occurred when the plumbing contractor was licensed;

(2) for which a license was required under IC 25-28.5; and

(3) that occurred after December 31, 1987.

As added by P.L.260-1987, SEC.1. Amended by P.L.214-1993, SEC.63; P.L.134-2013, SEC.10.

25-28.5-2-5

Sec. 5. (a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single plumbing contractor would exceed the fifty thousand dollar ($50,000) limit set forth in section 4 of this chapter, the fifty thousand dollars ($50,000) shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that the plumbing commission may determine equitable. This money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) The plumbing commission shall consider pending applications filed by all claimants and prospective claimants against a single plumbing licensee jointly to the end that the respective rights of all the claimants to the plumbing commission may be equitably adjudicated and settled.

(c) On June 30 and December 31 of each year, the plumbing commission shall identify each claim that the plumbing commission orders to be paid during the six (6) month period that ended on that day. The plumbing commission shall pay the part of each claim that is so identified within fifteen (15) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the plumbing commission shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the fifty thousand dollar ($50,000) limit described in section 4 of this chapter) before the payment of claims ordered to be paid during the following six (6) month period.

As added by P.L.260-1987, SEC.1. Amended by P.L.134-2013, SEC.11.

25-28.5-2-6

Sec. 6. Any plumbing contractor who is licensed or renews a license under this article after December 31, 1987, and upon whom personal service cannot be made with reasonable diligence shall be considered to have appointed the commission as the plumbing contractor's agent for service of process for purposes of actions filed under section 4 of this chapter for recovery from the plumbers recovery fund. Service of process under this section shall be made as nearly as practicable in the manner prescribed by the Indiana Rules of Trial Procedure for service on corporations.

As added by P.L.260-1987, SEC.1.

25-28.5-2-7

Sec. 7. An order for payment from the plumbers recovery fund may not be issued unless the action to recover from the plumbers recovery fund was commenced within two (2) years after the termination of all proceedings against the plumbing contractor for a violation under IC 25-1-11 or the plumbing codes of the state, including appeals and proceedings supplemental to judgment. When any person commences an action for a judgment that may result in an order for payment from the fund, the person shall notify the plumbing commission in writing of the commencement of the action.

As added by P.L.260-1987, SEC.1. Amended by P.L.214-1993, SEC.64; P.L.134-2013, SEC.12.

25-28.5-2-8

Sec. 8. (a) When any person files an application for an order directing payment from the plumbers recovery fund, the plumbing commission shall promptly review and consider the application, and it may issue an order directing payment out of the plumbers recovery fund, as provided in section 9 of this chapter, subject to the limitation of section 4 of this chapter, if the plumbing commission finds:

(1) that there is no collusion between the judgment creditor and the judgment debtor;

(2) that the judgment creditor is making application not more than one (1) year after the termination of all proceedings in connection with the judgment, including appeals and proceedings supplemental to judgment for collection purposes;

(3) that the judgment creditor has diligently pursued all available creditor's remedies, including proceedings supplemental, against the licensee who is the subject of the application filed under section 4 of this chapter, against all the judgment debtors, and against all other persons liable to the creditor in the transaction for which the creditor seeks recovery from the plumbers recovery fund, but that the diligent pursuit did not result in

satisfaction of the judgment;

(4) that a violation under IC 25-1-11 or the plumbing codes of the state arose directly out of a transaction that occurred when the judgment debtor was licensed and acted in a capacity for which a license is required under this article and that the transaction occurred after December 31, 1987; and

(5) that, in the event of a default judgment or a judgment entered upon stipulation of the parties, the judgment debtor's acts constituted a violation under IC 25-1-11 or the plumbing codes of the state.

(b) A person who is dissatisfied by:

(1) an order issued under subsection (a) directing payment from the plumbers recovery fund; or

(2) a denial of an application filed under section 4 of this chapter;

may petition for review under IC 4-21.5-3-7.

As added by P.L.260-1987, SEC.1. Amended by P.L.214-1993, SEC.65; P.L.134-2013, SEC.13.

25-28.5-2-9

Sec. 9. Upon a final order of the plumbing commission directing that payment be made out of the plumbers recovery fund, the plumbing commission shall, subject to sections 4 through 5 of this chapter, make the payment out of the plumbers recovery fund as provided in section 5 of this chapter.

As added by P.L.260-1987, SEC.1. Amended by P.L.134-2013, SEC.14.

25-28.5-2-10

Sec. 10. (a) If the plumbing commission is required to make any payment from the plumbers recovery fund in settlement of a claim or toward the satisfaction of an order under this chapter, the plumbing commission shall suspend the judgment debtor's license. The licensee is not eligible to be licensed again as either a plumbing contractor or journeyman plumber until the licensee has repaid in full the amount paid from the plumbers recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

As added by P.L.260-1987, SEC.1. Amended by P.L.134-2013, SEC.15.

25-28.5-2-11

Sec. 11. When the plumbing commission has ordered and caused payment to be made from the plumbers recovery fund to a judgment creditor, the plumbing commission is subrogated to the rights of the judgment creditor with respect to the amount paid.

As added by P.L.260-1987, SEC.1. Amended by P.L.134-2013, SEC.16.

25-28.5-2-12

Sec. 12. Subject to the approval of the budget agency, the commission may expend the interest earned by the plumbers recovery fund for the following:

(1) Publications that provide:

(A) information concerning the commission's activities and administrative rulings; and

(B) other educational information concerning the practice of plumbing.

(2) Educational programs concerning the practice of plumbing in Indiana.

As added by P.L.260-1987, SEC.1. Amended by P.L.20-1991, SEC.9.

25-28.5-2-13

Sec. 13. (a) The office of the attorney general shall provide the staff assistance necessary to:

(1) enable the plumbing commission to perform its duties under this chapter; and

(2) enforce this chapter.

(b) Expenses incurred by the office of the attorney general under this section shall be paid from the plumbers recovery fund.

As added by P.L.260-1987, SEC.1.

Chapter 1.5. Applicability Provisions

25-39-1.5

25-39-1.5-1

Sec. 1. For the purposes of this article, the occupation of a licensee is a regulated occupation under IC 25-1-7-1.
As added by P.L.262-1987, SEC.1. Amended by P.L.84-2010, SEC.73.

25-39-1.5-2

Sec. 2. For the purposes of licensing a water well driller and well water pump installer under IC 25-39-3, the department of natural resources is a "board" under IC 25-1-8-1.
As added by P.L.262-1987, SEC.1. Amended by P.L.84-2010, SEC.74.

25-39-1.5-3

Sec. 3. IC 25-39-3 and IC 25-39-4 do not apply to the following:

(1) A person who installs a well that:
  (A) is for personal use; and
  (B) is not greater than one and one-fourth (1 1/4) inches inside diameter and not greater than twenty-four (24) feet deep.
(2) A plumber who:
  (A) is licensed under IC 25-28.5;
  (B) is registered with the department under section 4 of this chapter; and
  (C) installs wells that are not greater than one and one-fourth (1 1/4) inches inside diameter and not greater than twenty-four (24) feet deep.
(3) A person who installs or repairs a water well pump or water well pumping equipment for personal use.
(4) A person who is working under the direction and personal supervision of a person who holds a license.

As added by P.L.262-1987, SEC.1. Amended by P.L.20-1991, SEC.10; P.L.120-1993, SEC.17; P.L.84-2010, SEC.75.

25-39-1.5-4

Sec. 4. A plumber licensed under IC 25-28.5 must register with the department before the plumber installs a well or well water pump.
As added by P.L.20-1991, SEC.11. Amended by P.L.84-2010, SEC.76.

Chapter 2. Definitions

25-39-2

25-39-2-1

Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.262-1987, SEC.2.

25-39-2-2

Sec. 2. "Abandoned well" means a well:

(1) whose original purpose and use have been discontinued for more than five (5) years; or
(2) that is in such a state of disrepair that using it to obtain ground water is impractical or a health hazard.

As added by P.L.262-1987, SEC.2.

25-39-2-3

Sec. 3. "Annular space" means the space between the exterior of the well casing and the natural formation in a drilled well.
As added by P.L.262-1987, SEC.2.

25-39-2-4

Sec. 4. "Aquifer" means any underground geologic formation (consolidated or unconsolidated) that has the ability to receive, store, and transmit water in amounts sufficient for the satisfaction of any beneficial use.
As added by P.L.262-1987, SEC.2.

25-39-2-5

Sec. 5. "Bentonite clay" means a commercial clay or clay mineral product that has been approved by the commission by rule adopted under IC 4-22-2.
As added by P.L.262-1987, SEC.2.

25-39-2-6
Sec. 6. "Casing" means a pipe installed to prevent unwanted solids, liquids, or gases from entering the interior of a well.
As added by P.L.262-1987, SEC.2.

25-39-2-7
Sec. 7. "Commission" refers to the natural resources commission.
As added by P.L.262-1987, SEC.2.

25-39-2-8
Sec. 8. "Department" refers to the department of natural resources.
As added by P.L.262-1987, SEC.2.

25-39-2-9
Sec. 9. "Director" refers to the director of the department of natural resources.
As added by P.L.262-1987, SEC.2.

25-39-2-10
Sec. 10. "Ground water" means water occurring beneath the surface of the ground regardless of location or form.
As added by P.L.262-1987, SEC.2.

25-39-2-11
Sec. 11. "Grouting" means the process of sealing the annular space in a well.
As added by P.L.262-1987, SEC.2.

25-39-2-12
Sec. 12. "License" refers to a water well driller's and water well pump installer's license issued by the department under this article.
As added by P.L.262-1987, SEC.2. Amended by P.L.84-2010, SEC.77.

25-39-2-12.5
Sec. 12.5. "Licensee" refers to a person who has been issued a water well driller's and water well pump installer's license issued by the department under this article.
As added by P.L.84-2010, SEC.78.

25-39-2-13
Sec. 13. "Neat cement" means a mixture of ninety-four (94) pounds of cement and no more than six (6) gallons of clean water. Additives designed to increase fluidity may not exceed five percent (5%) of the total mixture.
As added by P.L.262-1987, SEC.2.

25-39-2-14
Sec. 14. "Plugged" means the insertion of a material in a well that prevents the migration of gas, liquid, or solid material up or down the well.
As added by P.L.262-1987, SEC.2.

25-39-2-15
Sec. 15. "Water well driller" means a person who operates well drilling or driving equipment or engages in the drilling or driving of wells.
As added by P.L.262-1987, SEC.2.

25-39-2-15.5
Sec. 15.5. "Water well pump installer" means a person who installs or repairs water well pumps.

As added by P.L.84-2010, SEC.79.

25-39-2-16

Sec. 16. "Well" means a hole drilled or driven to:

(1) obtain geologic information on aquifers;

(2) monitor the quality or quantity of ground water;

(3) obtain ground water; or

(4) utilize the geothermal properties of earth formations.

As added by P.L.262-1987, SEC.2.

Chapter 3. Water Well Drillers Licensing

25-39-3

25-39-3-1

Sec. 1. (a) An individual may not be a water well driller or water well pump installer without a license.

(b) The department shall issue a license to each individual who applies and qualifies for a license under this chapter.

(c) The license of the licensee operating well drilling equipment or installing a water well pump shall be carried by the licensee and presented for inspection by a representative of the department upon request.

(d) Every license expires on December 31 of the year for which it was issued.

As added by P.L.262-1987, SEC.3. Amended by P.L.84-2010, SEC.80.

25-39-3-2

Sec. 2. (a) An application for a license must be made on a form prescribed by the commission in rules adopted under IC 4-22-2. The purpose of the form is to identify the applicant and obtain information to determine if the applicant is qualified to be licensed.

(b) An application for an original license or a license renewal must be accompanied by a license fee of one hundred dollars ($100).

(c) Unless an applicant has held an original license for less than one (1) year, a license renewal application must be accompanied by:

(1) a copy of the continuing education verification of attendance forms; and

(2) a statement by the applicant attesting that the applicant has complied with the continuing education requirements under IC 25-39-6.

As added by P.L.262-1987, SEC.3. Amended by P.L.120-1993, SEC.18; P.L.84-2010, SEC.81.

25-39-3-3

Sec. 3. (a) To qualify for an original license an individual must:

(1) be at least eighteen (18) years of age;

(2) furnish evidence from three (3) references, two (2) of whom are water well drillers, water well pump installers, or licensed plumbing contractors familiar with the applicant's work experience and professional competency; and

(3) have successfully completed a competency examination prepared and administered by the department.

(b) The competency examination shall be administered at least two (2) times every calendar year.

(c) The fee to take the competency examination shall be set by the director under IC 25-1-8. This fee is nonrefundable and must be paid each time an applicant applies to take the examination.

As added by P.L.262-1987, SEC.3. Amended by P.L.84-2010, SEC.82.

25-39-3-3.5 Expired

25-39-3-3.5 (Expired 7-1-2011 by P.L.84-2010, SEC.83.)

25-39-3-4

Sec. 4. (a) In consultation with the Indiana Well Drilling Contractors Association and the Indiana Ground Water Association, the department shall prepare one (1) or more competency examinations to determine if an applicant for a license is qualified to be a water well driller and water well pump installer.

(b) The competency examination must include questions to determine if the applicant for a license has adequate knowledge and expertise concerning the following:

(1) Placement of wells.
(2) Well drilling procedures.
(3) Operations of well drilling and water well pump equipment.
(4) Contamination precautions.
(5) Installation of well casing and water well pumps.
(6) Well grouting procedures.
(7) Well screen design and installation.
(8) Pitless adapter units.
(9) Installation of pumping apparatus.
(10) Well disinfection.
(11) Sealing abandoned wells.
(12) Ground water occurrence.
(13) Aquifer characteristics.
(14) Drawdown requirements and limitations.
(15) Depth considerations.
(16) Methods of measuring well yield.
(17) The requirements of this chapter and other laws relating to wells.
(18) Other accepted standards relating to the drilling, operation, and abandonment of wells and water well pumps.

As added by P.L.262-1987, SEC.3. Amended by P.L.84-2010, SEC.84.

Chapter 4. Regulation of Water Well Drilling

25-39-4

25-39-4-1

Sec. 1. (a) Each licensee shall keep accurate records for each well drilled. The record for each well must contain the following information:

(1) The location of the well.
(2) The depth and diameter of the well.
(3) The date the contractor completed the well.
(4) The character and thickness of materials or formations drilled.
(5) The static water level and performance data of the well.
(6) Any other information required by rule.

(b) Each licensee shall, within thirty (30) days after the completion of a well, forward a copy of the record of the well to the department on forms prescribed or approved by the department.

As added by P.L.262-1987, SEC.4. Amended by P.L.84-2010, SEC.85.

25-39-4-2

Sec. 2. (a) The commission shall, by rule, establish standards for well siting, construction, and operation. The standards must address the following:

(1) Placement of wells.
(2) Well drilling procedures.
(3) Operation of well drilling and water well pump equipment.
(4) Contamination precautions.
(5) Well casing and water well pump specification and installation.
(6) Well grouting procedures.
(7) Well screen design and installation.
(8) Pitless adapter units.
(9) Installation of pumping apparatus.
(10) Well disinfection techniques.
(11) Sealing and plugging abandoned wells.

(12) Other generally accepted standards relating to the drilling, operation, or abandonment of wells.

(b) A well that is drilled after December 31, 1987, must be drilled in compliance with the rules adopted under this section.

As added by P.L.262-1987, SEC.4. Amended by P.L.84-2010, SEC.86.

25-39-4-3

Sec. 3. The commission may not establish standards under section 2 of this chapter that prohibit the use of well casing that is at least two (2) inches in diameter.

As added by P.L.262-1987, SEC.4.

25-39-4-4

Sec. 4. A well that is drilled after December 31, 1987, and not equipped with casing must be plugged by the driller within seventy-two (72) hours after drilling is completed.

As added by P.L.262-1987, SEC.4.

25-39-4-5

Sec. 5. A well that is drilled after December 31, 1987, and equipped with casing must have the annular space grouted with neat cement, bentonite clay, or another material that has been approved by the commission by the driller when the well is completed.

As added by P.L.262-1987, SEC.4.

25-39-4-6

Sec. 6. (a) A well that was abandoned before January 1, 1988, must be sealed by the use of a welded or threaded cap, or in accordance with rules adopted by the commission under IC 4-22-2. If the director determines that a well described in this subsection poses a hazard to human health, the well shall be plugged in accordance with rules adopted by the commission under IC 4-22-2.

(b) The owner of land upon which is situated a well that is abandoned after December 31, 1987, must have the well plugged by a water well driller within one (1) year after it is abandoned.

(c) A well that has not been used for more than three (3) months, but has not been abandoned, must be sealed at or above the land surface with a welded or threaded cap, or in accordance with rules adopted by the commission under IC 4-22-2.

As added by P.L.262-1987, SEC.4. Amended by P.L.120-1993, SEC.19.

25-39-4-7

Sec. 7. (a) Under IC 4-21.5-3-6, the director may suspend or revoke the license of a licensee who has done any of the following:

(1) Acted as a licensee without a license in violation of this article.

(2) Secured a license through error or fraud.

(3) Failed to comply with any of the requirements of sections 1, 2, 4, 5, and 6 of this chapter.

(b) Under IC 4-21.5-3-5, the director may refuse to grant, renew, or restore a license to a person who has done any of the following:

(1) Acted as a licensee without a license in violation of this article.

(2) Secured a license through error or fraud.

(3) Failed to comply with any of the requirements of sections 1, 2, 4, 5, and 6 of this chapter.

As added by P.L.262-1987, SEC.4. Amended by P.L.84-2010, SEC.87.

25-39-4-8

Sec. 8. (a) The department may initiate injunctive proceedings in the appropriate court against a person who acts as a licensee without a license or while the person's license is suspended. The department may not be compelled to give bond in such a cause.

(b) After an action has been filed and notice has been given, all matters involved in the action shall be held in abeyance until the action has been tried and determined.

(c) If a defendant continues to violate this article after notice of the action has been given but before trial and determination, the department may, upon a verified showing of those acts of the defendant, obtain a temporary restraining order without notice. The order is effective until the cause has been tried and determined.

As added by P.L.262-1987, SEC.4. Amended by P.L.84-2010, SEC.88.

25-39-4-9

Sec. 9. (a) The commission shall adopt rules under IC 4-22-2 to implement this article.

(b) The commission may adopt rules under IC 4-22-2 to do the following:

(1) Establish standards for the licensing of dewatering well drillers.

(2) Regulate the drilling of dewatering wells.

(3) Exempt the drilling of a dewatering well from the application of this chapter if the commission determines that application of this chapter is inappropriate.

As added by P.L.262-1987, SEC.4. Amended by P.L.20-1991, SEC.12.

25-39-4-10

Sec. 10. Upon written application by the owner of a well or the licensee, the department shall keep the record of a well confidential for a period of one (1) year, and that record is not considered to be a public record.

As added by P.L.262-1987, SEC.4. Amended by P.L.84-2010, SEC.89.

25-39-4-11

Sec. 11. This article does not apply to wells drilled:

(1) under or incidental to an activity under IC 14-34 or IC 14-37;

(2) for the sole purpose of supplying water for the secondary recovery of petroleum resources; or

(3) for the sole purpose of evaluating the foundation characteristics of earth materials to support bridges, roadways, buildings, or other engineered structures.

As added by P.L.262-1987, SEC.4. Amended by P.L.3-1990, SEC.92; P.L.1-1995, SEC.70.

Chapter 5. Crimes and Infractions

25-39-5

25-39-5-1

Sec. 1. A person who recklessly, knowingly, or intentionally acts as a water well driller or a water well pump installer without a license in violation of this article commits a Class B misdemeanor.

As added by P.L.262-1987, SEC.5. Amended by P.L.289-2013, SEC.20.

25-39-5-2

Sec. 2. A person who fails to keep the records or file the reports required by IC 25-39-4-1 or who knowingly files any report containing false information commits a Class B infraction. The failure to submit records for each water well drilled constitutes a separate infraction.

As added by P.L.262-1987, SEC.5.

25-39-5-3

Sec. 3. A person who knowingly violates a standard established under IC 25-39-4-2 commits a Class B infraction.

As added by P.L.262-1987, SEC.5.

25-39-5-4

Sec. 4. A person who knowingly fails to plug a well in violation of IC 25-39-4-4 commits a Class B infraction.

As added by P.L.262-1987, SEC.5.

25-39-5-5

Sec. 5. A person who knowingly fails to grout a well in violation of IC 25-39-4-5 commits a Class B infraction.

As added by P.L.262-1987, SEC.5.

25-39-5-6

Sec. 6. A person who fails to seal, plug, or cap a well in violation of IC 25-39-4-6 commits a Class C infraction.

As added by P.L.262-1987, SEC.5.

25-39-5-7

Sec. 7. A plumber who installs a well without first registering with the department under IC 25-39-1.5-4 commits a Class B misdemeanor.
As added by P.L.120-1993, SEC.20.

Chapter 6. Continuing Education

25-39-6

25-39-6-1

Sec. 1. Except as provided in section 6 of this chapter, a licensee who has held a license for at least one (1) calender year shall complete six (6) actual hours of continuing education before December 31 of each even-numbered year.
As added by P.L.84-2010, SEC.90.

25-39-6-2

Sec. 2. A licensee shall retain the following for each continuing education course the individual attends:
(1) A record of:
(A) the number of hours the individual spent in the continuing education course;
(B) the name of the person or organization presenting the continuing education course;
(C) the date, location, and title of the continuing education course; and
(D) the number of hours of continuing education awarded for the course.
(2) Verification that the individual attended the course.
The records and verification of attendance must be retained for three (3) years after the individual attends a continuing education course.
As added by P.L.84-2010, SEC.90.

25-39-6-3

Sec. 3. (a) An institution, organization, governmental agency, or individual that wishes to offer continuing education courses for the purposes of this chapter must apply in writing to the department for approval of each course. An application for approval of a course must be received by the department not less than thirty (30) days before the course is offered. The department shall approve or deny an application for approval of a continuing education course not more than ten (10) business days after receiving the application.
(b) An application must include the following information:
(1) The title of the course and subjects that will be presented.
(2) The name of the person or organization presenting the continuing education course.
(3) The date, location, and title of the continuing education course.
(4) The number of hours of continuing education to be offered.
(5) Course outlines for the subjects to be offered.
(6) The fee to be charged for each course.
(7) Any other information requested by the department.
(c) The department may approve an application for approval of a continuing education course that addresses one (1) of the following topics:
(1) Water well construction.
(2) Pump installation and repair.
(3) Grouting.
(4) Water sample collection and sampling.
(5) Contamination of water supplies.
(6) Other topics the department determines to be relevant for the continued improvement of the knowledge of a license holder.
As added by P.L.84-2010, SEC.90.

25-39-6-4

Sec. 4. An institution, organization, governmental agency, or individual that has been approved to offer a

continuing education course for the purposes of this chapter shall submit to the department not more than forty-five (45) days after the course has been completed a typed listing of the following information:

(1) The name of each individual who attended the course, including each individual's license number.
(2) The title of the course.
(3) The name of the person or organization presenting the continuing education course.
(4) The date, location, and title of the continuing education course.
(5) The number of hours of continuing education each individual received.

As added by P.L.84-2010, SEC.90.

25-39-6-5

Sec. 5. The department shall maintain and make available to the public a list of future continuing education courses that will satisfy the continuing education requirements of this article.
As added by P.L.84-2010, SEC.90.

25-39-6-6

Sec. 6. A licensee may apply in writing to the department for a waiver or modification of the continuing education requirements applying to the licensee under this article if the licensee:

(1) establishes that an emergency existed during the period for which the continuing education was required;
(2) has had an incapacitating illness verified by the applicant and a licensed physician; or
(3) was prevented from completing the continuing education requirement because of active military duty during the period for which the continuing education was required.

As added by P.L.84-2010, SEC.90.

25-39-6-7

Sec. 7. The department may enter into a contract with the Indiana Ground Water Association to administer this chapter.
As added by P.L.84-2010, SEC.90.

Chapter 5. Uniform Conservation Easement Act

32-23-5

32-23-5-1

Sec. 1. (a) This chapter applies to any interest created after September 1, 1984, that complies with this chapter, whether the interest is designated:

(1) as a conservation easement;
(2) as a covenant;
(3) as an equitable servitude;
(4) as a restriction;
(5) as an easement; or
(6) otherwise.

(b) This chapter applies to any interest created before September 1, 1984, if the interest would have been enforceable had the interest been created after September 1, 1984, unless retroactive application contravenes the constitution or laws of Indiana or the United States.

(c) This chapter does not invalidate any interest, whether designated:

(1) as a conservation easement;
(2) as a preservation easement;
(3) as a covenant;
(4) as an equitable servitude;
(5) as a restriction;
(6) as an easement; or
(7) otherwise;

if the designated interest is enforceable under another law of this state.

(d) This chapter shall be applied and construed to effectuate the general purpose of the chapter to make uniform

the laws with respect to the subject of the chapter among the states that enact language consistent with this chapter.
As added by P.L.2-2002, SEC.8.

32-23-5-2

Sec. 2. As used in this chapter, "conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations with the purpose of:

(1) retaining or protecting natural, scenic, or open space values of real property;
(2) assuring availability of the real property for agricultural, forest, recreational, or open space use;
(3) protecting natural resources;
(4) maintaining or enhancing air or water quality; or
(5) preserving the historical, architectural, archeological, or cultural aspects of real property.

As added by P.L.2-2002, SEC.8.

32-23-5-3

Sec. 3. As used in this chapter, "holder" means any of the following:

(1) A governmental body that is empowered to hold an interest in real property under the laws of Indiana or the United States.
(2) A charitable corporation, charitable association, nonprofit corporation, or charitable trust, the purposes or powers of which include:
    (A) retaining or protecting the natural, scenic, or open space values of real property;
    (B) assuring the availability of real property for agricultural, forest, recreational, or open space use;
    (C) protecting natural resources;
    (D) protecting property bordering lakes;
    (E) maintaining or enhancing air or water quality; or
    (F) preserving the historical, architectural, archeological, or cultural aspects of real property.

As added by P.L.2-2002, SEC.8. Amended by P.L.49-2013, SEC.1.

32-23-5-4

Sec. 4. As used in this chapter, "third party right of enforcement" means a right that is:

(1) provided in a conservation easement to enforce any of the conservation easement's terms; and
(2) granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

As added by P.L.2-2002, SEC.8.

32-23-5-5

Sec. 5. (a) Except as otherwise provided in this chapter, a conservation easement may be:

(1) created;
(2) conveyed;
(3) recorded;
(4) assigned;
(5) released;
(6) modified;
(7) terminated; or
(8) otherwise altered or affected;

in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third party right of enforcement does not arise under a conservation easement before the conservation easement is accepted by the holder and the acceptance is recorded.

(c) Except as provided in section 6(b) of this chapter, a conservation easement is unlimited in duration unless the instrument creating the conservation easement provides otherwise.

(d) An interest in real property is not impaired by a conservation easement if the interest exists at the time the conservation easement is created, unless the owner of the interest is a party to the conservation easement or consents to the conservation easement.

As added by P.L.2-2002, SEC.8.

32-23-5-6

Sec. 6. (a) An action that affects a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third party right of enforcement; or

(4) a person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity, or the termination of a conservation easement by agreement of the grantor and grantee.

As added by P.L.2-2002, SEC.8.

32-23-5-7

Sec. 7. A conservation easement is valid even though:

(1) the conservation easement is not appurtenant to an interest in real property;

(2) the conservation easement can be or has been assigned to another holder;

(3) the conservation easement is not of a character that has been recognized traditionally at common law;

(4) the conservation easement imposes a negative burden;

(5) the conservation easement imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

As added by P.L.2-2002, SEC.8.

32-23-5-8

Sec. 8. For the purposes of IC 6-1.1, real property that is subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement.

As added by P.L.2-2002, SEC.8.

35-45-3-2

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse, commits littering, a Class B infraction. However, the offense is a Class A infraction if the refuse is placed or left in, on, or within one hundred (100) feet of a body of water that is under the jurisdiction of the:

(1) department of natural resources; or

(2) United States Army Corps of Engineers.

Notwithstanding IC 34-28-5-4(a), a judgment of not more than one thousand dollars ($1,000) shall be imposed for each Class A infraction committed under this section.

(b) "Refuse" includes solid and semisolid wastes, dead animals, and offal.

(c) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.75; P.L.155-1985, SEC.2; P.L.137-2007, SEC.36; P.L.231-2007, SEC.4.

Chapter 2. General Powers Concerning Transportation and Public Works

36-9-2

36-9-2-1

Sec. 1. This chapter applies to all units except townships. However, with respect to a public transportation system, this chapter does not apply after December 31, 2009, to a county that is a member of the northern Indiana regional transportation district established under IC 8-24 and that has a population of:

(1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or

(2) more than one hundred fifty thousand (150,000) but less than one hundred seventy thousand (170,000); or a unit located in such a county.

As added by Acts 1980, P.L.211, SEC.4. Amended by P.L.182-2009(ss), SEC.444; P.L.119-2012, SEC.223.

36-9-2-2

Sec. 2. A unit may establish, aid, maintain, and operate transportation systems.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-3

Sec. 3. A unit may establish, aid, maintain, and operate airports, bus terminals, railroad terminals, wharves, and other transportation facilities.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-4

Sec. 4. A unit may regulate the services offered by persons who hold out for public hire the use of vehicles. This includes the power to fix the price to be charged for that service.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-5

Sec. 5. A unit may establish, vacate, maintain, and operate public ways.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-6

Sec. 6. A unit may grant rights-of-way through, under, or over public ways.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-7

Sec. 7. A unit may regulate the use of public ways. A unit also may regulate the use of school corporation grounds if requested by the fiscal body of the school corporation.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-8

Sec. 8. A unit may establish, vacate, maintain, and control watercourses.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-9

Sec. 9. A unit may change the channel of, dam, dredge, remove an obstruction in, straighten, and widen a watercourse.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-10

Sec. 10. A unit may regulate the taking of water, or causing or permitting water to escape, from a watercourse.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-11

Sec. 11. A unit may regulate conduct that might alter the temperature of water, or affect the flow of water, in a watercourse.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-12

Sec. 12. A unit may regulate the introduction of any substance into a watercourse or onto its banks.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-13

Sec. 13. A unit may purify the water in a watercourse.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-14

Sec. 14. A unit may regulate the furnishing of water to the public. A unit also may establish, maintain, and operate waterworks.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-15

Sec. 15. A unit may furnish, or regulate the furnishing of, utility service to the public.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-16

Sec. 16. A unit may regulate the furnishing of the service of collecting, processing, and disposing of waste substances and domestic or sanitary sewage. This includes the power to fix the price to be charged for that service.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-17

Sec. 17. A unit may collect, process, and dispose of waste substances and domestic or sanitary sewage, and may establish, maintain, and operate sewers, sewage disposal systems, and systems to collect and dispose of waste substances.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-18

Sec. 18. A municipality may exercise powers granted by sections 2, 3, 14, 16, and 17 of this chapter in areas within four (4) miles outside its corporate boundaries.
As added by Acts 1980, P.L.211, SEC.4.

36-9-2-19

Sec. 19. A municipality may exercise powers granted by sections 9, 10, 11, 12, and 13 of this chapter in areas within ten (10) miles outside its corporate boundaries.
As added by Acts 1980, P.L.211, SEC.4.

Chapter 6. City Works Board

36-9-6

36-9-6-1

Sec. 1. This chapter applies to second and third class cities.
As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.44, SEC.59.

36-9-6-2

Sec. 2. Unless otherwise provided by statute or ordinance, the works board shall supervise the streets, alleys, sewers, public grounds, and other property of the city, and shall keep them in repair and good condition. The works board shall provide for the cleaning of city streets and alleys.
As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.43.

36-9-6-3

Sec. 3. (a) Unless otherwise provided by statute or ordinance, the works board has custody of and may maintain all real and personal property of the city.

(b) A city works board may design, order, contract for, and execute:

(1) all work required to improve or repair any real or personal property that belongs to or is used by the city; and

(2) the erection of all buildings and other structures needed for any public purpose.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.44.

36-9-6-4

Sec. 4. The works board may condemn, rent, or purchase any real or personal property needed by the city for any public use, unless a different provision for purchase is made by statute or ordinance. However, the city legislative body may by ordinance:

(1) require that these condemnations, rentals, or purchases be included in a long-range capital expenditure program to be proposed by the works board and updated as required by the legislative body, but at least annually;
(2) require the works board to estimate, at least annually, expenditures needed for condemnations, rentals, and purchases for each successive fiscal year;
(3) approve, amend, or reject all or part of the long-range capital expenditure program and the proposed annual expenditures, before or during the adoption of the city budget; and
(4) specify the manner in which the works board must itemize the estimates of capital program expenditures for each fiscal year.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1982, P.L.33, SEC.45.

36-9-6-5

Sec. 5. The works board may approve plats under IC 36-7-3-3(d).

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-6

Sec. 6. (a) The works board may lay out, open, change, and fix or change the grade of any public way, sidewalk, or public place in the city.

(b) The works board may keep a record of the grades of all public ways and sidewalks in the city.

As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.46, SEC.8.

36-9-6-7

Sec. 7. The works board may design, order, contract for, and execute all work required to improve or repair any street, alley, wharf, or public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-8

Sec. 8. The works board may, by contract or otherwise, clean and sprinkle any public place within the city.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-9

Sec. 9. The works board may erect lampposts or other lighting apparatus in the streets, alleys, and public places of the city.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-10

Sec. 10. (a) The works board may prepare a uniform plan for the drainage and sewerage of the city.

(b) The works board may lay out, design, order, contract for, and execute the construction, alteration, and maintenance of all public drains or sewers necessary to carry off the drainage of the city.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-11

Sec. 11. The works board may erect, maintain, and operate works for the collection, treatment, and disposal of sewage.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-12

Sec. 12. The works board may design, order, contract for, and cause the erection of any culvert, bridge, or aqueduct within the city, or may enter in a contract for the joint erection and maintenance of such a structure by the city and a company or individual.

As added by Acts 1981, P.L.309, SEC.79.

36-9-6-13

Sec. 13. (a) A contract under this section must be submitted to the city legislative body and does not take effect until approved by ordinance of the legislative body.

(b) The works board may authorize a telegraph, telephone, electric light, gas, water, steam, railroad, or interurban company to use and erect necessary structures in any street, alley, or public place in the city. The works board may prescribe the terms and conditions of uses under this section and may fix by contract the price to be charged to the company.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-14

Sec. 14. The works board may license the making of excavations from the surface or underneath the surface of a street, alley, or public place in the city. The works board may require bond to pay for damages caused by excavations and to secure the proper repair of the street, alley, or public place.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-15

Sec. 15. The works board may order the removal of any structure in a street, alley, or public place of the city. If the person maintaining the structure fails to remove it, the works board may remove it at his expense.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-16

Sec. 16. The works board may design, order, contract for, and cause the erection of levees for the city.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-17

Sec. 17. The works board may straighten, deepen, or otherwise improve any natural or artificial watercourse.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-18

Sec. 18. The works board may require the owners of canals and watercourses to construct and maintain bridges across them at street and alley intersections.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-19

Sec. 19. The works board may, by contract or otherwise, remove all dead animals, rubbish, and other refuse from the city. The works board may erect crematories or other plants for the destruction and disposal of this refuse.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-20

Sec. 20. The works board may maintain a map and record of all pipes and conduits in the city for sewers, gas, water, electric wire, heat, and other purposes, showing their size, depth, inclination, location, and date of construction.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-21

Sec. 21. (a) The works board may fill or drain, at the owner's expense, any lot or tract within the city, or within four (4) miles from its corporate boundaries if the water on the lot or tract is or may become injurious to the public health and comfort. However, no more than twenty percent (20%) of the value of the lot or tract, as assessed on the tax duplicate, may be expended in filling or draining the lot or tract in any (1) year.

(b) The expenses of the works board under this section are a lien against the lot or tract. This lien may be collected by foreclosure or by placing it on the tax duplicate.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-22

Sec. 22. The works board may construct restrooms and fountains in public places.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-23

Sec. 23. All expenses incurred or authorized by the works board under this chapter are payable out of the general

fund of the city, from appropriations made for the use of the board and available for the particular purpose, unless a statute specifically directs that the expenses are to be paid by assessments against owners of real property.
As added by Acts 1981, P.L.309, SEC.79.

36-9-6-24

Sec. 24. (a) If any work ordered or undertaken by the works board is payable out of the general fund of the city, it may cause the work to be done by independent contract or by employees of the board.

(b) If any work ordered or undertaken by the works board is payable, in whole or in part, from assessments made for that purpose upon the real property benefited by the work, the works board shall have the work done by contract, unless otherwise provided by statute.
As added by Acts 1981, P.L.309, SEC.79. Amended by Acts 1981, P.L.317, SEC.7.

Chapter 22. Contracts With Property Owners for Sewer Construction by Municipalities

36-9-22

36-9-22-1

Sec. 1. This chapter applies to all municipalities.
As added by Acts 1981, P.L.309, SEC.95.

36-9-22-2 Version a

Note: This version of section effective until 7-1-2013. See also following version of this section, effective 7-1-2013.

Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period of not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

(1) did not contribute to the original cost of the sewage works; and

(2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to it unless it has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive the person's rights to remonstrate against the annexation of the area served by the sewage works.

(d) Subsection (c) does not apply to a landowner if all of the following conditions apply:

(1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

(e) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.

As added by Acts 1981, P.L.309, SEC.95. Amended by P.L.172-1995, SEC.5; P.L.251-2013, SEC.4.

36-9-22-2 Version b

Note: This version of section effective 7-1-2013. See also preceding version of this section, effective until 7-1-2013.

Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period of not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

(1) did not contribute to the original cost of the sewage works; and

(2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to the contract unless the contract or (after June 30, 2013) a signed memorandum of the contract has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of the parties to the contract and their successors in title to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive the person's rights to remonstrate against the annexation of the area served by the sewage works.

(d) This subsection does not affect any rights or liabilities accrued, or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, the release of the right to remonstrate is binding on a successor in title to a party to the contract only if the successor in title:

(1) has actual notice of the release; or

(2) has constructive notice of the release because the contract, or a signed memorandum of the contract stating the release, has been recorded in the chain of title of the property.

(e) Subsection (c) does not apply to a landowner if all of the following conditions apply:

(1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

(f) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.

As added by Acts 1981, P.L.309, SEC.95. Amended by P.L.172-1995, SEC.5; P.L.251-2013, SEC.4; P.L.243-2013, SEC.3.

36-9-22-3

Sec. 3. (a) Plans and specifications for the sewage works contracted for must be approved by the municipal works board before construction is begun.

(b) Upon their completion, final inspection, and approval the sewage works become the property of the municipality, and the works board may:

(1) approve the construction of the sewage works;

(2) accept sewage from the sewers and pumping stations subject to the sewage rates that the municipality establishes;

(3) operate and maintain the disposal plants subject to the sewage rates that the municipality establishes; and
(4) accept storm water from sewers or approve the location of discharge of storm water.

(c) After the sewage works are approved and accepted by the works board, all further maintenance and operation of them are the responsibility of the municipality.

(d) Subsections (b) and (c) do not apply to lateral sewers or other extensions that, upon completion, become the property and responsibility of the landowners whose property they benefit.

As added by Acts 1981, P.L.309, SEC.95. Amended by Acts 1982, P.L.77, SEC.21.

36-9-22-4

Sec. 4. (a) A person may not be granted a permit or be authorized to tap into, use, or deposit sewage into any sewage works contracted for under this chapter, or any extension of them, during the period prescribed in the contract without first:

(1) obtaining the approval of the municipal works board; and
(2) paying to the municipality:
(A) charges made or assessed for the tap, use, or deposit, or for the sewers constructed in connection with the tap, use, or deposit; and
(B) the amount required by the contract.

All amounts received by the municipality under the contract shall be paid out, without appropriation, under the terms of the contract within sixty (60) days after they are received.

(b) Whenever any tap or connection is made in violation of subsection (a), the works board shall:

(1) remove or cause to be removed the unauthorized tap or connection and all connecting tile located in the right-of-way for the sewage works; and
(2) dispose of the unauthorized materials that are removed, without any liability on the part of the municipality.

As added by Acts 1981, P.L.309, SEC.95.

36-9-22-5

Sec. 5. (a) This section applies when:

(1) any part of the cost of a sewer, whether local or general, storm, sanitary, combination, or otherwise, is to be assessed against the owners of real property;
(2) the proposed sewer is to be connected into sewage works constructed under this chapter; and
(3) the owners did not contribute to the cost of those sewage works.

(b) There shall be included in:

(1) the engineer's estimate submitted to the municipal works board before the hearing on the proposed sewer; and
(2) the assessments;

a sum equal to the amount provided in or computed from the contract as the fair pro rata share due from the owners upon and for the contracted sewage works, including any interest owed. The sum included in the engineer's estimate must be separately itemized.

(c) If an owner elects to pay his assessment by installments in anticipation of which bonds and coupons are issued, the amount of the bonds and coupons must include the fair pro rata share of the cost of the contracted sewage works. However, an owner may elect to pay the fair pro rata share in cash within sixty (60) days after the assessment is final and to pay the remainder of the assessment in installments.

As added by Acts 1981, P.L.309, SEC.95.

Chapter 23. Municipal Sewage Works

36-9-23

36-9-23-0.1

Sec. 0.1. The amendments made to section 28 of this chapter (and to IC 32-9-1-2.5, before its repeal) by P.L.236-1993 apply to deposits held by a municipal sewage works under section 28 of this chapter, as amended by this act, after June 30, 1993.

As added by P.L.220-2011, SEC.683.

36-9-23-1

Sec. 1. This chapter applies to all municipalities.
As added by Acts 1981, P.L.309, SEC.96.

36-9-23-2

Sec. 2. A municipality may:

(1) acquire, construct, improve, operate, and maintain sewage works under this chapter;

(2) acquire, by gift, grant, purchase, condemnation, or otherwise, all lands, rights-of-way, and other property that are necessary for the sewage works;

(3) issue revenue bonds to pay the cost of acquiring, constructing, and improving the sewage works and property; and

(4) lease sewage works from a person, an entity, a corporation, a public utility, or a unit for a term not to exceed fifty (50) years.

A sewage works leased under this section is subject to IC 5-16-7.
As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.35-1990, SEC.68.

36-9-23-3

Sec. 3. The construction, acquisition, improvement, operation, and maintenance of sewage works under this chapter shall be supervised and controlled by the municipal works board. However, the municipal legislative body may, by ordinance, transfer the powers and duties of the works board under this chapter to:

(1) a sanitary board established under section 4 of this chapter; or

(2) the utility service board, if the municipality has such a board operating one (1) or more municipally owned utilities.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-4

Sec. 4. (a) A sanitary board established under this chapter consists of:

(1) the municipal executive; and

(2) two (2) persons appointed by the municipal legislative body, one (1) of whom must be a registered professional engineer.

The legislative body may not appoint any paid or unpaid municipal officer or employee to the board.

(b) One (1) of the original appointees to the sanitary board serves for a term of two (2) years, and the other serves for a term of three (3) years.

(c) When the term of a member of the sanitary board expires, a successor shall be appointed for a term of three (3) years in the manner prescribed by subsection (a).

(d) Vacancies on the sanitary board shall be filled for the unexpired term in the manner prescribed by subsection (a).

(e) The municipal executive is the chairman of the sanitary board.

(f) The sanitary board shall select a vice chairman from its members, and shall select a secretary and a treasurer, who need not be members of the board. However, the board may combine the offices of secretary and treasurer into a single office of secretary-treasurer. The officers selected under this subsection serve at the pleasure of the board.

(g) Each member of the sanitary board is entitled to the compensation, if any, that is fixed by:

(1) the executive, with the approval of the legislative body, in a city; or

(2) the legislative body, in a town;

as a salary or as payment for meetings attended. Each member is also entitled to payment for reasonable expenses incurred in the performance of his duties.

(h) The compensation of the secretary and treasurer of the sanitary board shall be fixed by:

(1) the executive, with the approval of the legislative body, in a city; or

(2) the legislative body, in a town.

(i) The municipal legislative body shall fix the bond required of each member of the sanitary board and of the treasurer of the board. These bonds shall be filed with the county recorder under IC 5-4-1-5.1.

(j) The sanitary board may establish rules and bylaws for its own government.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-5

Sec. 5. As used in sections 6 through 37 of this chapter, "board" means:

(1) the municipal works board; or

(2) if the municipality has transferred the powers and duties of the works board under section 3 of this chapter, the:

(A) sanitary board; or

(B) utility service board;

to which those powers have been transferred.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.1-2007, SEC.247; P.L.114-2008, SEC.28.

36-9-23-6

Sec. 6. (a) The board may enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. However, the board may not obligate itself or the municipality beyond the extent to which money has been or may be provided under this chapter.

(b) A contract relating to the financing of the acquisition or construction of any sewage works, or to any trust indenture authorized by this chapter, is not effective until it is approved by the municipal legislative body.

(c) A contract or an agreement with any contractor or contractors for labor, equipment, or materials shall be let and entered into under the statutes governing the letting of contracts by agencies of municipalities.

(d) The board or any public utility (as defined in IC 8-1-6-3) contracting with the board for the treatment, purification, or disposal in a sanitary manner of liquid and solid waste, sewage, night soil, or industrial waste may contract with a water utility furnishing water service to users or property served in the municipality or by the public utility to do the following:

(1) Ascertain the amount of water consumed.

(2) Compute the amount of the charge to be billed for sewer services to each user or property served.

(3) Bill and collect the amounts due for sewer services.

(4) Discontinue water service to delinquent sewer users.

A contract under this subsection is enforceable without the approval of the Indiana utility regulatory commission.

(e) The procedures in IC 36-9-25-11.5(a) through IC 36-9-25-11.5(e) apply to the discontinuance of water service to a delinquent sewer user under a contract between the board and a water utility described in subsection (d).

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.27-1995, SEC.7; P.L.34-1999, SEC.6.

36-9-23-7

Sec. 7. After the completion or acquisition of the sewage works, the board shall operate, manage, and control the works and may order and complete any extensions or improvements it considers necessary. The board shall adopt rules for the use and operation of the sewage works and of other sewers and drains connected to the works, to the extent that they may affect the operation of the works.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-8

Sec. 8. If requested to do so by the proper authority, the board shall, to the extent possible from money provided under this chapter, restore to their original condition any public ways or public works damaged by the board in the performance of its duties.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-9

Sec. 9. The board may employ, fix the compensation of, and prescribe the duties of engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and any other employees it considers necessary. The expenses incurred under this section shall be paid solely from money provided under this chapter.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-10

Sec. 10. (a) Before the construction, acquisition, or lease of any sewage works under this chapter, the municipal legislative body shall adopt an ordinance or ordinances:

(1) setting forth a brief general description of the works and, if the works are to be constructed, a reference to the plans and specifications prepared and filed by an engineer chosen by the board;
(2) setting forth the cost of the works, as estimated by the engineer;
(3) ordering the construction, acquisition, or lease of the works;
(4) setting forth an estimate of the fees for the several classes of users or property to be served;
(5) ordering the issuance of revenue bonds of the municipality under this chapter, in the amount necessary to pay the cost of the works; and
(6) containing any other necessary provisions.

(b) Unless all or part of the works is being constructed in compliance with an order of the department of environmental management to abate water pollution, notice of the adoption and the purport of the ordinance or ordinances shall immediately be given by publication in accordance with IC 5-3-1.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.197; P.L.35-1990, SEC.69.

36-9-23-11

Sec. 11. The engineer's estimate of costs under section 10(a)(2) of this chapter must include:
(1) the cost of acquiring or constructing the sewage works;
(2) the cost of all property, easements, franchises, and other rights considered necessary or convenient for the works;
(3) interest on bonds before and during the construction or acquisition, and for a period not exceeding twenty-four (24) months after completion of the construction or acquisition;
(4) engineering expenses, including expenses for plans, specifications, and surveys;
(5) legal expenses;
(6) expenses for estimates of cost and of revenues;
(7) administrative expenses; and
(8) other expenses necessary or incidental to:
(A) determining the feasibility of the works;
(B) financing the works;
(C) constructing or acquiring the works; and
(D) placing the works in operation.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-12

Sec. 12. (a) This section does not apply to undertakings in compliance with orders of the department of environmental management for which no objections are authorized.

(b) Forty (40) or more owners of property connected or to be connected to and served by sewage works authorized by an ordinance under section 10(a) of this chapter may file a written petition objecting to the construction or acquisition of the works. The petition must be filed with the municipal legislative body, must contain the names and addresses of the petitioners, and must set forth the following objections:
(1) The works are not required by the public needs.
(2) The cost of the proposed works would be excessive considering the value of the service to be rendered to the affected community.
(3) Any other ground of objection.

The petition shall be filed within twenty (20) days after the publication of notice under section 10(b) of this chapter.

(c) Unless the proposed works are abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first ten (10) signers of the petition at the addresses shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the works until the matters presented by the petition have been heard and determined by the court.

(d) The petitioners shall file with their petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(e) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(f) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body may not institute any further proceedings for the construction of the sewage works described in the ordinance or ordinances for a period of one (1) year after the date of the order, unless the construction is required by a subsequent order of the state department of environmental management to abate water pollution.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.198.

36-9-23-12.5

Sec. 12.5. Whenever a sewer user moves to a different residence from the one being supplied sewer service, but within the same municipality, the sewer utility shall forward the user's final sewer bill to the new address.

As added by P.L.349-1985, SEC.4.

36-9-23-13

Sec. 13. (a) All necessary preliminary expenses actually incurred by the board before the issuance and delivery of revenue bonds, including expenses incurred in:

(1) making surveys;
(2) estimating costs and revenues;
(3) employing engineers or other employees;
(4) giving notices; and
(5) taking options;

may be paid in the manner prescribed by this section.

(b) The board shall, from time to time, certify the items of expense to the municipal fiscal officer, directing him to pay the amounts certified. The fiscal officer shall draw a warrant or warrants in the correct amounts on the general fund, without appropriation. If there is no money in the general fund, the fiscal officer shall request the municipal legislative body to transfer from other funds of the municipality an amount sufficient to meet the items of expense, or to make a temporary loan for this purpose. The legislative body shall comply with the request promptly.

(c) Money transferred under subsection (b) shall be repaid by the board to the fund from which it was taken, out of the first proceeds of the sale of revenue bonds and before any other disbursements are made from those proceeds. The amount advanced to pay the preliminary expenses constitutes a first charge against the proceeds resulting from the sale of the revenue bonds until repaid.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-14

Sec. 14. (a) A municipality may, in the manner prescribed by IC 32-24, condemn:

(1) sewage works; and
(2) any land, easements, franchises, and other property it considers necessary for the construction of sewage works or for improvements to sewage works.

However, the municipality may pay for any property condemned or purchased only from money provided under this chapter.

(b) In any proceedings to condemn, orders that are just to the municipality and to the owners of the property to be condemned may be made. An undertaking or other security securing the property owners against any loss or damage resulting from the failure of the municipality to accept and pay for the property may be required, but the undertaking or security imposes liability upon the municipality only in the amount that may be paid from money provided under this chapter.

(c) If the board wants to purchase sewage works, it may obtain and exercise an option for the purchase of the works, or may enter into a contract for the purchase in the manner and under the terms and conditions that it considers proper.

(d) If the board wants to purchase or condemn sewage works already constructed, it must, at or before the time of adoption of the ordinance authorizing the acquisition, determine what repairs, replacements, additions, and other

actions are required to make the works effective for their purpose. An estimate of the cost of these actions shall be included in the estimate of cost made under section 11 of this chapter. These actions shall be taken upon the acquisition of the works, as a part of the cost of the acquisition.
As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.2-2002, SEC.122.

36-9-23-15

Sec. 15. Property upon which any lien or other encumbrance exists may not be acquired under this chapter unless, at the time the property is acquired, a sufficient sum of money is deposited in trust to pay and redeem the lien or encumbrance in full.
As added by Acts 1981, P.L.309, SEC.96.

36-9-23-16

Sec. 16. (a) A municipality that does not have a sewage treatment plant, and wants to acquire, construct, improve, operate, and maintain sewage works other than a sewage treatment plant, may proceed under this chapter only if it first contracts for the required treatment of the sewage emanating from its works.

(b) A municipality owning and operating facilities for sewage treatment may contract to treat all or part of the sewage of:

(1) any other municipality;

(2) any facility of the department of correction; or

(3) if a contract described in subdivision (2) is in effect, any person or entity, a municipal corporation, a private corporation, or a federal government facility that is located within five (5) miles of the sewer line connecting the municipality to the facility of the department of correction under the contract.

The contracts must be authorized by ordinance and are subject to approval by the department of environmental management according to rules adopted by the water pollution control board as to the sufficiency of the provision for sewage treatment.

(c) Unless otherwise provided in the authorizing ordinance or governing indenture, the revenues received by the owner under the contract are considered a part of the revenues of the owner's sewage treatment facilities, and shall be applied in accordance with the applicable statutes.

(d) The necessary intercepting and connecting sewers and appurtenances to connect the sewage treatment facilities and sewage works of the contracting parties may be constructed in part or in whole by either of the contracting parties, as provided in the contract. For a municipality, the money to pay for this construction may be provided by the issuance of bonds under the applicable statutes, as part of the cost of the facilities or works of the respective parties.

(e) All bonds issued under this section are payable before the expiration date of the contract. The parties may contract for the terms of the bonds, and for any term or terms beyond the last maturity of the bonds.
As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.199; P.L.318-1989, SEC.1.

36-9-23-17

Sec. 17. (a) This chapter does not authorize a municipality to make any contract or to incur any obligation that is not payable solely from money provided under this chapter.

(b) Money for the costs of the sewage works or any improvement of the works may be provided only:

(1) by the issuance of revenue bonds of the municipality;

(2) from a cumulative fund established by the municipality for that purpose; or

(3) by grant or loan from the federal government or any of its agencies.

(c) A municipality obtaining a loan from the federal government or a federal agency may issue its obligations under this chapter to the federal government or federal agency to evidence its indebtedness. The obligations are not a corporate indebtedness of the municipality, are payable solely from the revenues of the sewage works, and may be made of equal priority or subordinate to any other revenue bonds issued or to be issued under this chapter.

(d) Notwithstanding subsection (b), money to finance the construction of any of the self-liquidating works authorized by this chapter may be obtained from any state or federal agency.

(e) Notwithstanding subsection (b), any industrial cost recovery received by the municipality and required to be paid by industrial users under the terms of a federal grant are not considered revenues under this chapter. The municipal legislative body may use industrial cost recovery grants as provided by the terms of federal grants.
As added by Acts 1981, P.L.309, SEC.96.

36-9-23-18

Sec. 18. (a) Revenue bonds issued under this chapter are payable solely from the revenues of the sewage works for which they are issued, and are not a corporate indebtedness of the municipality.

(b) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the municipal legislative body, payable annually or at shorter intervals, and mature at the time or times determined by ordinance.

(c) The revenue bonds may be made redeemable before maturity at the option of the municipality, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the ordinance authorizing the issuance of the bonds.

(d) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(e) The ordinance authorizing the issuance of the revenue bonds must determine the form of the bonds, including any interest coupons to be attached to them, and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(f) The revenue bonds must contain a statement on their face that the municipality is not obligated to pay the principal or interest on them, except from the special fund provided from the net revenues of the sewage works.

(g) The revenue bonds are negotiable instruments.

(h) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone, or as to both principal and interest, but fully registered bonds shall be made convertible to coupon bonds at the option of the registered owner.

(i) The revenue bonds shall be executed in the same manner as other revenue bonds issued by municipalities are executed.

(j) The revenue bonds shall be sold by the municipal fiscal officer in the manner that is determined to be in the best interests of the municipality, but at not less than par value and only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(k) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(l) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the ordinance authorizing the first issue, or in the trust indenture authorized by section 22 of this chapter, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

(m) Subject to the provisions and limitations of any ordinance or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section, for the purpose of improving any works acquired or constructed under this chapter.

(n) Revenue bonds issued under this section are exempt from taxation for all purposes.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-19

Sec. 19. Any action to contest the validity of revenue bonds issued under this chapter must be brought at least five (5) days before the advertised date for the sale of the bonds.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-20

Sec. 20. (a) The first proceeds of any revenue bonds issued under this chapter shall be used to repay all amounts advanced for preliminary expenses under section 13 of this chapter. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(b) After the payments required by subsection (a) have been made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by section 21 of this chapter.

(c) The holders of the revenue bonds, or the trustees under section 22 of this chapter, have a lien on the bond proceeds until they are applied under this section.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-21

Sec. 21. At or before the time of issuance of revenue bonds under this chapter, the municipal legislative body, by ordinance, shall:

(1) establish a sinking fund for the payment of:

(A) the principal of and interest on the bonds; and

(B) the charges of banks or trust companies for making payment of the principal or interest; and

(2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The ordinance may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this chapter.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-22

Sec. 22. (a) The municipal legislative body may secure revenue bonds issued under this chapter by a trust indenture between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana, or another state. However, such a trust indenture may not convey or mortgage any part of the sewage works.

(b) The ordinance authorizing the revenue bonds may provide that:

(1) the trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the municipality and the board in relation to:

(A) the construction, acquisition, improvement, operation, repair, maintenance, and insurance of the sewage works; and

(B) the custody, safeguarding, and application of all money; and

(2) the works shall be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers or their successors, assigns, or nominees, who may be given the right to specify the security to be given by contractors and by any depository of the proceeds of bonds, revenues of the works, or other money pertaining to the works.

(b) The trust indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual right of action of bondholders as is customary in a trust indenture securing bonds and debentures of corporations. Except as otherwise provided in this chapter, the municipal legislative body may, by ordinance or in the trust indenture, specify:

(1) the officer, board, or depository that shall collect the proceeds of the sale of the bonds and the revenues of the sewage works; and

(2) the method of disbursing the proceeds and revenues.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-23

Sec. 23. (a) The rights granted by this section are subject to any restrictions contained in the ordinance authorizing the issuance of revenue bonds or in any trust indenture securing the bonds.

(b) The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this chapter or under the ordinance or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works.

(c) If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the municipality, the bondholders, and the trustee, if any. The receiver may:

(1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;

(2) pay any revenue bonds and interest outstanding; and

(3) apply the revenues in conformity with this chapter, the ordinance authorizing the bond issue, and the trust indenture, if any.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-24

Sec. 24. The municipality is subject to the fees established under this chapter or to fees established in harmony with this chapter, for services rendered the municipality, and shall pay the fees when due. The fees are considered part of the revenues of the sewage works and are subject to the disposition authorized or required for other revenues of the works.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-25

Sec. 25. (a) Subject to section 37 of this chapter, the municipal legislative body shall, by ordinance, establish just and equitable fees for the services rendered by the sewage works, and provide the dates on which the fees are due.

(b) Just and equitable fees are the fees required to maintain the sewage works in the sound physical and financial condition necessary to render adequate and efficient service. The fees must be sufficient to:

(1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;

(2) provide the sinking fund required by section 21 of this chapter;

(3) provide adequate money to be used as working capital; and

(4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) The fees are payable by the owner of each lot, parcel of real property, or building that:

(1) is connected with the sewage works by or through any part of the municipal sewer system; or

(2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each sewer connection.

(2) The amount of water used on the property.

(3) The number and size of water outlets on the property.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property has been or will be required to pay separately for any part of the sewage works.

(7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of his property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.

(8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.

(9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.

(10) Any other factors the legislative body considers necessary.

Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

(1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or

(2) the number of users in various locations.

As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.317, SEC.23; P.L.35-1990, SEC.70;

P.L.114-2008, SEC.29.

36-9-23-26

Sec. 26. (a) After the introduction of the ordinance establishing fees under section 25 of this chapter, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which users of the sewage works, owners of property served or to be served by the works, and other interested persons may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be:

(1) published in accordance with IC 5-3-1;

(2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for sewer availability to vacant or unimproved property; and

(3) mailed to users of the sewage works for service to property located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of the hearing is conspicuous. The hearing may be adjourned from time to time. Notice mailed under subdivision (3) must include the statement required by IC 8-1.5-3-8.1(c).

(b) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified. A copy of the schedule of fees adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. An ordinance adopted after March 31, 2012, that imposes different rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality or to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges, as required by IC 8-1.5-3-8.1(d).

(c) Subject to section 37 of this chapter, the fees established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(d) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(e) Fees collected under this chapter are considered revenues of the sewage works.

As added by Acts 1981, P.L.309, SEC.96. Amended by Acts 1981, P.L.45, SEC.62; P.L.77-1991, SEC.4; P.L.114-2008, SEC.30; P.L.139-2012, SEC.5.

36-9-23-26.1

Sec. 26.1. (a) Owners of property connected or to be connected to and served by the sewage works authorized under this chapter may file a written petition objecting to the rates and charges of the sewage works so long as:

(1) the petition contains the names and addresses of the petitioners;

(2) the petitioners attended the public hearing provided under section 26 of this chapter;

(3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 26 of this chapter;

(4) the written petition states specifically the ground or grounds of objection; and

(5) the petitioners have not filed a petition with the commission under IC 8-1.5-3-8.3 appealing the same rates and charges of the utility.

(b) Unless the objecting petition is abandoned, the municipal clerk shall file in the office of the clerk of the circuit or superior court of the county a copy of the rate ordinance or ordinances together with the petition. The court shall then set the matter for hearing at the earliest date possible, which must be within twenty (20) days after the filing of the petition with the court. The court shall send notice of the hearing by certified mail to the municipality and to the first signer of the petition at the address shown on the petition. All interested parties shall appear in the court without further notice, and the municipality may not conduct any further proceedings concerning the rates and charges until the matters presented by the petition have been heard and determined by the court.

(c) At the discretion and upon direction of the court, the petitioners shall file with the petition a bond in the sum and with the security fixed by the court. The bond must be conditioned on the petitioners' payment of all or part of the costs of the hearing and any damages awarded to the municipality if the petition is denied, as ordered by the court.

(d) Upon the date fixed in the notice, the court shall, without a jury, hear the evidence produced. The court may confirm the decision of the municipal legislative body or sustain the objecting petition. The order of the court is final and conclusive upon all parties to the proceeding and parties who might have appeared at the hearing, subject

only to the right of direct appeal. All questions that were presented or might have been presented are considered to have been adjudicated by the order of the court, and no collateral attack upon the decision of the municipal legislative body or order of the court is permitted.

(e) If the court sustains the petition, or if it is sustained on appeal, the municipal legislative body shall set the rates and charges in accordance with the decision of the court.

As added by P.L.77-1991, SEC.5. Amended by P.L.139-2012, SEC.6.

36-9-23-27

Sec. 27. After a contract for the construction of sewage works has been let and actual work has commenced, the municipality may bill and collect fees for the services to be rendered, in an amount sufficient to pay:

(1) the interest on the revenue bonds; and

(2) other expenses payable before the completion of the works.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-28

Sec. 28. (a) The legislative body of a municipality that operates sewage works under this chapter may, by ordinance, require the owners, lessees, or users of property served by the works to pay a deposit to ensure payment of sewer fees.

(b) The deposit required may not exceed the estimated average payment due from the property served by the sewage works for a three (3) month period. The deposit must be retained in a separate fund.

(c) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

(1) has been conveyed or transferred to another person; or

(2) no longer uses or is connected with any part of the municipal sewage system.

A statement under subdivision (1) must include the name and address of the person to whom the property is conveyed or transferred.

(d) If a depositor fails to satisfy costs and fees within sixty (60) days after the termination of his use or ownership of the property served, he forfeits his deposit and all accrued interest. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner prescribed by section 31 or 32 of this chapter.

(e) A deposit may be used to satisfy all or part of any judgment awarded the municipality under section 31 of this chapter.

(f) A deposit made under this section that has remained unclaimed by the depositor for more than seven (7) years after the termination of the services for which the deposit was made becomes the property of the municipality. IC 32-34-1 (unclaimed property) does not apply to a deposit described in this subsection.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.236-1993, SEC.2; P.L.31-1995, SEC.8; P.L.2-2002, SEC.123.

36-9-23-28.5

Sec. 28.5. (a) This section does not apply to a deposit made under section 28 of this chapter.

(b) IC 32-34-1 does not apply to an overpayment described in subsection (d).

(c) As used in this section, "payor" refers to the owner, lessee, or user of property served by the sewage works who has paid for service from the sewage works.

(d) An overpayment of sewer fees that remains unclaimed by a payor for more than seven (7) years after the termination of the service for which the overpayment was made becomes the property of the municipality.

As added by P.L.40-1996, SEC.12. Amended by P.L.2-2002, SEC.124.

36-9-23-29

Sec. 29. (a) If, as part of the construction of sewage works under this chapter, a municipality constructs a sewer suitable for use as a local or lateral sewer by abutting or adjoining property, it may charge a fee for connections to the sewer. The fee must be based on the pro rata cost of constructing a local or lateral sewer sufficient to serve the property.

(b) The board may approve or disapprove applications for connections and may fix the amount of the connection fee.

(c) A person who applies for a connection shall agree to pay the connection fee. If payment is not made as agreed, the fee constitutes a lien on the property for which the connection is made. Such a lien may be enforced in the manner prescribed by section 34 of this chapter.

(d) The municipal legislative body shall determine by ordinance whether the proceeds of connection fees collected under this section and other laws are to be used as:

(1) net revenues of the sewage works;

(2) payment toward the cost of construction of the works; or

(3) payment toward the cost of improving the works in the future.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-30

Sec. 30. (a) Subject to subsection (b), a municipality that operates sewage works under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) may require:

(1) connection to its sewer system of any property producing sewage or similar waste; and

(2) discontinuance of the use of privies, cesspools, septic tanks, and similar structures.

(b) A municipality may exercise the powers granted by subsection (a) only if:

(1) there is an available sanitary sewer within three hundred (300) feet of the property line of the affected property; and

(2) it has given notice by certified mail to the property owner at the address of the property, at least ninety (90) days before the date specified for connection in the notice.

(c) A municipality may establish, enforce, and collect reasonable penalties for failure to make a connection under this section.

(d) A municipality may apply to the circuit or superior court for the county in which it is located for an order to require a connection under this section. The court shall assess the cost of the action and reasonable attorney's fees of the municipality against the property owner in such an action.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.135.

36-9-23-31

Sec. 31. If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. The amount of the fee, the penalty, and a reasonable attorney's fee may be recovered by the board in a civil action in the name of the municipality.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.3-1990, SEC.136.

36-9-23-32

Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner if the owner has given the general office of the utility written notice of the address to which the owner's notice is to be sent. A notice sent to the owner under this subsection must be sent by certified mail, return receipt requested, or an equivalent service permitted under IC 1-1-7-1 to:

(1) the owner of record of real property with a single owner; or

(2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the

notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.131-2005, SEC.7; P.L.113-2010, SEC.153.

36-9-23-33

Sec. 33. (a) An officer described in subsection (b) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (l), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) The officer shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall then mail to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. Except for a county having a consolidated city, a service charge of five dollars ($5), which is in addition to the recording fee charged under this subsection and under subsection (f), shall be added to each delinquent fee that is recorded.

(d) This subsection applies only to a county containing a consolidated city. Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall certify to the county auditor a list of the liens that remain unpaid according to a schedule agreed upon by the county treasurer and the officer for collection with the next cycle's property tax installment. The county and its officers and employees are not liable for any material error in the information on the list.

(e) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the officer shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(f) The officer shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(g) On receipt of the list under subsection (e), the county auditor of each county shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which fees are delinquent, which fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next installment of property taxes. The county treasurer shall then include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(h) After certification of liens under subsection (e), the officer may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(i) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(l) A board may write off a fee or penalty under subsection (a) that is for less than forty dollars ($40).

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.354-1987, SEC.1; P.L.45-1990, SEC.8; P.L.1-1993, SEC.249; P.L.57-1993, SEC.18; P.L.88-1995, SEC.11; P.L.236-1997, SEC.1; P.L.10-1997, SEC.36; P.L.98-2000, SEC.29; P.L.171-2002, SEC.2; P.L.174-2003, SEC.1; P.L.39-2008, SEC.6.

36-9-23-34

Sec. 34. (a) A municipality or board may foreclose a lien established by this chapter in order to collect fees and penalties. The municipality or board shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

As added by Acts 1981, P.L.309, SEC.96.

36-9-23-35

Sec. 35. No proceedings other than those prescribed by this chapter are required for:

(1) the construction or acquisition of sewage works;

(2) the issuance or sale of bonds; or

(3) the establishment of fees;

under this chapter. However, the functions, powers, and duties of the department of environmental management, the water pollution control board, and the state department of health are not affected by this chapter.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.143-1985, SEC.200; P.L.2-1992, SEC.894.

36-9-23-36

Sec. 36. (a) Except as provided in subsections (b) and (c), a municipality may exercise powers granted by this chapter in areas within ten (10) miles outside its corporate boundaries.

(b) The mileage limitation in subsection (a) does not apply to the provision of sewage treatment service for an entity that is described in section 16(b)(2) of this chapter.

(c) In an area referred to in subsection (a), a municipality may not:

(1) impose fees under this chapter; or

(2) otherwise exercise powers granted by this chapter;

to provide storm water management services to the area if the county provides storm water management services to the area under IC 8-1.5-5.

As added by Acts 1981, P.L.309, SEC.96. Amended by P.L.318-1989, SEC.2; P.L.114-2008, SEC.31.

36-9-23-37

Sec. 37. (a) As used in this section:

(1) "service" means:

(A) imposing fees; and

(B) otherwise exercising powers;

to provide storm water management services; and

(2) "storm water board" refers to a board defined in IC 8-1.5-5-2.

(b) This section applies only if actions of:

(1) a board under section 36 of this chapter; and

(2) a storm water board under IC 8-1.5-5;

are pending at the same time to service the same area outside a municipality's corporate boundaries.

(c) The board and the storm water board must negotiate the adoption by the board and the storm water board of a

memorandum of understanding that permits only the board or only the storm water board to service the area referred to in subsection (b). Neither the board nor the storm water board may service the area before a memorandum of understanding is adopted under this subsection. The entity designated to service the area in the memorandum of understanding may finalize the entity's action referred to in subsection (b). The entity not designated to service the area in the memorandum of understanding must terminate the entity's action referred to in subsection (b).
As added by P.L.114-2008, SEC.32.

Chapter 24. Leasing of Sewage Disposal Facilities

36-9-24

36-9-24-1

Sec. 1. This chapter applies to all municipalities that own and operate sewage works under IC 36-9-23.
As added by Acts 1981, P.L.309, SEC.97.

36-9-24-2

Sec. 2. As used in this chapter, "sewage disposal facilities" means all or part of the facilities of a sewage disposal company furnishing service within the corporate boundaries of a municipality, or within one (1) mile outside those boundaries, including:

(1) certificates of territorial authority;
(2) indeterminate permits;
(3) franchises;
(4) rights-of-way; and
(5) easements;

but does not include the company's corporate stock, going-concern value, or good will.
As added by Acts 1981, P.L.309, SEC.97.

36-9-24-3

Sec. 3. (a) A municipality may lease sewage disposal facilities from a sewage disposal company that:

(1) holds a certificate of territorial authority under IC 8-1-2-89; and
(2) is a corporation organized under Indiana law for the purpose of acquiring, constructing, and leasing sewage disposal facilities to a municipality.

(b) In addition to the authority described in subsection (a), a municipality may lease from any person facilities to provide for treatment or disposal of sludge generated by the municipality's sewage works. The lessor under this subsection may be an individual, partnership, corporation, or other entity organized to lease sewage works to a municipality. Notwithstanding any other law, a lessor may acquire, construct, and lease facilities described in this subsection to a municipality without the approval of the utility regulatory commission.

(c) The municipality may operate the leased facilities in conjunction with the operation of the municipally owned sewage works.
As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.5-1988, SEC.222; P.L.186-1988, SEC.2.

36-9-24-4

Sec. 4. The term of a lease under this chapter may not exceed fifty (50) years. However, the lease must provide that the municipality has an option to renew the lease for a further term on similar conditions.
As added by Acts 1981, P.L.309, SEC.97.

36-9-24-5

Sec. 5. (a) A lease under this chapter must provide that the municipality has an option to purchase the property covered by the lease, under the terms and conditions specified in the lease.

(b) If the municipality exercises the option to purchase, it may obtain money to pay the purchase price by issuing and selling revenue bonds under the statutes governing the issuance and sale of sewage works revenue bonds for additions and extensions to the municipally owned sewage works.

(c) If the municipality does not exercise the option to purchase, the property covered by the lease becomes the absolute property of the municipality when:

(1) the lease has expired; and

(2) the municipality has discharged and performed all its obligations under the lease.
The lessor shall then execute proper instruments conveying good and merchantable title to the property to the municipality.
As added by Acts 1981, P.L.309, SEC.97.

36-9-24-6

Sec. 6. (a) A lease under this chapter may provide that:

(1) as part of the lease rental for the facilities, the municipality shall agree to:

(A) pay all property taxes and assessments levied against or on account of the facilities; and

(B) maintain insurance on the facilities for the benefit of the lessor; and

(2) the municipality shall assume all responsibilities for the operation, maintenance, repair, alteration, and extension of the facilities.

(b) However, the lease rental and the expenses incurred under this chapter are payable solely from the revenues derived from sewage and sewer fees to be collected by the municipality from property and users in the area served by the facilities.
As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.3.

36-9-24-7

Sec. 7. (a) When a municipality and a lessor agree on the terms and conditions of a lease proposed to be entered into under this chapter, notice of a hearing to be held before the municipal legislative body shall be given to all interested persons by publication in accordance with IC 5-3-1. The notice must name the date, place, and hour of the hearing, and set forth a summary of the principal terms of the lease agreed upon, including the name of the lessor, the character of the property to be leased, the lease rental to be paid, and the number of years the lease is to be in effect.

(b) The date of the hearing may not be less than twenty (20) days after publication of the notice.

(c) The proposed lease shall be kept available for inspection by the public before and at the hearing.

(d) At the hearing, all interested persons are entitled to be heard as to the necessity for the execution of the lease and whether the rental to be paid to the proposed lessor under the lease is a fair and reasonable rental for the facilities. The hearing may be adjourned to a later date or dates.

(e) After the hearing, the municipal legislative body may authorize the execution of the lease as originally agreed on, or may, with the consent of the proposed lessor, modify the lease. However, the lease rental as set out in the published notice may not be increased without a new notice and hearing.
As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.63; P.L.186-1988, SEC.4.

36-9-24-8

Sec. 8. (a) When a municipal legislative body authorizes the execution of a lease under section 7 of this chapter, notice of the signing of the contract shall be given by publication in the manner prescribed by section 7 of this chapter. Within thirty (30) days after publication of the notice, fifty (50) or more of the:

(1) users in the municipality served by the municipally owned sewage works; or

(2) users served by the facilities to be leased;

may file with the utility regulatory commission (if the lessor is leasing facilities under section 3(a) of this chapter), or with the circuit or superior court of the county where the facility is located (if the lessor is leasing facilities under section 3(b) of this chapter), a petition setting forth their objections to the lease rental, including facts showing that the lease rental is not fair and reasonable.

(b) On receipt of the petition, the commission or the court shall fix a time and place for a hearing on whether the lease rental is fair and reasonable. The hearing may not be less than twenty (20) nor more than sixty (60) days after the commission's or the court's receipt of the petition. At least ten (10) days before the date of the hearing, the commission or the court shall mail notice of the hearing to:

(1) the municipal executive;

(2) the municipality; and

(3) the first ten (10) petitioners listed on the petition, at their usual place of residence.

(c) The decision of the commission or the court as to whether the lease rental is fair and reasonable is final.
As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.126; P.L.186-1988, SEC.5.

36-9-24-9

Sec. 9. An action to contest the validity of a lease under this chapter, or to enjoin the performance of any of the terms and conditions of such a lease, may not be instituted later than:

(1) thirty (30) days after publication of notice under section 8(a) of this chapter; or

(2) if a petition has been filed with the utility regulatory commission or the court twenty (20) days after the decision of the commission or the court.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.127; P.L.186-1988, SEC.6.

36-9-24-10

Sec. 10. A lease under this chapter does not become effective until its provisions for sewage treatment have been found sufficient by the department of environmental management according to rules adopted by the state water pollution control board.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.143-1985, SEC.201.

36-9-24-11

Sec. 11. (a) A municipality that leases facilities under this chapter may, by ordinance, establish, bill, and collect fees from the property and users in the area served by the leased facilities. The fees must be sufficient to pay the costs of operation, maintenance, repair, alterations, depreciation, additions, and extensions of the leased facilities, and to pay the lease rental as it becomes due.

(b) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

(1) A flat charge for each sewer connection.

(2) The amount of water used on or in the property.

(3) The number and size of water outlets on the property.

(4) The amount, strength, or character of the sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Any other factors the legislative body considers necessary.

(c) After introduction of the ordinance establishing the fees, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which all of the users of the leased facilities and owners of property served or to be served by the facilities may be heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be published in accordance with IC 5-3-1. The hearing may be adjourned from time to time.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified.

(e) The fees established for any class of users shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(f) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(g) The fees established and collected by the municipality are not subject to the jurisdiction of the utility regulatory commission.

(h) The municipality may collect delinquent fees in the manner provided by IC 36-9-23-31 through IC 36-9-23-34.

As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.64; P.L.23-1988, SEC.128; P.L.186-1988, SEC.7.

36-9-24-12

Sec. 12. Facilities leased to a municipality under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of such a lease is subject to all applicable taxes.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.8.

36-9-24-13

Sec. 13. Except as specifically required in this chapter, a municipality acting under this chapter need not comply with other statutes concerning the lease and acquisition of facilities by municipalities.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.9.

36-9-24-14

Sec. 14. A municipality that leases and operates sewage disposal facilities in an area within one (1) mile outside its corporate boundaries is considered to be furnishing sewage and sewer service in that area for purposes of IC 36-4-3-13.

As added by Acts 1981, P.L.309, SEC.97.

Chapter 25. Sanitation Department in Certain Cities

36-9-25

36-9-25-1

Sec. 1. (a) This chapter applies to the following:

(1) A second class city located in a county having a population of more than one hundred eleven thousand (111,000) but less than one hundred fifteen thousand (115,000).

(2) Each municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) in which the legislative body has adopted this chapter by ordinance.

(b) This chapter also applies to each second class city not in such a county in which the legislative body has adopted this chapter by ordinance.

(c) In addition, in a consolidated city, sections 9 through 38 of this chapter apply to the department of public works and the board of public works, subject to IC 36-3-4-23.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.179; P.L.80-1997, SEC.19; P.L.170-2002, SEC.168; P.L.119-2012, SEC.230.

36-9-25-2

Sec. 2. As used in this chapter:

"Board" refers to a board of sanitary commissioners, or board of public works of a consolidated city.

"Department" refers to a department of public sanitation, or department of public works of a consolidated city.

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

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-3

Sec. 3. (a) A department of public sanitation is established as an executive department of the municipality. However, in the case of a district described in subsection (b)(2), the department is established as an executive department of each municipality in the district.

(b) The department is under the control of a board of sanitary commissioners, which is composed as follows:

(1) If the department is established under section 1(a) of this chapter, the board consists of not less than three (3) but not more than five (5) commissioners. All of the commissioners shall be appointed by the municipal executive, unless one (1) commissioner is the municipal engineer. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) may be of the same political party.

(2) Notwithstanding subdivision (1), if the department is established under section 1(a) of this chapter and the district contains at least one (1) city having a population of less than one hundred thousand (100,000) and at least one (1) town, the board consists of one (1) commissioner from each municipality in the district. The executive of each of those municipalities shall appoint one (1) commissioner. If after all appointments are made the board has fewer than five (5) commissioners, the executive of the municipality with the largest population shall appoint the number of additional commissioners needed to bring the total to five (5). Not more than three (3) of the commissioners may be of the same political party.

(3) If the department is established under section 1(b) of this chapter, the board consists of not less than three (3) commissioners but not more than five (5) commissioners. One (1) commissioner is the city civil engineer. All other commissioners shall be appointed by the city executive. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) of the commissioners may be of the same political party. However, if the department is located in a county having a population of:

(A) more than one hundred five thousand (105,000) but less than one hundred ten thousand (110,000);
(B) more than one hundred eleven thousand (111,000) but less than one hundred fifteen thousand (115,000);
(C) more than one hundred seventy thousand (170,000) but less than one hundred seventy-five thousand (175,000); or
(D) more than one hundred twenty-five thousand (125,000) but less than one hundred thirty-five thousand (135,000);

and the city does not have a city civil engineer, one (1) of the commissioners must be a licensed engineer, appointed by the executive, with at least five (5) years experience in civil or sanitary engineering. In addition, in such a city the commissioners may not hold another public office. Not more than two (2) of the commissioners may be of the same political party, unless the board consists of five (5) commissioners, in which case not more than three (3) of the commissioners may be of the same political party.

(c) Before beginning the commissioner's duties, each commissioner shall take and subscribe the usual oath of office. The oath shall be endorsed upon the certificate of appointment and filed with the municipal clerk.

(d) Each commissioner shall also execute a bond in the penal sum of five thousand dollars ($5,000) payable to the state and conditioned upon the faithful performance of the commissioner's duties and the faithful accounting for all money and property that comes under the commissioner's control. The bond must be approved by the municipal executive.

(e) The appointed commissioners are entitled to a salary of not less than three thousand six hundred dollars ($3,600) a year during actual construction and not less than six hundred dollars ($600) a year in other years.

(f) Notwithstanding IC 36-1-8-10, whenever this section requires that the membership of the board of sanitary commissioners not exceed a stated number of members from the same political party, at the time of appointment the appointee must:

(1) have voted in the two (2) most recent primary elections held by the party with which the appointee claims affiliation; or
(2) if the appointee did not vote in the two (2) most recent primary elections or only voted in one (1) of those elections, be certified as a member of the party with which the appointee claims affiliation by that party's county chairman for the county in which the appointee resides.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.64; P.L.319-1989, SEC.1; P.L.320-1989, SEC.1; P.L.12-1992, SEC.180; P.L.170-2002, SEC.169; P.L.175-2006, SEC.21; P.L.17-2007, SEC.1; P.L.119-2012, SEC.231.

36-9-25-4

Sec. 4. (a) The initial terms of the commissioners are as follows:

(1) If the department is established under section 1(a) of this chapter, the initial terms are one (1), two (2), and three (3) years for the first three (3) commissioners. If additional commissioners are appointed, their initial terms are four (4) years.
(2) If the department is established under section 1(b) of this chapter, the initial terms of the two (2) appointed commissioners are four (4) and three (3) years respectively. However, if a third commissioner has also been appointed, the commissioner's initial term is two (2) years.

All terms begin on January 1 following the establishment of the department.

(b) As the initial terms expire, successors shall be appointed for four (4) year terms. In a county that is listed in section 3(b)(3) of this chapter, the appointments must be made before January 16 in the year the term begins. If a vacancy occurs on the board, the appointing authority shall appoint a commissioner for the remainder of the term within thirty (30) days after the vacancy occurs.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.65; P.L.320-1989, SEC.2; P.L.12-1992, SEC.181.

36-9-25-5

Sec. 5. (a) A commissioner may not be removed from office except upon charges preferred before the municipal executive and a hearing held on them. The only permissible reasons for removal are neglect of duty and incompetence. The commissioner must be given at least ten (10) days' notice of the time and place of the hearing and the opportunity to produce evidence and examine and cross-examine witnesses. All testimony shall be given under oath. The municipal executive shall put his findings in writing and file them with the municipal clerk.

(b) If the charges are sustained and the commissioner removed, he may appeal the findings within ten (10) days after the date they are filed with the clerk to the circuit or superior court of the county in which the municipality is located. The commissioner shall file an original complaint against the executive, stating the charges preferred and the findings made. The court shall hear the appeal within thirty (30) days after it is filed without a jury and shall either ratify or reverse the finding of the executive. The judgment of the court is final and an appeal may not be taken.
As added by Acts 1981, P.L.309, SEC.98.

36-9-25-6

Sec. 6. (a) Within six (6) months after the date this chapter is adopted by ordinance, or within thirty (30) days after the commissioners are appointed in a county that is listed in section 3(b)(3) of this chapter, the board shall hold a meeting for the purpose of organization. The board shall choose one (1) of its members to be president and another to be vice president, who shall perform the usual duties of those offices. The officers serve for a period of one (1) year or until their successors are elected and qualified. The municipal fiscal officer shall perform the same duties with the funds and accounts of the board as with the funds and accounts of the other executive departments of the municipality, except as otherwise provided in this chapter. The fiscal officer receives no additional compensation for performing these duties.

(b) A majority of the members of the board constitutes a quorum, and the concurrence of a majority is necessary for any action of the board. The board shall hold regular meetings at the times it fixes and may call special meetings at the times and upon the notice that it fixes by rule or resolution. All meetings must be open to the public. The board may adopt the rules that it considers necessary to conduct its meetings and business and to control and manage the property under its jurisdiction.
As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.66; P.L.12-1992, SEC.182.

36-9-25-7

Sec. 7. (a) This section applies to cities in a county that is listed in section 3(b)(3) of this chapter. However, subsections (b) and (c) of this section also apply to municipalities that adopt this chapter by ordinance under section 1(a) of this chapter.

(b) This chapter does not affect the enabling ordinances, the duties of the municipality, or the rights of bondholders with regard to sewage works revenue bonds or other outstanding revenue bonds issued before this chapter was adopted by ordinance.

(c) Adoption of this chapter by ordinance does not affect the system of fees for sewage treatment. All revenue derived from fees shall be applied only to the following purposes:

(1) The administrative expense, operation, construction, and maintenance of sewage works.

(2) The retirement of outstanding revenue bonds and any additional revenue bonds that may be issued for construction of sewage works and improvements, additions, and extensions to them.

(3) The payment of the cost of improvements, additions, and extensions to the extent permitted by the ordinances authorizing the issuance of revenue bonds.

(d) The ordinance adopting this chapter must specify that the district initially includes all territory within the corporate boundaries of the city, including any territory, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the city that has been taken into or has been connected with the public sanitation system of the city in accordance with another statute if the sewage or drainage of that area discharges into or through the sewage system of the city.
As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.67; P.L.12-1992, SEC.183.

36-9-25-8

Sec. 8. (a) This section applies to cities in a county having a population of more than one hundred twenty-five thousand (125,000) but less than one hundred thirty-five thousand (135,000).

(b) The ordinance adopting this chapter must specify the purpose or purposes for which the district is established, which must be one (1) or more of the following:

(1) To provide for the collection, treatment, and disposal of sanitary sewage and other water-carried wastes of the district.

(2) To provide for the drainage of storm and surface water to relieve sanitary sewers of that water.

(3) To reduce the pollution of watercourses in the district.

(4) To provide for the collection and disposal of trash, garbage, and solid waste.

If not all of these purposes are listed in the ordinance, one (1) or more of the remaining purposes may, by subsequent ordinance, be added to the purposes of the district.

(c) After adoption of the ordinance, three (3) interim members of the board shall be appointed for terms until the January 1 following the adoption. On the January 1 following the adoption, members shall be appointed as provided in sections 3 and 4 of this chapter.

(d) Bonds of the district may not be sold without the prior approval of the city legislative body. In addition, the legislative body must approve all budgets and tax levies of the district.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1982, P.L.1, SEC.68; P.L.12-1992, SEC.184; P.L.170-2002, SEC.170; P.L.119-2012, SEC.232.

36-9-25-9

Sec. 9. The board shall manage and control all sewage works of the district. The board has concurrent power with the works board of the municipality to construct, reconstruct, maintain, repair, and regulate the use of all connecting and intercepting sewers. The board shall collect and remove garbage, ashes, and other waste materials to prevent the pollution of watercourses within the district and to protect the public health. The board may purchase, acquire, construct, reconstruct, operate, repair, and maintain all sewage works.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-10

Sec. 10. In performing its duties the board may do the following:

(1) If needed for sewage works, condemn, appropriate, lease, rent, purchase, and hold any real or personal property within the district or within five (5) miles outside the boundaries of the district.

(2) Enter upon any lots or lands for the purpose of surveying or examining them to determine the location of any sewage works or other structures, roads, levees, or walls connected with or necessary for the use or operation of the facilities.

(3) Design, order, contract for, construct, reconstruct, and maintain the sewage works.

(4) Build or have built all roads, levees, walls, other structures, or lagoons that may be desirable in connection with sewage works and make improvements to the grounds and premises under its control, including the erection and operation of a plant for the removal of sand and gravel from the grounds.

(5) Compel the owners, operators, or lessees of all factories, shops, works, plants, or other structures to treat, purify, or eliminate from the sewage and trade waste of the premises any ingredients that interfere with the successful operation of the sewage works. It may compel the owners, operators, or lessees of the premises located on a watercourse to direct an excessive flow of water into the watercourse.

(6) Review and approve plans for privately constructed plants for the treatment or elimination of trade waste. This is to insure that an owner, operator, or lessee of a house, factory, shop, works, plant, or other structure that may be directly or indirectly connected with sewers emptying into the sewage works does not construct a purification plant, machine, or other device for eliminating or treating the trade waste from those places for the purpose of eliminating ingredients that would harm the sewage works until the plans have been submitted to and approved by the board. After plans have been submitted to the board, it may reject them in their entirety or order changes to be made that include its supervision and regulation of the operation. An appeal may be taken from the decision of the board rejecting the plans submitted or ordering changes by the owner, operator, or lessee of a proposed private plant, in the same manner as appeals from the works board as far as applicable.

(7) Build or have built a plant or plants and all appurtenances for the treatment of sludge, pressing of sludge, or converting sludge into marketable fertilizer.

(8) Sell any byproduct from the sewage works, or furnish any byproduct free for the use of the municipality or for other public uses, with revenue derived from the sale above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.

(9) Compel the owners, lessees, or agents in possession of lots or land from which sewers discharge sewage or drainage and pollute a watercourse or body of water or constitute a menace to public health and welfare to connect the sewers with drains leading directly or indirectly into sewage works regulating the use and assessing reasonable charges.

(10) Construct or have constructed regulating devices at the junction of combined sewers with intercepting sewers to regulate the discharge into the intercepting and connecting sewers to prevent the pollution of streams

or bodies of water or a menace to the public health and welfare.
(11) Construct, add to, reconstruct, or maintain an incinerating or reduction plant or other plants for the conversion, destruction, or disposal of garbage, filth, ashes, dirt, and rubbish. The board may operate the plant in connection with sewage works, and sell any byproducts derived from the garbage, filth, ashes, or rubbish, including sand and gravel taken from lands under the control of the board at prices that are determined by the board, or furnish it free to the municipality or for other public uses, with revenue derived above the amount needed for maintenance to be paid into the sanitary district bond fund, or if no bonds are outstanding, to revert to its general fund.
(12) Take charge of all real property, belonging to the municipality and under the control of the works board, suitably located for sewage works if the board demands the works board, subject to contracts, to relinquish and transfer control of real and personal property used by the works board for the collection and removal of garbage and ashes. The transfer of personal property must be made by resolution adopted by the works board describing the property, with a copy of the resolution to be delivered to the board and made a matter of record in the minutes of the proceedings of the board.
(13) Collect and remove, or contract for the collection and removal of, all garbage, ashes, dead animals, refuse, and wastes from domestic premises, and construct or have constructed stations, including barns, garages, sheds, blacksmith shops, dumps, incinerators, and all other useful or necessary improvements for this purpose. This includes the power to collect and remove soil and other sewage in areas not provided with sewers, and then to discharge or dispose of it into sewage works.
(14) Enter into contracts in the name of the municipality, with the approval of the executive as provided by law. However, in the case of a district described in section 3(b)(2) of this chapter, the board may enter into contracts in the name of:
(A) a municipality in the district, with the approval of the executive of the municipality; or
(B) the district, with the approval of the board.
(15) Employ and pay for all engineering, architectural, legal, and other professional services needed in carrying out this chapter, including determining the number, prescribing the duties, and fixing the compensation for all its engineers, chemists, attorneys, bacteriologists, surveyors, inspectors, clerks, stenographers, laborers, supervisors, and other employees as provided by law for other executive departments of the municipality.
(16) Adopt resolutions, rules, and bylaws that are necessary to carry out this chapter, including repealing or amending them consistent with this chapter.
(17) Prepare a schedule of reasonable service fees and collect them from persons who own, lease, or possess or control as tenants or as agents lots or lands located outside the boundaries of the district if the lots or lands are benefited by connection into the sanitary sewer system of the district as described in this chapter, with the proceeds from sewage connections and treatment service credited to the general fund of the district for general use and maintenance purposes. The fees may be fixed, repealed, or amended, or the service discontinued, by the board at its discretion.
(18) Sue or be sued in the name of the municipality, with payment for obligations and of a judgment against the municipality in an action to be made solely from funds of the department and its district that may be available for this purpose. In the case of a district described in section 3(b)(2) of this chapter, the board may sue or be sued in the name of any municipality in the district or in the name of the district. If a judgment is entered against a municipality in the district, payment of obligations and the judgment shall be made solely from available funds of the department or the district.
(19) Pay for services rendered or for any other obligations incurred by the board while executing its powers, or pay any judgments, including interest and costs, by issuing and selling the bonds of the district, or obtaining temporary loans or levying taxes as authorized by this or other statutes for any other purpose.
(20) Lease, rent, purchase, and hold real or personal property more than five (5) miles outside the boundaries of the district if the property is needed:
(A) to store sludge;
(B) to convert sludge into marketable fertilizer; or
(C) by the district to conduct activities that are related to activities described in clause (A) or (B).
As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.175-2006, SEC.22.

36-9-25-11

Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the board from the delinquent user or owner of the property served in a civil action in the name of the municipality.

(g) Fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the penalties under subsections (f) and (g) and section 11.5 of this chapter, a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

(1) established under this subsection or any other law; and

(2) used to provide financial assistance under section 42 of this chapter;

is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.65; Acts 1982, P.L.77, SEC.22; P.L.55-1988, SEC.13; P.L.64-1989, SEC.3; P.L.175-2006, SEC.23; P.L.168-2009, SEC.10.

36-9-25-11.1

Sec. 11.1. In a consolidated city, the board may also require the users of the sewage service to make a reasonable deposit in advance of a connection or reconnection to the sewerage system to secure payment of the fees. The deposit may not exceed thirty-three percent (33%) of the estimated annual cost of the service for a particular user.
As added by P.L.349-1985, SEC.1.

36-9-25-11.2

Sec. 11.2. If a fee established under section 11 of this chapter is not paid within thirty (30) days after it is due, a copy of any notice of delinquency sent to a delinquent user who is a tenant must be sent to the owner of the property occupied by the tenant at the latest address of the owner as shown on the property tax records of the county in which the property is located.
As added by P.L.237-1997, SEC.1.

36-9-25-11.3

Sec. 11.3. (a) This section applies to a board and district created under section 3(b)(2) of this chapter.

(b) For purposes of this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) For purposes of this section, "fees" means fees:

(1) for the treatment and disposal of sewage and other waste discharged into the sewer system of the district; and

(2) related to property that is subject to full taxation.

(d) Fees do not take effect until the fees are:

(1) approved by the board; and

(2) either:

(A) approved in an ordinance adopted by the legislative body of each municipality in the district; or

(B) established by the commission under this section.

(e) Not earlier than thirty (30) days after fees are approved under subsection (d)(1), the board may petition the commission to establish the fees under:

(1) the procedures set forth in IC 8-1-2; and

(2) subsection (f).

(f) The commission shall observe the following requirements when establishing fees for a district:

(1) Fees must be sufficient to enable the district to furnish reasonably adequate services and facilities.

(2) Fees for a service must be nondiscriminatory, reasonable, and just and must produce sufficient revenue, together with taxes levied under this chapter, to do the following:

(A) Pay all legal and other necessary expenses incident to the operation of the utility, including the following:

(i) Maintenance costs.

(ii) Operating charges.

(iii) Upkeep.

(iv) Repairs.

(v) Depreciation.

(vi) Interest charges on bonds or other obligations, including leases.

(B) Provide a sinking fund for the liquidation of bonds or other obligations, including leases.

(C) Provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the board. The amount may not exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals, if any.

(D) Provide adequate money for working capital.

(E) Provide adequate money for making extensions and replacements to the extent not provided for through depreciation in clause (A).

(F) Provide money for the payment of taxes that may be assessed against the district.

(3) The fees charged by the district must produce an income sufficient to maintain district property in a sound physical and financial condition to render adequate and efficient service. Fees may not be too low to meet these requirements.

(4) If the board petitions the commission under subsection (e), the fees established must produce a reasonable return on the sanitary district facilities.

(5) Fees other than fees established for a municipally owned utility taxed under IC 6-1.1-8-3 must be sufficient to compensate the municipality for taxes that would be due the municipality on the utility property located in the municipality if the property were privately owned.

(6) The commission must grant a request by the board to postpone an increase in fees until after the occurrence of a future event.

(g) The board may transfer fees in lieu of taxes established under subsection (f)(5) to the general fund of the appropriate municipality.

(h) Fees established by the commission under this section take effect to the same extent as if the fees were approved by an ordinance adopted by the legislative body of each municipality in the district.

As added by P.L.175-2006, SEC.24.

36-9-25-11.5

Sec. 11.5. (a) As an alternative to the penalties provided in section 11 of this chapter, the board may require that the water utility providing water service to a delinquent user discontinue service until payment of all overdue user fees, together with any penalties provided in this section, are received by the municipality.

(b) If a fee established is not paid within one (1) monthly billing cycle after it is due, the board or its designee shall send notice to the delinquent user stating:

(1) the delinquent amount due, together with any penalty;

(2) that water service may be disconnected if the user continues not to pay the delinquency and any penalty; and

(3) the procedure for resolving disputed bills.

The municipality shall provide by ordinance a procedure for resolving disputed bills that includes an opportunity for a delinquent user to meet informally with designated personnel empowered to correct incorrect charges. Payment of a disputed bill and penalties by a user does not constitute a waiver of rights to subsequently claim and recover from the municipality sums improperly charged to the user.

(c) If the user fails to pay the delinquent amount or otherwise resolve the charges as specified in subsection (a), the board or its designee shall give written notice to the water utility serving the user to discontinue water service to the premises designated in the notice until notified otherwise. The notice must identify the delinquent sewer user in enough detail to enable the water utility to identify the water service connection that is to be terminated. Upon receipt of the notice, the water utility shall disconnect water service to the user.

(d) Water service may not be shut off under this section if a local board of health has found and certified to the municipality that the termination of water service will endanger the health of the user and others in the municipality.

(e) The water utility that discontinues water service in accordance with an order from the board or its designee does not incur any liability except to the extent of its own negligence or improper conduct.

(f) If the water utility does not discontinue service within thirty (30) days after receiving notice from the municipality, the utility is liable for any user fees incurred thirty (30) days after receipt of notice to discontinue water service and that are not collected from the user.

As added by P.L.349-1985, SEC.2. Amended by P.L.55-1988, SEC.14; P.L.64-1989, SEC.4; P.L.93-1993, SEC.9; P.L.98-1993, SEC.6.

36-9-25-11.7

Sec. 11.7. A municipality may, by ordinance, establish a procedure to expense as bad debt overdue user fees, together with any penalties provided under this chapter, if the amount of fees and penalties involved does not exceed twenty-five dollars ($25).

As added by P.L.55-1988, SEC.15.

36-9-25-12

Sec. 12. (a) The fees for the treatment and disposal of sewage may be based on:

(1) a flat charge for each sewer connection;

(2) the amount of water used on the premises;

(3) the number and size of water outlets on the premises;

(4) the amount, strength, or character of sewage discharged into the sewers;

(5) the size of sewer connections; or

(6) any combination of these factors or other factors that the board determines necessary in order to establish just and equitable rates and charges.

(b) The board may enter into contracts with a water utility furnishing water service to users or property served in the district relative to:

(1) ascertaining the amount of water consumed;

(2) the computation of the amount of charge to be billed to each user or property served;

(3) the billing and collection of the amounts; and

(4) the discontinuance of water service to delinquent users as provided in section 11.5 of this chapter.

(c) As an alternative to subsection (b), the board may require a water utility furnishing water service to users or property served in the district to perform the functions listed in subsection (b). If the water utility and the board do not agree upon the reasonable compensation to be paid to the water utility for the services described in subsection (b), the board or the water utility may apply to the utility regulatory commission to establish the reasonable compensation for the services. Upon receipt of an application, the utility regulatory commission, after notice to the water utility and the board and after a hearing, shall establish the reasonable compensation to be paid for the services. The water utility shall then render the services described in return for the compensation fixed.

(d) If a person owns or occupies real property that is connected to the sewage works and either directly or indirectly uses water obtained from a source other than a water utility that is not measured by a water meter acceptable to the board, then the board may require the person, at his own expense, to furnish, install, and maintain a water or sewage measuring device acceptable to the board.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.349-1985, SEC.3; P.L.23-1988, SEC.129.

36-9-25-13

Sec. 13. (a) The board, in the name of the municipality, may bring an action to recover damages for:

(1) the breach of an agreement, express or implied, relating to the construction, management, or repair of sewage works under its control, including real property; or

(2) injury to the personal or real property used in the sanitary disposal of sewage in a municipality located within the district.

(b) The board may recover possession of property, may bring an action for the specific performance of an agreement, and may use, in the name of the municipality, any legal or equitable remedy necessary to protect and enforce the rights and perform the duties of the department.

(c) The board may establish limits on the kinds or amounts of chemicals and the strength of the waste or other substances the board considers detrimental to the sewage works. If a person discharges sewage into the sewage works that exceeds limits set by the board, the board may order the person to cease using the sewage works upon a hearing with notice. However, if evidence indicates a public health hazard is being created, the board may summarily order the person to cease without notice or hearing. Orders of the board may be enforced by bringing an action to enjoin discharges into the sewer works in any court in the county having jurisdiction to hear equity actions. A person aggrieved by an order of the board is entitled to appeal the order to the circuit or superior court of the county in which the city is located. If an order is given without notice, an appeal must be perfected within ten (10) days after receipt of the order or the right to appeal is considered waived.

(d) The board of a department in a district described in section 3(b)(2) of this chapter may bring an action in the name of:

(1) a municipality in the district with the approval of the executive of the municipality; or

(2) the district, with the approval of the board.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.175-2006, SEC.25.

36-9-25-14

Sec. 14. (a) As to each municipality to which this chapter applies:

(1) all the territory included within the corporate boundaries of the municipality; and

(2) any territory, town, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the municipality that has been taken into the district in accordance with a prior statute, the sewage or drainage of which discharges into or through the sewage system of the municipality;

constitutes a special taxing district for the purpose of providing for the sanitary disposal of the sewage of the district in a manner that protects the public health and prevents the undue pollution of watercourses of the district.

(b) Upon request by:

(1) a resolution adopted by the legislative body of another municipality in the same county; or

(2) a petition of the majority of the resident freeholders in a platted subdivision or of the owners of unplatted land outside the boundaries of a municipality, if the platted subdivision or unplatted land is in the same county;

the board may adopt a resolution incorporating all or any part of the area of the municipality, platted subdivision, or unplatted land into the district.

(c) A request under subsection (b) must be signed and certified as correct by the secretary of the legislative body, resident freeholders, or landowners. The original shall be preserved in the records of the board. The resolution of the board incorporating an area in the district must be in writing and must contain an accurate description of the area incorporated into the district. A certified copy of the resolution, signed by the president and secretary of the board, together with a map showing the boundaries of the district and the location of additional areas, shall be delivered to the auditor of the county within which the district is located. It shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) In addition, upon request by ten (10) or more interested resident freeholders in a platted or unplatted territory, the board may define the limits of an area within the county and including the property of the freeholders that is to be considered for inclusion into the district. Notice of the defining of the area by the board, and notice of the location and limits of the area, shall be given by publication in accordance with IC 5-3-1. Upon request by a majority of the resident freeholders of the area, the area may be incorporated into the district in the manner provided in this section. The resolution of the board incorporating the area into the district and a map of the area shall be made and filed in the same manner.

(e) In addition, a person owning or occupying real property outside the district may enter into a sewer service agreement with the board for connection to the sewage works of the district. If the agreement provides for connection at a later time, the date or the event upon which the service commences shall be stated in the agreement. The agreement may impose any conditions for connection that the board determines. The agreement must also provide the amount of service charge to be charged for connection if the persons are not covered under section 11 of this chapter, with the amount to be fixed by the board in its discretion and without a hearing.

(f) All sewer service agreements made under subsection (e) or (after June 30, 2013) a signed memorandum of the sewer service agreement shall be recorded in the office of the recorder of the county where the property is located. The agreements run with the property described and are binding upon the persons owning or occupying the property, their personal representatives, heirs, devisees, grantees, successors, and assigns. Each agreement that is recorded, or each agreement of which a signed memorandum is recorded, and that provides for the property being served to be placed on the tax rolls shall be certified by the board to the auditor of the county where the property is located. The certification must state the date the property is to be placed on the tax rolls, and upon receipt of the certification together with a copy of the agreement, the auditor shall immediately place the property certified upon the rolls of property subject to the levy and collection of taxes for the district. An agreement may provide for the collection of a service charge for the period services are rendered before the levy and collection of the tax.

(g) Except as provided in subsection (j), sewer service agreements made under subsection (e) must contain a waiver provision that persons (other than municipalities) who own or occupy property agree for themselves, their executors, administrators, heirs, devisees, grantees, successors, and assigns that they will:

(1) neither object to nor file a remonstrance against the proposed annexation of the property by a municipality within the boundaries of the district;

(2) not appeal from an order or a judgment annexing the property to a municipality; and

(3) not file a complaint or an action against annexation proceedings.

(h) This subsection does not affect any rights or liabilities accrued or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, a waiver of the right to remonstrate under subsection (g) is binding as to an executor, administrator, heir, devisee, grantee, successor, or assign of a party to a sewer service agreement under subsection (g) only if the executor, administrator, heir, devisee, grantee, successor, or assign:

(1) has actual notice of the waiver; or

(2) has constructive notice of the waiver because the sewer service agreement or a signed memorandum of the sewer service agreement stating the waiver has been recorded in the chain of title of the property.

(i) This section does not affect any sewer service agreements entered into before March 13, 1953.

(j) Subsection (g) does not apply to a landowner if all of the following conditions apply:

(1) The landowner is required to connect to a sewer service because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of service or connection to the sewer service are paid by a person other than the landowner or the municipality.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.66; P.L.172-1995, SEC.6; P.L.243-2013, SEC.4.

36-9-25-15

Sec. 15. (a) The board, on its own initiative, whenever any territory, by its contour and watershed, or because of the extension of sewers by the municipality, is capable of draining sewage into or connecting with the sanitary system, may incorporate any territory, whether platted or unplatted, into the district by adopting a resolution to that effect describing the reason it is to be included. A certified copy of the resolution is conclusive evidence in any proceeding that the territory described was properly incorporated and constitutes a part of the district, subject to this chapter.

(b) Immediately after the passage of a resolution under subsection (a), a notice stating the time and place for a public hearing on the resolution shall be published in accordance with IC 5-3-1. By the date and time of the hearing any affected person may file in the office of the board a written remonstrance to having his lands included. The board shall either confirm, modify, or rescind the resolution after the hearing. An appeal may be taken from the decision by one (1) or more persons considering themselves aggrieved or injuriously affected, as long as those appealing have filed written remonstrances, as provided in this subsection, by filing their complaint within thirty (30) days after the final decision of the board. The appeal shall be governed by IC 34-13-6.

(c) If the court is satisfied upon hearing an appeal under subsection (b):

(1) that less than seventy-five percent (75%) of the persons owning property in the territory sought to be incorporated in the district have remonstrated; and

(2) that the incorporation of the territory into the district will be for its interest and will cause no manifest injury to the persons owning property in the territory;

the court shall so find and the incorporation shall be ordered. If the court is satisfied that seventy-five percent (75%) or more of the persons owning property in the territory sought to be incorporated have remonstrated, then the incorporation may not be ordered unless the court further finds from the evidence that unless it is incorporated, the health and welfare of residents of the territory or of the adjoining lands will be materially affected and that the safety and welfare of the inhabitants and property of other persons and property will be endangered.

(d) Pending an appeal under subsection (b) and during the time within which the appeal may be taken, the territory sought to be incorporated is not a part of the district. Upon the determination of the appeal, the judgment must particularly describe the resolution upon which the appeal is based. The clerk of the court shall deliver a certified copy of the judgment to the secretary of the board, who shall record it in the minute book of the board and make a cross-reference to the page upon the margin where the original resolution was recorded. If a decision is adverse to an incorporation, further proceedings may not be taken by the board to incorporate that territory within the district for a period of one (1) year after the rendition of the judgment.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.67; P.L.1-1998, SEC.216.

36-9-25-16

Sec. 16. (a) If any bonds of the district are outstanding, and until they are fully paid, all property included within the district at the time the bonds were issued and sold remains subject to taxes levied and for its proportion of the indebtedness, notwithstanding that the property and territory may have been disannexed from the district.

(b) Any property in territory added to the district, as a condition of the special benefits it receives, becomes liable for its proportion of all taxes levied to pay all bonds of the special taxing district that are either outstanding or are later issued and sold. The proportion of taxation shall be determined in the same manner as when territory is annexed to a municipality under IC 36-4-3.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-17

Sec. 17. (a) All preliminary expenses actually incurred by the board in providing necessary records, giving

notice, employing clerks, engineers, attorneys, and other employees, making surveys, and all other expenses that must be paid before the issue and sale of the bonds under section 27 of this chapter, and before the collection of taxes levied under section 32 of this chapter, shall be met and paid according to this section. The board shall, from time to time, certify items of expense to the municipal fiscal officer, directing him to pay those amounts. The fiscal officer shall at once draw his warrant, with the warrant to be paid out of the unappropriated part of the general fund of the municipality, without a special appropriation being made by the municipal legislative body.

(b) If there is no unappropriated money in the general fund, the fiscal officer shall recommend to the legislative body either the temporary transfer from other funds of the municipality of a sufficient amount to meet the items of expense, or the making of a temporary loan for this purpose. The legislative body shall, at once, make the transfer or authorize the temporary loan in the same manner that other temporary loans are made by the municipality. However, the fund or funds of the municipality from which payments are made must be fully reimbursed and repaid by the board:

(1) out of the first proceeds of the sale of bonds to the extent that expenses paid are chargeable to the cost of acquiring land or the construction of a work under a resolution adopted and confirmed under section 18 of this chapter; or

(2) out of the fund raised by taxation under section 32 of this chapter to the extent that expenses paid are in the nature of a general expense of the board.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-18

Sec. 18. (a) If upon investigation it is found by the board of a municipality located on or near a watercourse that:

(1) the watercourse is being polluted by the discharge of sewage, drainage, or other harmful matter from the sewage or drainage systems of the municipality;

(2) a system of sewage disposal is necessary for the public health and welfare; and

(3) the construction of a system for the disposal of the sewage and drainage of the territory will be of public utility and benefit;

the board shall have prepared general plans for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also have prepared separate descriptions of all real property and of all personal property affected, and shall determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any part of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.

(b) When general plans under subsection (a) have been prepared by the board, it shall adopt a resolution declaring that, upon investigation, it has been found:

(1) that the watercourse particularly described in the resolution is being polluted by the discharge of sewage, drainage, or other harmful matter accumulating within the boundaries of the district; and

(2) that it is necessary for the public health and welfare and will be of public utility and benefit to construct and maintain sewage works to prevent the pollution of the watercourse, and, for that purpose, to appropriate the property described.

The board shall adopt all general plans and estimates in the resolution, which must be open to inspection by all persons interested in or affected by the appropriation of property or the construction of the work.

(c) Upon the adoption of the resolution, the board shall, in accordance with IC 5-3-1, publish notice of:

(1) the adoption; and

(2) the fact that general plans and estimates have been prepared and can be inspected.

The notice must name a date on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings and when it will determine the public utility and benefit of the project. A similar notice shall be mailed to each owner of land to be appropriated under the resolution. If a nonresident owner's residence is unknown to the board, then he is considered to have been notified of the pendency of the proceedings by the publication of notice. All persons affected in any manner by the proceeding, including all taxpayers in the district, are considered to be notified of the pendency of the proceedings and of all subsequent acts, hearings, adjournments,

and orders of the board by the original notice by publication.

(d) In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is a sufficient description of the property purchased, to be purchased, or to be appropriated or damaged to give a description of the entire tract by metes and bounds whether the property is composed of one (1) or more lots or parcels and whether it is owned by one (1) or more persons. If the land or a part of it is to be acquired by purchase, the resolution must also state the maximum proposed cost.

(e) The board may, at any time before the adoption of the resolution, obtain from the owner or owners of the land an option for its purchase or may enter into a contract for its purchase upon terms and conditions that the board considers best. The option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution and to the condition that the land may be paid for only out of the special fund resulting from the sale of sanitary district bonds as provided in this chapter.

(f) The title to any land, rights-of-way, or other property acquired under the resolution, whether by purchase or by appropriation, does not vest in the municipality until it is paid for out of the special fund created by the sale of bonds. Neither an indebtedness nor an obligation of any kind is incurred by the municipality in its corporate capacity because of the acquisition of land, rights-of-way, or other property. All land, rights-of-way, or other property acquired shall be held by the municipality in trust for sanitary purposes for the use and benefit of the district and for the general public.

(g) At or before the time fixed for the hearing, an owner of land, rights-of-way, or other property to be appropriated under the resolution or injuriously affected, including any person owning real or personal property located within the boundaries of the district, may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances that have been filed. After considering them, the board shall take final action determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution. The final action shall be recorded, and is final and conclusive upon all persons. However, a person who has remonstrated in writing as provided in this subsection and who is aggrieved by the decision of the board, may, within ten (10) days, take an appeal to the superior court of the county in which the district is located.

(h) The remonstrator shall file in the office of the clerk of the court a copy of the order of the board and his remonstrance, together with his bond conditioned to pay the costs of the appeal if the appeal is determined against him. The only ground of remonstrance that the court has jurisdiction to hear on appeal is whether it will be of public utility and benefit to establish and construct the proposed sewage works described in the resolution. The burden of proof is on the remonstrator. The cause shall be summarily tried by the court without a jury as other civil cases are tried. All of the judges of the court shall sit in the trial. All remonstrances upon which an appeal is taken shall be consolidated and heard as one (1) cause of action by the court. The cause shall be heard and determined by the court within thirty (30) days after the time of the filing of the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall either confirm the final action of the board or sustain the remonstrance. The judgment of the court is final and conclusive upon all persons, and an appeal may not be taken from the judgment of the court.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.68; P.L.38-1984, SEC.4; P.L.17-1985, SEC.26.

36-9-25-19

Sec. 19. After final action of the board or of the court confirming the resolution in its original or a modified form, all property located within the boundaries of the district is subject to a special tax to provide money to pay the total cost of the construction of the sewage works, including the acquisition of all necessary land or rights-of-way as described in the resolution of the board and all necessary incidental expenses. The special tax constitutes the amount of benefits resulting to the property from the proceedings and shall be levied as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-20

Sec. 20. If the resolution provides for the appropriation of property or rights-of-way, after final action by the board or by the court on appeal, the board shall have prepared a list of all the owners or holders of property and of interests sought to be taken or that will be injuriously affected. The list must also show with reasonable certainty a description of the property to be appropriated or injuriously affected belonging to those persons or owners, and this certainty in names and descriptions need not exceed that required in the assessment of taxes.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-21

Sec. 21. (a) After completion of the list, the board shall consider, determine, and award the damages sustained by the owners of the parcels of land or rights-of-way required to be taken and appropriated or that will be injuriously affected. When the awards are completed, the board shall have a written notice served upon the owner of each piece of property, showing the amount of the award, by leaving a copy at his last usual place of residence in the municipality or county or by delivering the copy to the owner personally.

(b) If the person is a nonresident, or if his residence is unknown, he shall be notified by publication in accordance with IC 5-3-1. The notice must name a date on which the board shall receive or hear remonstrances from persons regarding the amount of their respective awards of damages. Persons not included in the lists of awards, but claiming to be entitled to them, are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board as provided in section 18 of this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.69.

36-9-25-22

Sec. 22. (a) If a person having an interest in land affected by the proceedings is mentally incompetent or under eighteen (18) years of age, the board shall certify that fact to its attorney.

(b) The attorney shall apply to the proper court and secure the appointment of a guardian for that person. The board shall then give notice to the guardian, who shall appear and protect the interest of the protected person. However, if the mentally incompetent person or person under eighteen (18) years of age already has a guardian, the notice may be served upon that guardian. The requisites of notice to the guardian are the same as for other notices.

(c) If there are defects or irregularities in the proceedings with respect to one (1) or more interested persons, they do not affect the proceedings unless they touch the interests or property of the person or persons and do not affect any other person. If a defect does exist, supplementary proceedings may be had in order to supply them.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.33-1989, SEC.128.

36-9-25-23

Sec. 23. (a) A person notified or considered to be notified under the preceding sections of this chapter may appear before the board on the day fixed for hearing remonstrances regarding awards and remonstrate in writing against them. All persons appearing before the board who have an interest in land or rights-of-way to be appropriated or injuriously affected must be given a hearing.

(b) After the remonstrances have been received and the hearing held, the board shall either sustain the awards or modify the awards by increasing or decreasing them.

(c) A person remonstrating in writing who is aggrieved by the decision of the board may, within ten (10) days after the decision, take an appeal to the circuit or superior court in the county in which the municipality is located. The appeal affects only the amount of the award of the person appealing.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-24

Sec. 24. (a) An appeal may be taken by filing an original complaint in court against the board stating the action of the board regarding the award and stating the facts relied upon as showing an error on the part of the board. The court shall hear the matter of the award de novo and confirm, decrease, or increase the award. The cause shall be tried by the court without a jury as other civil cases are tried.

(b) All appeals shall be heard and determined by the court within thirty (30) days after the appeal is filed. The plaintiff in the appeal may recover costs only if the court increases the amount of damages awarded in favor of the property owner by ten percent (10%) or more.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.317, SEC.24.

36-9-25-25

Sec. 25. (a) The board shall, upon the completion of the award of damages or upon the determination of appeals taken, make out certificates for the proper amounts and in favor of the proper persons. Upon the presentation of the certificate to the municipal fiscal officer, the person is entitled to the amount due out of the separate and specific fund derived from the sale of bonds provided in section 27 of this chapter. The payments may not be made from

other sources or funds.

(b) Certificates or vouchers shall, whenever practical, be actually tendered to the person entitled to them. If this is impractical, they shall be kept for the persons in the office of the board. The making and filing of the certificates constitute valid and effectual tender to the person entitled to them at the time or as soon as there is sufficient money to pay them. They shall be delivered to him on request.

(c) In case of dispute or doubt as to which person is entitled to the money, the board shall make out the certificate in favor of the attorney appointed by the board for the use of persons entitled to it. The attorney shall then draw the money and pay it into the court in a proceeding requiring the various claimants to interplead and have their respective rights determined.

(d) If an injunction is obtained because damages have not been paid or tendered, the board may tender the certificate for the amount with interest from the time of entry upon the property if entry has been made, plus all accrued costs. The injunction shall then be disposed of, if there is sufficient money to pay the certificate. The pendency of an appeal as provided in section 24 of this chapter does not affect the validity of a tender made under this section, but the board may enter upon and take possession of the property in question.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-26

Sec. 26. (a) If the board, or the court hearing an appeal, finally confirms the resolution, the board shall have published, in accordance with IC 5-3-1, a notice of the general nature of the work and of the fact that detailed plans, drawings, and specifications are on file in the office of the board.

(b) The board may advertise for and receive construction bids at any time after confirming the resolution. The board shall require each bidder to deposit with his bid a certified check or satisfactory bond by an incorporated surety company in good standing and qualified to do business in Indiana in an amount that the board determines to be at least sufficient to insure the execution of the contract for which the bid is made. Each bidder shall also file with his bid an affidavit that he has not, directly or indirectly, entered into any combination, collusion, understanding, or agreement with another bidder to maintain the price of the work or contract, to prevent another bidder from bidding, or to induce a bidder to refrain from bidding on the contract or work. The affidavit must also state that the bidding is made without regard to any other bidder and without any agreement, understanding, or combination, either directly or indirectly, with any other persons concerning the bidding.

(c) If, after a contract has been let, it appears that the successful bidder is guilty of collusion, combination, understanding, or agreement, as defined in the affidavit, the successful bidder forfeits the contract and the work shall be relet by the board. The board may impose conditions upon the bidders regarding bond surety, guaranteeing the good faith and responsibility of the bidders and the faithful performance of the work according to contract, keeping the work in repair for a given length of time, or for another purpose. The board may reject any bids, but if it does reject all bids notices must be published as originally required before other bids may be received.

(d) The board may let part of the proposed work under different contracts. A contract may not be let at a bid higher than the estimate of cost of the work to be performed under the contract. However, the board may make a new estimate of the cost of the work at any time after the adoption of the resolution required by section 18 of this chapter and before the advertising for the receipt of bids for the construction of the work. If a new estimate is made, notice shall be given by publication in accordance with IC 5-3-1 naming a date when a public hearing will be held to determine the public utility of the new estimate.

(e) The contracts must expressly state that payments for all work shall be made only from the special fund derived from the proceeds of bonds authorized for this purpose. If a contract is executed for the construction of sewage works under this chapter, the validity of the contract may be questioned only in an action to enjoin the performance of the contract brought within fifteen (15) days after the date of execution. Sixteen (16) days after execution, all proceedings and orders of the board preliminary to and including the contract are valid, conclusive, and binding upon all persons and are not subject to attack.

(f) Additions or extensions to sewage works constructed under this chapter shall be built under contract entered into under this section in the same manner as the contract for the original works. The cost of additions or extensions, including additional land or rights-of-way acquired by the board, may be met by the sale of additional bonds to be issued and sold by the board and the levy of special taxes to retire the bonds as provided in this chapter.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.70.

36-9-25-27

Sec. 27. (a) To raise money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in sections 19 and 29 of this chapter, the board may have issued, in the name of the municipality, the bonds of the district. The bonds may not exceed in amount the estimated cost of all land, rights-of-way, and other property to be acquired and the estimated cost of all construction as provided in the resolution, including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction. The expenses to be covered by the bond issue include all expenses of every kind actually incurred preliminary to acquisition of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses.

(b) If different parcels of land are to be acquired, or if more than one (1) contract for work is let by the board at approximately the same time, whether under one (1) or more resolutions of the board, the estimated cost may be combined in one (1) bond issue. The bonds shall be issued in denominations of at least one thousand dollars ($1,000) each and shall have a final maturity of not later than fifty (50) years from the date of issue. The bonds are negotiable unless registered, but may be made registrable for principal only or principal and interest. The bonds may be made redeemable before the stated maturities on terms and conditions and at the premiums that the board determines in the resolution authorizing the issuance of the bonds.

(c) Upon adoption of a resolution ordering bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The municipal executive shall execute the bonds and the fiscal officer shall attest them. The bonds and interest are exempt from taxation for all purposes, except the financial institutions tax imposed under IC 6-5.5 or an inheritance tax imposed under IC 6-4.1. All bonds issued by the board shall be sold by the fiscal officer to the highest bidder, but not for less than par, after giving notice of the sale by publication in accordance with IC 5-3-1.

(d) The bonds are not a corporate obligation or indebtedness of the municipality, but constitute an indebtedness of the district as a special taxing district. Except as provided in section 29(c) of this chapter, the bonds and interest are payable only out of a special tax levied upon all the property of the district as provided in this chapter. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(e) The board may sell bonds of the district to run for a period of five (5) years from the date of sale. The five (5) year bonds are exempt from taxation for all purposes except for the financial institutions tax imposed under IC 6-5.5. The board may sell bonds of the district in series for the purpose of refunding at any time the five (5) year bonds. Actions questioning the validity of the bonds issued or to prevent their issue may not be brought after the date set for the sale of the bonds, and all bonds are incontestable for any cause after that date.

(f) The total amount of the bond issue, including bonds already issued and to be issued, may not exceed twelve percent (12%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds issued in violation of this subsection are void.

As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.71; P.L.27-1986, SEC.5; P.L.21-1990, SEC.57; P.L.80-1997, SEC.20; P.L.254-1997(ss), SEC.34; P.L.6-1997, SEC.223; P.L.2-1998, SEC.86; P.L.2-1998, SEC.87.

36-9-25-28

Sec. 28. (a) All proceeds from the sale of bonds under section 27 of this chapter shall be kept as a separate and specific fund to pay the cost of land, rights-of-way, and other property acquired and for construction under the resolution, including all costs and expenses incurred in connection with the project. The proceeds may not be used for any other purpose. The proceeds shall be deposited at interest with the depository or depositories of other public funds of the municipality, and all interest collected on them belongs to the fund. Any surplus of funds remaining out of the proceeds after all expenses are paid shall be paid into and becomes a part of the sanitary district bond fund.

(b) Money derived from sources other than the sale of bonds, such as state or federal reimbursement grants, matching funds, or other contributions, including money derived from a project financed from bond monies, shall be deposited in:

(1) the sanitary district bond fund;

(2) the sanitary maintenance and general expense fund; or

(3) a separate fund established by the board for extensions, additions, and improvements to the sewage works of the district.

The money may be expended as other money is expended by the board.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-29

Sec. 29. (a) In order to raise money to pay all bonds issued under section 27 of this chapter, including interest, and except as set forth in subsection (c), the board shall levy each year a special tax upon all the property of the district, to meet and pay the principal of the bonds as they mature, together with all accrued interest. The board shall have the tax levied each year certified to the municipal fiscal officer and to the auditor of the county in which the district is located by October 1. The tax as levied and certified shall be estimated and entered upon the tax duplicate by the county auditor. The tax shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the sanitary district bond fund. It shall be applied to the payment of the bonds and interest as they mature and not to another purpose. All accumulations of the fund before their use for the payment of the bonds and interest shall be deposited with the depository or depositories of other public funds in the municipality. The fund may also be invested as other funds are invested. In determining the amount of levy necessary for this section, the board shall consider the amount of revenue, if any, to be derived from the collection of fees for sewage treatment service above the amount of revenues necessary to be applied to the operation, maintenance, and administrative expenses of the district.

(c) In lieu of making a levy under this section, or to reduce the amount of the levy, the board may set aside, by resolution, the revenues of the district to be collected before the maturity of the principal and interest of the bonds payable in the following calendar year. If the board adopts the resolution, then the board may not use any part of the amount set aside out of the revenues for any purpose other than the payment of the bonds and interest. A proportionate payment of the amount shall be made to the bond fund monthly.

As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.21.

36-9-25-30

Sec. 30. (a) If the board finds it necessary to build, alter, or repair a sewer, drain, or appurtenance used in connection with sewage works in a public way or other public place in the district or a highway outside its boundaries, it shall file with the works board of the municipality, or the executive of the county in which the municipality is located, a petition and a map showing the route of the sewer or drain or the location of the structure or appurtenance proposed to be built, altered, or repaired, including the part of the public way or other public place to be used in the work. That body shall then adopt a resolution granting the board the right to use the public way or other public place.

(b) If the board shows in the petition that it is necessary to open or vacate a public way or public place, the appropriate body shall promptly begin the proceedings necessary for the opening or vacation. Within a reasonable time after the completion of the work, the board shall restore the surface of a public way or public place to the same condition that it was in before the performance of the work.

(c) If the land on which it is necessary to build, alter, or repair a sewer, drain, structure, or appurtenance in connection with the sewage works is already in use for another public purpose or has been condemned or appropriated for a use authorized by statute and is being used for that purpose by the body appropriating it, the public use or prior condemnation does not bar the board from condemning the use of the land for purposes in connection with the sewage works. However, the use by the board does not permanently prevent the use of the land for the public use or by the body condemning or appropriating the land. In addition, in a proceeding prosecuted by the board to condemn the use of the land for purposes permitted by this chapter, the burden is upon the board to show that its proposed use will not permanently interfere with the continued public use of the land or by the body condemning it, including its successors.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-31

Sec. 31. To provide money to pay for general expenses of the board not chargeable to the cost of any property acquired or work done under a resolution of the board for which bonds of the district are issued, the board may issue the bonds of the district in an aggregate amount not to exceed two percent (2%) of the adjusted value of the taxable property within the district as determined under IC 36-1-15. The bonds are payable from a special tax, which the board shall levy annually at the rate required to finance the bonds. The tax shall be levied, collected, and

expended according to section 32 of this chapter.
As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.6-1997, SEC.224.

36-9-25-32

Sec. 32. (a) To provide money to pay:

(1) all general expenses of the board, including salaries of officers and employees, fees and expenses for professional services, and other items of expense not chargeable to the cost of property acquisition or work done under a resolution of the board for which bonds of the district are issued; and

(2) for the operation, maintenance, and repair of sewage works, including the cost of the collection and removal of garbage and ashes;

a tax on all the taxable property in the district, at the rate required to provide the money needed to defray all expenses, shall be levied annually by the board.

(b) The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes in the same manner as state and county taxes are estimated, entered, collected, and enforced. The county treasurer shall, by the tenth day of each month, notify the board of the amount of taxes collected during the preceding month and shall credit a fund to be known as the sanitary maintenance and general expense fund with that amount. The fund may not be used for a purpose other than one stated in this section. The board has complete and exclusive authority to expend on behalf of the district all money thus realized. Warrants for the expenditures shall be drawn by the municipal fiscal officer upon vouchers of the board.

(c) The board may, by resolution, make:

(1) temporary loans in anticipation of taxes actually levied under this section; or

(2) emergency loans for the expenditure of any sums not provided for in the current levy of the board, for which a levy shall then be made in the next annual budget of the board.

The loans mature and shall be paid within one (1) year after the date the loan is made and may bear interest at any rate payable at the maturity of the loan. The warrants or other evidence of the loans may not be sold for less than par. Before making the loan, notice of the time, place, amount, and terms of the loan shall be given by publication in accordance with IC 5-3-1. The warrants carry no personal obligation for their payment and are payable only out of the tax levied.
As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.45, SEC.72; Acts 1982, P.L.77, SEC.23.

36-9-25-33

Sec. 33. (a) All money remaining in a fund to the credit of the board at the end of the calendar year belongs to the fund for use by the board for the purposes for which the fund was created. In addition, all money raised under this section shall be deposited at interest with the depository of other public funds of the municipality, with all interest collected on the fund belonging to the fund.

(b) Notwithstanding the provisions of any other statute, money collected for or belonging to a sanitary district belongs to the sanitary district, and not to any city or town in the sanitary district. This money shall be deposited in an interest bearing account, and all interest earned from this deposit shall belong to the sanitary district. If no statutory provision exists to require the crediting or deposit of this interest to a specific fund of the sanitary district, the interest shall be deposited in the sanitary district's sanitary maintenance and general expense fund.

(c) Notwithstanding subsections (a) through (b), money may be transferred from the fund as provided in IC 36-1-8-4.
As added by Acts 1981, P.L.309, SEC.98. Amended by Acts 1981, P.L.318, SEC.1; P.L.57-1991, SEC.4.

36-9-25-34

Sec. 34. (a) All revenues derived from the collection of fees for sewage treatment become a part of the sanitary maintenance and general expense fund established under section 32 of this chapter and shall be deposited, held, and used as provided in that section, except any part that the board sets aside in the sanitary district bond fund established under section 29 of this chapter or the sinking fund established under section 41 of this chapter.

(b) The board may appropriate and set aside from the sanitary maintenance and general expense fund an amount of money to be used as a revolving fund for the payment of necessary preliminary expenses incurred by the board in connection with proposed projects, such as making surveys, estimating cost, employing engineers and other employees, preparing plans and specifications, and all other expenses to be paid before the issuance and sale of bonds under section 27 of this chapter.

(c) The revolving fund shall be fully repaid by the board out of the first proceeds of the sale of bonds to the extent that the expenses paid are chargeable to the cost of acquiring land or construction under a resolution adopted and confirmed under section 18 of this chapter. The appropriations to the revolving fund shall be made in accordance with statutes governing appropriations by municipal corporations, but it is not necessary to appropriate the money set aside in the revolving fund before making expenditures from it.
As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.80-1997, SEC.22.

36-9-25-35

Sec. 35. (a) From the sanitary district bond fund and not from any other source, the board shall pay to the appropriate parties the amounts respectively due them for land, rights-of-way, or other property taken or purchased or for work done by contract or otherwise. If all or part of the land, rights-of-way, or other property is secured by purchase or contract, payment shall be made according to the terms of the contract. If property is taken by condemnation under this chapter, the amount of damages assessed shall be paid within ninety (90) days after the final determination of the condemnation proceedings or as soon after that as the fund from the bonds is available. The title to the land, rights-of-way, or other property or that part paid for or otherwise acquired for that purpose then vests in the municipality in the manner, to the extent, for the purpose, and subject to the limitations of this chapter.

(b) The board shall order that payments from the funds be made to contractors in the amounts and at the times they determine. The board may retain a part of the amount otherwise due the contractor. The amount that may be retained by the board is as follows:

(1) Until work is fifty percent (50%) complete, not more than ten percent (10%) of the payment claimed.

(2) When work is fifty percent (50%) complete, five percent (5%) of the value of all work satisfactorily completed to date, as long as the contractor is making satisfactory progress and there is no specific cause for greater withholding.

(3) When the work is substantially complete (operational or beneficially occupied), an amount below five percent (5%) that is necessary to assure completion.

As added by Acts 1981, P.L.309, SEC.98.

36-9-25-36

Sec. 36. Within sixty (60) days after land or a 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 located a description of it sufficiently accurate for its identification, together with a statement of the purpose for which it is acquired or taken signed by a majority of the board members.
As added by Acts 1981, P.L.309, SEC.98.

36-9-25-37

Sec. 37. Money raised under this chapter may be expended only upon warrants drawn by the municipal fiscal officer upon vouchers of the board. An appropriation is not necessary, but all money raised under this chapter is considered appropriated to the respective purposes stated and is under the control of the board. The board has complete and exclusive authority to expend the money for the purposes provided.
As added by Acts 1981, P.L.309, SEC.98.

36-9-25-38

Sec. 38. After the erection and completion of sewage works under this chapter, any municipality within the boundaries of the district shall construct and maintain sewers so that they directly or indirectly convey all sewage and drainage matter into the sewage works.
As added by Acts 1981, P.L.309, SEC.98.

36-9-25-39

Sec. 39. (a) This section applies only to departments in a county having a population of:

(1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or

(2) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

(b) The board may secure temporary loans in anticipation of revenues of the district actually levied and in the course of collection for the fiscal year in which loans are made. The loans must be authorized by a resolution of the board, and the securities evidencing them shall be issued and sold in the same manner as tax anticipation warrants

by second class cities in anticipation of property tax revenues as provided in IC 36-4-6-20. The temporary loans shall be evidenced by time warrants of the district in terms designating the nature of the consideration, the time or times payable, the funds and revenues in anticipation of which the warrants are issued and out of which they are payable, and the place where they are payable upon presentation on or after the date of maturity. The interest accruing on the warrants to date of maturity shall be included in their face value. The resolution authorizing the issue of the temporary loans must appropriate and pledge a sufficient amount of the current revenues in anticipation of which the warrants are issued for their payment.
As added by Acts 1981, P.L.309, SEC.98. Amended by P.L.12-1992, SEC.185; P.L.119-2012, SEC.233.

36-9-25-40

Sec. 40. If the district of a department established under section 1(b) of this chapter includes territory of another municipality, the powers granted the board over local sewers and drains, solid waste collection, and collection of dead animals may be exercised for the use and benefit of the second class city alone as long as all of the direct and allocable costs of the service are paid from money raised solely from the property located within the city, from charges made to persons within the city, or both.
As added by Acts 1981, P.L.309, SEC.98.

36-9-25-41

Sec. 41. (a) This section applies to each consolidated city.

(b) To raise money to pay the costs of acquiring, constructing, and improving sewage works and property necessary for sewage works, the board may have issued, in the name of the municipality, revenue bonds payable solely from the revenues of the sewage works for which they are issued. Revenue bonds issued under this section are not a corporate indebtedness of the district or the municipality.

(c) The revenue bonds bear interest at a rate not to exceed the maximum rate per annum specified by the board and will be payable and mature at the time or times determined by the board in the resolution.

(d) The revenue bonds may be made redeemable before maturity at the option of the board, to be exercised by the board, at not more than their par value plus a premium of five percent (5%), under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the revenue bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the revenue bonds must determine the form of the bonds and must fix the denomination or denominations of the bonds and the place or places of payment of their principal and interest, which may be at any bank or trust company in Indiana or another state.

(g) The revenue bonds must contain a statement on their face that neither the district nor the municipality is obligated to pay the principal or interest on them, except from the net revenue of the sewage works that are deposited in the sinking fund established by subsection (t).

(h) The revenue bonds are negotiable instruments.

(i) Provision may be made for the registration of any of the revenue bonds in the name of the owner as to principal alone or as to both principal and interest.

(j) The revenue bonds shall be executed in the same manner as other bonds issued under section 27 of this chapter.

(k) The revenue bonds shall be sold by the district and the municipal fiscal officer in the manner that is determined to be in the best interests of the district, but only at public sale in accordance with the statutes concerning the sale of municipal bonds.

(l) Before the preparation of the definite revenue bonds, temporary revenue bonds may be issued with or without coupons. The temporary revenue bonds, which shall be issued in the manner prescribed by this section, may be exchanged for the definite revenue bonds when they are issued.

(m) If the proceeds of the revenue bonds are less than the cost of the sewage works, additional revenue bonds may be issued under this section to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the first issue, the additional revenue bonds are considered part of the first issue and are entitled to payment from the same fund, without priority for the first issue.

(n) Subject to the provisions and limitations of any resolution or trust indenture pertaining to any outstanding revenue bonds, additional bonds payable from the revenues of the sewage works may be authorized and issued in the manner prescribed by this section for the purpose of improving any works acquired or constructed under this chapter without priority of one (1) issue over another.

(o) Revenue bonds issued under this section are exempt from taxation for all purposes.

(p) Any action to contest the validity of revenue bonds issued under this section must be brought at least five (5) days before the advertised date for the sale of the bonds.

(q) The first proceeds of any revenue bonds issued under this section shall be used to repay all amounts advanced for preliminary expenses. The remaining proceeds of the bond issue shall be applied to the cost of acquiring, constructing, or improving the sewage works.

(r) After the payments required by subsection (q) have been made, any proceeds of the bond issue that have not been spent shall be deposited in the sinking fund established by subsection (t).

(s) The holders of the revenue bonds have a lien on the bond proceeds until they are applied under this section.

(t) At or before the time of issuance of revenue bonds under this section, the board, by resolution, shall:

(1) establish a sinking fund for the payment of:

(A) the principal of and interest on the revenue bonds; and

(B) the charges of banks or trust companies for making payment of the principal or interest on the revenue bonds; and

(2) pledge the net revenues of the sewage works, after the payment of the reasonable expense of operation, repair, and maintenance of the works, to the payment of the expenses described in subdivision (1).

The resolution may also provide for the accumulation of reasonable reserves in the sinking fund as a protection against default, and for the payment of premiums on bonds retired by call or purchase under this section.

(u) The rights granted by this section are subject to any restrictions contained in the resolution authorizing the issuance of revenue bonds or in any trust indenture securing the bonds. The holder of any revenue bonds or any coupons attached to them, and the trustee, if any, may, either at law or in equity, protect and enforce all rights granted by this section or under the resolution or trust indenture, including the making and collecting of reasonable and sufficient fees for services rendered by the sewage works. If the principal or interest of any of the revenue bonds is not paid on the date named in the bonds for payment, any court having jurisdiction of the action may appoint a receiver to administer the sewage works on behalf of the district, municipality, the bondholders, and the trustee, if any. The receiver may:

(1) charge and collect fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance of the works;

(2) pay any revenue bonds and interest outstanding; and

(3) apply the revenues in conformity with this chapter, the resolution authorizing the bond issue, and the trust indenture, if any.

(v) Bonds issued under this section are subject to the requirements of IC 36-3-5-8.

As added by P.L.80-1997, SEC.23.

36-9-25-42

Sec. 42. (a) The board may adopt a resolution authorizing the board to provide financial assistance, including grants, to property owners to construct or install regulating devices, improvements, or overhead plumbing or backflow prevention devices for one (1) or more of the following purposes:

(1) To regulate or prevent discharge into private dwellings.

(2) To prevent the pollution of streams or bodies of water.

(3) To reduce or ameliorate inflow and infiltration in sewage works.

(4) To remedy or prevent a menace to the public health and welfare.

(b) A resolution adopted by the board under subsection (a) must do the following:

(1) State that provided financial assistance as described in subsection (a) will accomplish one (1) or more of the purposes listed in subsection (a)(1) through (a)(4).

(2) State that the board anticipates that the costs associated with providing the financial assistance will be less than the financial burdens potentially incurred if the financial assistance is not provided.

(3) Find that providing financial assistance as described in subsection (a) is necessary to avoid or reduce additional financial burdens.

(4) Establish rules and regulations concerning financial assistance provided under subsection (a). A rule or regulation must provide that:

(A) a grant or other financial assistance provided by the board may not exceed eighty percent (80%); and

(B) the property owner that receives the financial assistance must pay for at least twenty percent (20%);

of the total anticipated cost of the project for which the financial assistance is provided.
As added by P.L.168-2009, SEC.11.

Chapter 27. Drainage Law

36-9-27

36-9-27-1

Sec. 1. This chapter applies to all counties. However, sections 6, 7, 9, 10, 30, 31, and 32 of this chapter do not apply to a county having a consolidated city.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-2

Sec. 2. As used in this chapter:

"Affected land" means land within a watershed that is affected by the construction, reconstruction, or maintenance of a regulated drain.

"Board" refers to the drainage board of a county.

"Crossing" means a drainage structure that passes over, under, or through a location used for the passage of people, livestock, or vehicles.

"Dam" means a dam or other structure and its appurtenances that impounds a small lake at the lake's outlet.

"Maintenance" means work on a drain as described in section 34(c) of this chapter for any of the purposes stated in that section.

"Mutual drain" means a drain that:

(1) is located on two (2) or more tracts of land that are under different ownership;

(2) was established by the mutual consent of all the owners; and

(3) was not established under or made subject to any drainage statute.

"Open drain" means a natural or artificial open channel that:

(1) carries surplus water; and

(2) was established under or made subject to any drainage statute.

"Owner" refers to the owner of any interest in land.

"Private drain" means a drain that:

(1) is located on land owned by one (1) person or by two (2) or more persons jointly; and

(2) was not established under or made subject to any drainage statute.

"Reconstruction" means work on a drain as described in section 34(b) of this chapter to correct any of the problems with the drain that are enumerated in that section up to and including the discharge portion of the drain.

"Regulated drain" means an open drain, a tiled drain, or a combination of the two.

"Rural drain" means a regulated drain that provides adequate drainage or impounds water for rural land.

"Rural land" means affected land that:

(1) will not appreciably benefit from more drainage than is necessary to expediently remove water after frequent or periodic flooding; and

(2) is generally used for crop production, pasture, forest, or similar purposes.

"Small lake" means a lake, pond, or similar body of water that:

(1) covers less than twenty (20) acres;

(2) is surrounded by two (2) or more tracts of affected land that are under different ownership or a tract of land that is owned by a not-for-profit corporation having more than one (1) member;

(3) is not constructed, reconstructed, or maintained under this chapter as part of an open drain;

(4) is not a private crossing, control dam, or other permanent structure referred to under section 72 of this chapter;

(5) is not owned by a state or any of its political subdivisions; and

(6) is not designed and constructed primarily for reduction or control of pollutants or cooling before discharge of a liquid.

"Tiled drain" means a tiled channel that:

(1) carries surplus water; and

(2) was established under or made subject to any drainage statute.

"Urban land" means affected land that:

(1) will appreciably benefit from drainage that will provide the maximum practicable protection against flooding or the impounding of water in a small lake; and

(2) is used or will in the reasonably foreseeable future be used generally for commercial, industrial, large estate, higher density residential, or similar purposes.

"Watershed" means an area of land from which all runoff water drains to a given point or that is affected by a small lake.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.2; P.L.205-1984, SEC.1.

36-9-27-2.5

Sec. 2.5. (a) For the purposes of this chapter, a reference to "drain", "drainage", or "ditch" is deemed to include a "dam". However, sections 16(b), 17, 21, 22, 23, 24, 26, 27, 28, 54, and sections 56 through 66 of this chapter do not apply to a dam.

(b) Any owner may petition a board to designate a dam as a regulated drain, and any board may assume jurisdiction over a dam in the same manner that an owner may petition and the board may assume jurisdiction over a mutual drain. A board does not otherwise have jurisdiction over a dam.

(c) A board may reconstruct or maintain a dam over which the board has assumed jurisdiction, but an agency may not construct a new dam.

As added by P.L.166-1983, SEC.3.

36-9-27-3

Sec. 3. (a) The rights and powers of a political subdivision under this chapter as an owner shall be exercised on behalf of the political subdivision by:

(1) the works board, for a municipality;

(2) the executive, for a county or a township; and

(3) the fiscal body, for any other political subdivision.

(b) The rights and powers of the state as an owner under this chapter shall be exercised on behalf of the state by the director of the department, office, or institution charged by law with the maintenance, supervision, or control of the affected land owned by the state.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-4

Sec. 4. There is established in each county a drainage board, which shall act in the name of "The _____ County Drainage Board" (designating the name of the county).

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-5

Sec. 5. (a) Except in a county having a consolidated city, the drainage board consists of either:

(1) the county executive; or

(2) three (3) or five (5) persons, at least one (1) of whom must be a member of the executive, appointed by the executive;

at the option of the executive. Appointees under subdivision (2) must be resident freeholders of the county who are knowledgeable in drainage matters. Freeholders appointed to the board serve for terms of three (3) years, with their initial appointments made so as to provide for staggering of terms on an annual basis. In addition, the county surveyor serves on the board as an ex officio, nonvoting member.

(b) In a county having a consolidated city, the board of public works of the consolidated city comprises the drainage board, subject to IC 36-3-4-23.

(c) In a county having a consolidated city, the department of public works of the consolidated city has all the powers, duties, and responsibilities of the county surveyor under this chapter, subject to IC 36-3-4-23.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-6

Sec. 6. (a) When the membership of the board is reduced to less than three (3) because of disqualifications, the board shall immediately certify that fact to the circuit court of the county. The court shall then restore the

membership of the board to three (3) by appointing the appropriate number of resident freeholders of the county to serve as special members for the particular drainage proceedings.

(b) A special member of the board has the same duties and powers as a regular member of the board, and is entitled to a per diem, to be paid as an expense of the board, in an amount fixed by the county fiscal body for each day or major part of a day spent in actual attendance at any meeting of the board or in the performance of official business of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990, SEC.9.

36-9-27-7

Sec. 7. (a) The board shall organize at a meeting each January, by electing one (1) of its members as chairman and one (1) of its members as vice chairman. At the same time, the board shall elect a secretary, who need not be a member of the board.

(b) The county surveyor may not hold an office on the board.

(c) The board shall fix the time and dates for regular meetings, which shall be held in the office of the county surveyor. However, if the surveyor's office is not adequate, the county executive shall provide an adequate meeting place.

(d) Special meetings of the board may be called by the chairman, any two (2) members, or the county surveyor, by mailing a written notice setting forth the time, date, and place of the meeting to each member not less than five (5) days before the date of the meeting. A member may waive the mailing of notice of a special meeting by filing a written waiver with the secretary or by his presence at the meeting.

(e) Meetings of the board may be adjourned from day to day or to a day certain without written notice being given.

(f) All meetings of the board must be open to the public, and the minutes of the meetings are open to public inspection.

(g) A majority of the voting members of the board constitutes a quorum, and the concurrence of a majority of the voting members present at a meeting is necessary to authorize any action under this chapter.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-8

Sec. 8. The board may bring civil actions in its own name to enforce any of the provisions of this chapter.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-9

Sec. 9. The board may employ and fix the compensation of an attorney to represent and advise the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.137-1989, SEC.17.

36-9-27-10

Sec. 10. (a) Each member of the board and each person employed by the board under this chapter shall be paid at a rate equal to that provided by law for state employees for each mile necessarily traveled while performing the duties of his office.

(b) The county fiscal body may provide the members of the county executive who serve as members of the board with per diem for their services as members of the board, in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.

(c) Each appointed freeholder member serving on the board is entitled to a per diem in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990, SEC.10.

36-9-27-11

Sec. 11. All expenses of the board shall be paid from money appropriated from the county general fund. Claims for expense reimbursements and per diem must be:

(1) accompanied by an itemized written statement;

(2) approved by a recorded motion of the board; and

(3) allowed as provided by statute.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-12

Sec. 12. (a) This section does not apply to a joint board that includes three (3) or more counties in a drainage basin of more than one hundred thousand (100,000) acres.

(b) Whenever it appears, in any proceeding for the construction, reconstruction, or maintenance of a regulated drain, that a member of the board has an interest in the proceedings because of his ownership of real property affected by the drain, that member shall immediately disqualify himself from serving on the board in those proceedings. However, the fact that county highways will be affected by any proceedings does not disqualify a regular member of the board.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.350-1985, SEC.1.

36-9-27-13

Sec. 13. (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) There is established a county drainage advisory committee. The executive of each township in the county shall appoint one (1) resident of his township to serve on the committee. Committee members serve for four (4) year terms. Members may not receive per diem or mileage for service on the committee.

(c) The county drainage advisory committee shall advise and assist the board in the performance of its powers, duties, and functions. The board or the county legislative body may assign responsibilities to the committee concerning drainage. The committee may select one (1) of its members as chairman and may meet at his call or at the call of any three (3) of its members.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992, SEC.186.

36-9-27-14

Sec. 14. (a) Whenever it appears to the county surveyor that any proceedings instituted under this chapter may affect land in more than one (1) county, he shall immediately forward notification of that fact to the chairman of the board of each county in which the land is located, by certified mail with return receipt requested. The notice must state the number of counties involved and fix a date, hour, and place for a meeting of a joint board. The date for the meeting may not be less than twenty (20) nor more than thirty (30) days after the notice is mailed.

(b) After the notice is given, all proceedings in the matter shall be heard and determined by a board appointed from the membership of the board of each county in which lands that may be affected are located, as follows:

(1) If land in two (2) counties may be affected, the chairman of the board of each county shall appoint two (2) of the members of his board, other than the county surveyor, to serve on the joint board. In addition, a fifth member shall be appointed by the four (4) members of the joint board. The fifth member must reside in a county that is not affected by the drainage problem.

(2) If land in more than two (2) counties may be affected, the chairman of the board of each county shall appoint one (1) of the members of his board, other than the county surveyor, to serve on the joint board. If, as a result of the appointments, the board has an even number of members, the members of the joint board shall appoint an additional member to the joint board. The additional member must reside in a county that is not affected by the drainage problem.

(3) The surveyor of the county having the greatest length of drain or proposed drain serves as an ex officio member of the joint board, and has the same duties, powers, and responsibilities he would have if the proposed construction, reconstruction, or maintenance affected lands lying solely within one (1) county.

(c) A joint board may authorize the employment of one (1) or more persons to assist the county surveyor who serves on the board in the performance of his duties in connection with the joint board. The joint board shall set the rate of compensation for the assistants and authorize an advance on the general drain improvement fund of each county in proportion to the apparent percentage of the total land area in each county to be affected by the drain. The cost of the assistants and the advance is a part of the operating expense of the joint board, which shall be finally adjusted and allocated as provided in subsection (e).

(d) Whenever the county surveyor finds that a joint board should be appointed and that:

(1) the area of affected land in his county exceeds eighty percent (80%) of the total area of land affected by the drain; or

(2) ninety percent (90%) or more of the length of the affected drain lies within his county;

he may request in writing that each board in the lesser affected county or counties waive the right to be represented

on a joint board and that the board of his county be the board for the proceedings. The request and all subsequent communications in the proceedings, including notice of any benefits or damages to the lands within a lesser affected county, shall be forwarded by certified mail with return receipt requested to the chairman of the board of each lesser affected county. If the surveyor does not receive a negative response to his request from the board of a lesser affected county within thirty (30) days, the surveyor may request his board to resolve itself as the board for the proceedings. The board shall serve notice only on the board of a lesser affected county and shall certify to the auditor of that county a single claim for all benefits in that county, unless the surveyor or board of that county furnishes to the board full and acceptable information concerning all individual parcels of affected land in that county, including maps.

(e) If the joint board proceeds with the proposed improvement or maintenance, all operating expense of the joint board, including the compensation of the fifth member appointed under subsection (b)(1) and the additional member appointed under subsection (b)(2) shall be:

(1) divided among the counties represented on it in the same proportion that the total land assessment allocated to each county bears to the total cost of the improvement or maintenance; or

(2) paid from the joint drain's maintenance fund after the fund is established and maintenance funds are collected.

If the joint board does not proceed, all operating expense of the joint board shall be apportioned by the joint board to the counties represented on it as justice requires.

(f) To the extent applicable, a joint board is governed by the provisions of this chapter concerning:

(1) the powers, duties, and procedures of a board that serves one (1) county; and

(2) the rights and remedies of owners affected by the proceedings of a board that serves one (1) county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.225-1986, SEC.9; P.L.276-2001, SEC.11.

36-9-27-15

Sec. 15. Each regulated drain in a county is under the jurisdiction of the board and subject to this chapter, except as otherwise provided by this chapter.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-16

Sec. 16. (a) Private and mutual drains are not subject to this chapter.

(b) Land drained by a private or mutual drain is subject to assessment for the construction, or reconstruction, or maintenance of a regulated drain if the land is also drained by the regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.4.

36-9-27-17

Sec. 17. (a) Whenever:

(1) an owner wants to construct or extend a private or mutual drain, and outlet that drain into a regulated drain that is subject to this chapter; and

(2) the construction or extension will not go through land owned by other persons;

the owner shall file with the county surveyor having jurisdiction of the regulated drain for permission to connect his drain with the regulated drain.

(b) The owner shall file with his request the plans and specifications of the private or mutual drain that will be constructed or extended. However, if the private or mutual drain will have a tiled outlet of twelve (12) inches or less, and he alleges this in his request, no specifications need be filed.

(c) If the county surveyor determines that the regulated drain is adequate to handle the additional flow of water, if any, that would result from the connection, and that no harmful pollution is likely to result from the connection, he shall grant the request.

(d) If the county surveyor determines that the regulated drain is not adequate to handle the additional flow of water resulting from the connection without being reconstructed, he shall deny the request, and the request may not be granted until the regulated drain is reconstructed under sections 49 through 52 of this chapter.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-18

Sec. 18. (a) Whenever all of the owners affected by a private or mutual drain request the board in writing to

assume jurisdiction over the private or mutual drain, the board shall refer the request to the county surveyor, who shall determine whether the private or mutual drain meets the standards of design and construction established under section 29 of this chapter.

(b) If the surveyor determines that the private or mutual drain meets the standards of design and construction, he shall make a written report of that fact to the board, which shall issue an order granting the request. The drain becomes a regulated drain when the request is granted.

(c) If the surveyor determines that the private or mutual drain does not meet the standards of design and construction, he shall make a written report of that fact to the board, which shall deny the request.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.12.

36-9-27-19

Sec. 19. (a) Any owner affected by a mutual drain may file a written request with the board to make the mutual drain a regulated drain under this chapter. Upon receipt of such a request, the board shall fix the date, time, and place for a hearing, which may not be less than thirty (30) days after receipt of the request.

(b) At least twenty (20) days before the date of the hearing, the owner making the request shall give the owners of all land affected by the request notice of the date, time, place, and purpose of the hearing. Service of the notice shall be made in the manner set forth in section 58 of this chapter or in the manner summonses are served in civil actions.

(c) Any owner affected by the mutual drain may, on or before the date of the hearing, file with the board written evidence for or against the granting of the request. At the hearing the board shall consider all of the evidence filed, and if it finds that:

(1) the owners of more than fifty percent (50%) in acreage of the affected land will be benefited if the drain is made a regulated drain under this chapter; and

(2) the benefit to owners benefited is likely to be greater than the damages to owners damaged by reason of the mutual drain being made a regulated drain;

it shall make written findings to that effect and issue an order granting the request.

(d) Before adjourning the hearing, the board shall announce its findings and order. This announcement constitutes notice to all affected persons, and, if judicial review is not requested under section 106 of this chapter within twenty (20) days after the date of notice, the findings and order are conclusive.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-20

Sec. 20. A board may, by resolution, relinquish its jurisdiction over ditches and drains located in a municipality or a sanitary district, if that jurisdiction is accepted by the municipality or sanitary district.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-20.5

Sec. 20.5. (a) A municipal or sanitary district drain maintenance fund is established for each drain:

(1) that is subject to assessments by the board for periodic maintenance and repair; and

(2) jurisdiction over which is transferred by the board to a municipality or sanitary district under section 20 of this chapter.

(b) Except as provided in subsections (c) and (d), on or after the date the board transfers jurisdiction over a drain to the municipality or sanitary district, the county treasurer shall transfer the following to the municipal or sanitary district drain maintenance fund established under this section:

(1) The balance of the maintenance fund established under section 44 of this chapter.

(2) Except as provided in subsection (e), any assessments for periodic maintenance of the drain that:

(A) were imposed before the date on which the board transfers jurisdiction of the drain; and

(B) are collected after the date on which the board transfers jurisdiction of the drain.

(c) Except as provided in subsection (d), if the board transfers jurisdiction over part of a drain to a municipality or sanitary district, the county treasurer shall transfer under subsection (b):

(1) the part of the balance in the maintenance fund established under section 44 of this chapter that bears the same proportion to the balance in the fund that the length of the part of the drain transferred to the municipality or sanitary district bears to the total length of the drain; and

(2) except as provided in subsection (e), the proportion determined under subdivision (1) of any assessments

for periodic maintenance of the drain that:

(A) were imposed before the date on which the board transfers jurisdiction of part of the drain; and

(B) are collected after the date on which the board transfers jurisdiction of part of the drain.

(d) The board and a municipality or sanitary district to which jurisdiction over part of a drain is transferred may agree in writing to an apportionment of the maintenance fund and outstanding assessments different from the apportionment under subsection (c) based on disproportionate maintenance requirements between the part of the drain transferred and the part remaining under the jurisdiction of the board. Subject to subsection (e), a county treasurer who receives a written agreement under this subsection shall transfer under subsection (b) the amounts specified in the agreement.

(e) If payment for maintenance work for a drain was made from the general drain improvement fund under section 45 of this chapter, the county treasurer shall transfer all or part of the assessment described in subsection (b)(2) to the general drain improvement fund to reimburse the fund for all or part of the cost of the maintenance work.

(f) The expenses of a municipal or sanitary district drain maintenance fund established by subsection (a) shall be paid from the fund. The municipality or sanitary district to which jurisdiction over a drain is transferred shall deposit money in the fund established for the drain under subsection (a) in accordance with IC 5-13-6. Any interest earned by the fund shall be credited to the fund. Any balance remaining in the fund at the end of a fiscal year shall be carried over in the fund for the following fiscal year.

(g) A municipal or sanitary district drain maintenance fund established under subsection (a) is subject to the use of the municipality or the sanitary district for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains for which the fund was established whenever the municipality or sanitary district finds that it is necessary. Except as provided in subsection (h), payment for all the maintenance work for a drain or combination of drains shall be made out of the municipal or sanitary district drain maintenance fund established for the drain or combination of drains under subsection (a).

(h) If the balance of a maintenance fund is not sufficient to pay for all of the maintenance work, the municipality or sanitary district shall pay for any deficiency from the funds used by the municipality or the sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund. A drain maintenance fund shall close upon payment of all money in the fund.

(i) If the amount of funds on deposit in a municipal or sanitary district drain maintenance fund is less than five hundred dollars ($500), the balance of the municipal or sanitary district drain maintenance fund may be transferred to the fund used by the municipality or the sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund, and the drain maintenance fund shall be closed.

As added by P.L.111-2003, SEC.1.

36-9-27-20.6

Sec. 20.6. If jurisdiction over a drain is transferred by the board to a municipality or sanitary district under section 20 of this chapter, the municipality or sanitary district has, with respect to that drain, the same right of entry and right-of-way powers over and upon private land that are given to the county surveyor or drainage board under section 33 of this chapter.

As added by P.L.111-2003, SEC.2.

36-9-27-21

Sec. 21. (a) A drain that is located partly or wholly within the corporate boundaries of a municipality is subject to this chapter only if it was constructed by the municipality under this chapter, IC 19-4 (repealed February 26, 1982), or a statute repealed by Acts 1965, c.305, s.1003.

(b) If a municipal drain not subject to this chapter flows directly or indirectly into a regulated drain that is subject to this chapter, the board shall assess the land benefited by the municipal drain to the extent that it is benefited by the construction, reconstruction, or maintenance of the regulated drain.

(c) This subsection applies to any parcel of land that is partly within the corporate boundaries of a municipality having a drain affected by subsection (b). Notwithstanding section 38 of this chapter, the drainage board may make only one (1) assessment for the same purpose on each individual drain on the parcel. For purposes of making this one (1) assessment, the total acreage of the parcel must be considered to be located where most of the land in the parcel is situated, either within the boundaries or outside the boundaries.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.200-1988, SEC.1; P.L.3-1990, SEC.137.

36-9-27-22

Sec. 22. (a) A municipality acting under a statute other than this chapter may not construct, reconstruct, or maintain a drain that:

(1) is located partly or wholly within the corporate boundaries of the municipality; and

(2) will flow directly or indirectly into a regulated drain that is subject to this chapter;

without the written approval of the board.

(b) The municipality shall file with the board a written request for consent to use the regulated drain as an outlet, subject to this chapter. The request must be accompanied by:

(1) the plans and specifications for the proposed construction, and reconstruction, or maintenance; and

(2) an estimate by the municipal civil engineer, or another qualified person, of the amount of water that will be discharged into the regulated drain as a result of the proposed construction, reconstruction, or maintenance.

(c) The board shall refer the request for consent to the county surveyor, who shall determine whether the regulated drain is adequate to handle the additional flow of water, if any, that would result from the construction, reconstruction, or maintenance proposed by the municipality. If the surveyor finds that the regulated drain is adequate to handle the additional flow of water, the surveyor shall make a written report of that fact to the board, which shall issue its order consenting to the construction, reconstruction, or maintenance by the municipality. If the surveyor finds that the regulated drain is not adequate, the surveyor shall:

(1) prepare a preliminary plan for the reconstruction of the regulated drain so that it will be adequate to handle the additional flow of water;

(2) estimate the total cost of the reconstruction;

(3) file the plan and estimate with the board; and

(4) serve a copy of the plan and estimate on the municipality.

(d) If the municipality binds itself by resolution to pay the cost of the reconstruction of the regulated drain, the county surveyor shall prepare final plans and specifications for the work, reestimate the cost of the work except for damages to affected land, and file the plans and estimate with the board. The board shall determine the amount of damages sustained by any owner as a result of the reconstruction of the regulated drain and shall serve upon each owner a notice:

(1) describing the owner's lands;

(2) stating the amount of each owner's damages;

(3) explaining the injury upon which the determination was based; and

(4) stating the date, time, and place of a hearing by the board on objections to the amount of damages.

The notice shall be served and the hearing held in accordance with sections 49 through 52 of this chapter.

(e) The board shall add the damages to affected land to the county surveyor's reestimation of the costs of the reconstruction and shall certify that amount to the municipality. When the municipality pays the amount certified by the board into the office of the county treasurer for the use of the board in the reconstruction of the regulated drain, the board shall issue an order consenting to the use of the regulated drain by the municipality and shall proceed with the reconstruction of the regulated drain in accordance with the plans and specifications of the surveyor.

(f) After the contracts for the reconstruction are let in accordance with sections 77 through 79.1 of this chapter, the board shall compute the actual cost of the reconstruction. If the actual cost is less than the estimated cost, the excess shall be returned to the municipality on certification by the board to the county auditor of the amount to be returned. If the actual cost of the reconstruction is more than the estimated cost, the board shall certify that fact to the municipality, which shall immediately pay the difference into the office of the country treasurer.

(g) When the board consents to a request made by a municipality under subsection (b), the board shall fix the annual assessment against the municipality for the periodic maintenance of the regulated drain in accordance with sections 38 through 43 of this chapter.

(h) This section does not prohibit a municipality from petitioning the board for the construction of a new regulated drain under sections 54 through 65 of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.42-2011, SEC.86.

36-9-27-23

Sec. 23. (a) Whenever:

(1) a person wants to connect a drain with a regulated drain that is subject to this chapter; and

(2) the connection would result in the discharge into the regulated drain of liquid wastes that would cause or

contribute to pollution of the receiving waters;

the person seeking the connection must obtain written approval from the department of environmental management for the discharge, and shall file that written approval with the board having jurisdiction of the regulated drain when filing his request to connect.

(b) The board may deny a connection request, even though approval of the department of environmental management is given or is not required.

(c) The board shall deny a connection request whenever the approval of the department of environmental management is required and is not obtained.

(d) The provisions of this section requiring department of environmental management approval do not apply to the discharge of sewage from a single or two (2) family residence.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.143-1985, SEC.202.

36-9-27-24

Sec. 24. (a) A regulated drain that is located within a conservancy district is not subject to this chapter if:

(1) the drain has been designated for construction, reconstruction, or maintenance in the district plan of the conservancy district; and

(2) the district plan was approved before January 1, 1966.

However, if the drain has a direct or indirect outlet into any other drain that is subject to this chapter, the board shall assess the district for any benefits it receives from the construction, reconstruction, or maintenance of the other drain.

(b) A court may not approve the district plan or an amendment to the district plan of a conservancy district if it includes the construction, reconstruction, or maintenance of a regulated drain in the district, unless written approval for the district to perform the work is filed with the court by the board or by the department of natural resources.

(c) When a drain located in a conservancy district is not subject to this chapter, the district, with the approval of the court having jurisdiction over the district, may file a written request with the board for the board to assume jurisdiction over the drain. The drain becomes subject to this chapter when the request is filed.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-25

Sec. 25. Whenever a regulated drain that is subject to this chapter is included in a flood control project approved by the department of natural resources, the drain ceases to be subject to this chapter. The construction, reconstruction, and maintenance of such a drain is the responsibility of the local agency that constructs and maintains the project.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-26

Sec. 26. A drain that is under the jurisdiction of:

(1) a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8; or

(2) an association established under Acts 1913, c. 165;

is not subject to annual assessments for periodic maintenance under this chapter, and the district or association is solely responsible for the maintenance of the drain. However, if the drain flows directly or indirectly into a regulated drain that is subject to this chapter, the board shall assess the land within the district or association for any benefits it receives from the construction, reconstruction, or maintenance of the regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995, SEC.88.

36-9-27-26.5

Sec. 26.5. (a) A county executive may change a regulated drain that is subject to this chapter into a drain that is subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8.

(b) When a drain that is subject to assessments for periodic maintenance and repair under this chapter becomes subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8, the county treasurer shall transfer all money in the drain's maintenance fund established under section 44 of this chapter to the drain's drainage maintenance fund established under IC 14-27-8-19.

(c) The county executive shall establish procedures for the transition of a drain from administration under this

chapter to administration under IC 14-27-8.
As added by P.L.154-1993, SEC.5. Amended by P.L.1-1995, SEC.89; P.L.97-2004, SEC.132.

36-9-27-27

Sec. 27. (a) A written statement alleging that a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8 is not active and is not properly maintaining the drains under its control may be filed with the board by:

(1) the owners of fifty-one percent (51%) in area of the land located in the district; or

(2) fifty-one percent (51%) of the owners of land located in the district.

When the statement is filed, the board may file with the court that established the district a complaint that sets forth the allegations in the statement and requests the court to dissolve the district.

(b) The drainage maintenance and repair district shall be named defendant in the action, and a summons shall be served:

(1) on any commissioner of the district; or

(2) on the district by publication if a commissioner cannot be found.

The issues shall be considered closed by a general denial, without the filing on any specific pleadings.

(c) The court shall hear the action without a jury. A change of venue from the county may not be granted.

(d) If the court finds that the allegations in the complaint are true, it shall dissolve the district. All the drains formerly under the jurisdiction of the district become regulated drains subject to this chapter when the district is dissolved.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995, SEC.90.

36-9-27-28

Sec. 28. (a) A written statement alleging that an association established under Acts 1913, c. 165 for the purpose of maintaining and repairing a drain is not active and is not properly maintaining the drain may be filed with the board by:

(1) members of the association who own fifty-one percent (51%) in area of the land within the jurisdiction of the association; or

(2) fifty-one percent (51%) of the members of the association.

When the statement is filed, the board may notify the association of its intention to declare the drain to be subject to this chapter.

(b) The notice must fix a date, time, and place for a hearing on the matter, and shall be:

(1) served personally or by registered mail upon any director or officer of the association who did not sign the statement filed with the board; or

(2) published in accordance with IC 5-3-1, if such a director or officer cannot be found.

(c) On or before the date of the hearing, any member of the association may file written evidence with the board.

(d) If the board finds that the allegations in the statement are true, it shall issue an order declaring the drain to be a regulated drain that is subject to this chapter. The finding and order shall be marked filed and shall be announced publicly at the hearing. The board shall then publish a notice setting forth its order in accordance with IC 5-3-1. Judicial review of the order under section 106 of this chapter may be requested by any member of the association within twenty (20) days after publication of the notice. The drain becomes subject to this chapter when the order becomes final and conclusive.

(e) If the board finds that the allegations in the statement are not true, it shall dismiss the proceedings.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.74.

36-9-27-29

Sec. 29. The county surveyor is the technical authority on the construction, reconstruction, and maintenance of all regulated drains or proposed regulated drains in the county, and he shall:

(1) investigate, evaluate, and survey all regulated drains or proposed regulated drains, and prepare all reports, plans, profiles, and specifications necessary or incident to any proposed construction, reconstruction, or maintenance of regulated drains;

(2) prepare and make public standards of design, construction, and maintenance that will apply to all regulated drains and their appurtenances, taking into consideration in preparing these standards the published recommendations made by Purdue University, the American Society of Agricultural Engineers, the American

Society of Civil Engineers, the United States Department of Agriculture, the department of natural resources, the United States Army Corps of Engineers, and other reliable sources of information;

(3) supervise all construction, reconstruction, and maintenance work performed under this chapter;

(4) catalog and maintain a record of all surveying notes, plans, profiles, and specifications of all regulated drains in the county, and of all mutual and private drains when available; and

(5) perform the functions set forth in sections 67 through 69 of this chapter concerning all urban drains under his jurisdiction.

In preparing plans under subdivision (1), the surveyor shall, when feasible, include the seeding of the banks of all open drains. The surveyor shall, when feasible, use United States Geological Survey data on plans and profiles prepared under subdivision (1).

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.5.

36-9-27-30

Sec. 30. (a) Whenever the county surveyor is not registered under IC 25-21.5 or IC 25-31 and that statute prohibits an unregistered person from performing any function that the county surveyor is directed to do under this chapter, the surveyor shall employ and fix the compensation of a person who is a professional engineer or professional surveyor in performing those functions. However, if the county surveyor does not employ a registered person within one (1) year of the acceptance of a petition for construction or reconstruction of a drain, the board may make the appointment of a registered person that this section requires.

(b) The person employed by the county surveyor, who shall be known as a qualified deputy, shall file with the county surveyor the original of all plans, specifications, and other documents made by the person in performing the work for which the person was employed. Those plans, specifications, and other documents become a part of the permanent file of the county surveyor's office, which the county surveyor shall maintain for the use of the board as provided in section 109 of this chapter.

(c) The rate of compensation paid to a qualified deputy shall be assessed against the drainage project for which the deputy was employed.

(d) This subsection applies whenever the county surveyor is not registered under IC 25-21.5 or IC 25-31, and the county surveyor has not employed a registered person as provided in subsection (a). If the county has a full-time employee who is registered as a professional surveyor under IC 25-21.5 or as a professional engineer under IC 25-31, the board may, subject to the approval of the county executive and the county surveyor, designate that person to perform the functions of the county surveyor under this chapter that are allowed under the employee's license as a professional surveyor or professional engineer. If a designation is made and approved under this subsection, the county surveyor may not employ a registered person under subsection (a) to perform that same function.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.1; P.L.76-1989, SEC.5; P.L.2-1997, SEC.84; P.L.2-1998, SEC.88; P.L.241-1999, SEC.4; P.L.57-2013, SEC.101.

36-9-27-31

Sec. 31. If for any reason there is no elected county surveyor in any county, the board shall employ and fix the compensation of a part-time or full-time engineer or surveyor. The engineer or surveyor, who must be registered under IC 25-21.5 or IC 25-31 and must be or become a resident of Indiana, shall perform the functions required of the county surveyor in this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.2-1997, SEC.85.

36-9-27-32

Sec. 32. (a) Whenever the board finds that it is necessary to advance the work of construction or of reconstruction, as determined from the long-range plan established under section 36 of this chapter, to a degree inconsistent with the work load of the county surveyor, the board shall publicly declare an emergency and shall authorize the employment of an engineer, firm of engineers, or professional surveyor as a contract deputy to perform the necessary work, including:

(1) the preparation of the county surveyor's report or specified parts of it; and

(2) the supervision of the construction or reconstruction.

(b) A contract deputy shall be employed by contract. Each contract must be for work on a specific drainage project, and may be on a per project fee basis or on a per diem basis of compensation.

(c) A contract deputy must have the same qualifications as an engineer or professional surveyor employed or

appointed by the board under section 30 or 31 of this chapter.

(d) The original of all plans, specifications, and other documents made by a contract deputy in performing the work for which the contract deputy was employed, or facsimiles of them in reproducible form, shall be transmitted to the board and shall be permanently retained by the board or by the county surveyor in the manner in which similar documents prepared by the county surveyor or the board are retained.

(e) The compensation of a contract deputy shall be assessed against the drainage project for which the deputy was employed, and may be paid from the general drain improvement fund before the order for the construction or reconstruction.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.2; P.L.57-2013, SEC.102.

36-9-27-33

Sec. 33. (a) The county surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter has the right of entry over and upon land lying within seventy-five (75) feet of any regulated drain. The seventy-five (75) foot limit shall be measured at right angles to:

(1) the center line of any tiled drain; and

(2) the top edge of each bank of an open drain;

as determined by the surveyor.

(b) Spoil bank spreading resulting from the construction, reconstruction, or maintenance of an open drain may extend beyond the seventy-five (75) foot right-of-way if:

(1) the county surveyor finds that the extension is necessary; and

(2) the extension has been provided for in the engineer's report on the construction, reconstruction, or maintenance.

(c) All persons exercising the right given by this section shall, to the extent possible, use due care to avoid damage to crops, fences, buildings, and other structures outside of the right-of-way, and to crops and approved structures inside the right-of-way. The county surveyor shall give oral or written notice of the entry on the land to the property owner of record, and in the case of a municipality, to the executive of that municipality. The notice must state the purpose for the entry.

(d) The owners of land over which the right-of-way runs may use the land in any manner consistent with this chapter and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when so ordered by the board or by the county surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the surveyor, the board, or their representatives. Trees, shrubs, and woody vegetation may not be planted in the right-of-way without the written consent of the board, and trees and shrubs may be removed by the surveyor if necessary to the proper operation or maintenance of the drain.

(e) This subsection applies to new regulated drains established after September 1, 1984, and to urban drains. Except as provided in subsection (f), the board may reduce the seventy-five (75) foot right-of-way requirement of subsections (a) and (b) to any distance of not less than:

(1) twenty-five (25) feet from the top of each bank of an open ditch; and

(2) fifteen (15) feet from the center line of any tiled drain;

as measured at right angles.

(f) This subsection applies only to a platted subdivision. Upon the recommendation of the county surveyor, the board may further reduce the right-of-way for any tiled drain, including a tiled urban drain that was reduced under subsection (e)(2). However, the board shall not make a reduction that results in a right-of-way that is:

(1) less than seven (7) feet from each side of the center line as measured at right angles; or

(2) less than the recommendation made by the county surveyor.

(g) A reduction of a right-of-way under subsection (e) or (f) does not:

(1) affect a public utility's use of; or

(2) deprive a public utility of the use of;

the right-of-way if, at the time the right-of-way is reduced, the public utility is occupying and using the right-of-way for the location of the public utility's structures, including pipelines, electric lines, or any related structures.

(h) The surveyor, the board, or an authorized representative of the surveyor or the board acting under this

chapter does not commit criminal trespass under IC 35-43-2-2.
As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.3; P.L.76-1989, SEC.6; P.L.145-2013, SEC.1.

36-9-27-34

Sec. 34. (a) The county surveyor shall classify all regulated drains in the county as:
(1) drains in need of reconstruction;
(2) drains in need of periodic maintenance; or
(3) drains that should be vacated.
The surveyor shall also consider the designation of urban drains under section 67 of this chapter.
(b) A regulated drain is in need of reconstruction when:
(1) it will not perform the function for which it was designed and constructed;
(2) it no longer conforms to the maps, profiles, and plans prepared at the time when the legal drain was established; or
(3) topographical or other changes have made the drain inadequate to properly drain the lands affected without extensive repairs or changes, including:
(A) converting all or part of an open drain to a tiled drain or a tiled drain to an open drain;
(B) adding an open drain to a tiled drain or a tiled drain to an open drain;
(C) increasing the size of the tile;
(D) deepening or widening an open drain;
(E) extending the length of a drain;
(F) changing the course of a drain;
(G) constructing drainage detention basins and drainage control dams;
(H) providing for erosion control and for grade stabilization structures; or
(I) making any major change to a drainage system that would be of public utility.
(c) A regulated drain is in need of periodic maintenance when, with or without the use of mechanical equipment, it can be made to perform the function for which it was designed and constructed, and to properly drain all affected land under current conditions, by periodically:
(1) cleaning it;
(2) spraying it;
(3) removing obstructions from it; and
(4) making minor repairs to it.
(d) A regulated drain should be vacated when:
(1) the drain does not perform the function for which it was designed and constructed, or it has become inadequate to properly drain all affected land under current conditions;
(2) the expense of reconstruction outweighs the benefits of reconstruction; and
(3) the vacation will not be detrimental to the public welfare.
As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.6.

36-9-27-35

Sec. 35. (a) The county surveyor shall submit to the board a written report setting forth his classification of regulated drains in order of priority for action by the board. This report may be made from time to time during the surveyor's process of classification.
(b) The board may adopt the classifications and order of work priority as made by the county surveyor, or may modify them.
(c) If ten percent (10%) of the owners' request the board to classify or reclassify a drain affecting their land, the board shall, after giving notice to all affected owners, conduct a hearing on the request and adopt a proper classification. The notice shall be given by publication in accordance with IC 5-3-1. Notice shall be given to an attorney of record in the manner provided in section 110 of this chapter.
As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.75.

36-9-27-36

Sec. 36. (a) When the classification of drains, or a partial classification of drains, has been adopted by the board, the county surveyor shall prepare a long-range plan for:

(1) the reconstruction of regulated drains classified as in need of reconstruction;
(2) the establishment of an annual maintenance assessment for regulated drains classified as in need of periodic maintenance; and
(3) the vacating of regulated drains classified as drains that should be vacated.

The plan must set forth the approximate date each drain will be referred to the surveyor for report, taking into consideration the work load of the surveyor and the estimation by the surveyor of the time it will take to prepare each report.

(b) The long-range plan is subject to approval by the board, may be amended by the board at any time, and shall be reconsidered and brought up to date before June 1 of each year.

(c) The board shall refer each regulated drain to the county surveyor for a report in accordance with the long-range plan. If no long-range plan has been adopted by the board, and if the surveyor has classified only part of the regulated drains, the board may refer the regulated drains that have been classified to the surveyor for a report in the order of priority set forth in the partial classification.

(d) Ten percent (10%) of the owners of land affected by a regulated drain that has been classified as a drain that:
(1) is in need of reconstruction;
(2) is in need of periodic maintenance; or
(3) should be vacated;

may file with the board a written request that the board advance the proposed date when the drain will be referred to the county surveyor for report. Upon receipt of such a request, the board shall set the request for hearing at its next regular meeting and shall promptly mail notice of the time, date, and place of the hearing to the owners making the request. At the meeting any affected owner or the surveyor may present evidence for or against the request. After the hearing, the board may advance the date the drain will be referred to the surveyor if it is practicable to do so.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-37

Sec. 37. (a) When instituting proceedings to vacate a regulated drain, the board shall:
(1) serve a notice of intention to vacate on all owners of affected land;
(2) fix a date for a hearing;
(3) receive all objections filed;
(4) hold the hearing; and
(5) issue an order vacating or reclassifying the drain.

(b) A board acting under this section shall:
(1) comply with the applicable provisions of sections 49 through 52 of this chapter; and
(2) consider section 34(d) of this chapter in determining whether a drain should be vacated.

(c) An owner aggrieved by the final order of the board may obtain judicial review of the order under section 106 of this chapter.

(d) When a drain is vacated, the county treasurer shall transfer all money in that drain's maintenance fund to the general drain improvement fund.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.4.

36-9-27-38

Sec. 38. When the board refers a regulated drain classified in need of periodic maintenance to the county surveyor, he shall prepare a maintenance report that includes the following items:
(1) The estimated annual cost of periodically maintaining the drain.
(2) The name and address of each owner of land that will be affected by the proposed maintenance, and the legal description of the land of each owner, as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. If the name of an owner is not known, and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.
(3) The nature of the maintenance work required and how frequently the work should be performed.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-39

Sec. 39. When the board receives a maintenance report under section 38 of this chapter, it shall prepare a schedule of assessments that includes the following items:

(1) A description of each tract of land determined to be benefited, and the name and address of the owner, as listed on the county surveyor's report.

(2) The percentage of the estimated cost of periodically maintaining the drain to be assessed against each tract of land. The percentage shall be based upon the benefit accruing to each tract of land from the maintenance, and must be at least one hundred percent (100%) and as near to one hundred percent (100%) as is practicable.

(3) The amount annually assessed against each tract of land for maintenance.

The board may consider the factors listed in section 112 of this chapter in preparing the schedule.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-40

Sec. 40. (a) The board shall fix a date, time, and place for a hearing on the maintenance report of the surveyor and on the schedule of assessments, and shall prepare a written notice for each owner of land proposed to be assessed. The notice, which must describe the land to be assessed, must state:

(1) the name and identifying number by which the drainage proceedings are known;

(2) that the maintenance report of the county surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the surveyor;

(3) that the surveyor has estimated that the annual cost of periodically maintaining the drain is in the sum of _____ dollars;

(4) that the land of the owner is shown by the schedule of assessments to be annually assessed _____ percent of the total cost of periodically maintaining the drain;

(5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for periodically maintaining the drain; and

(6) the date, hour, and place of the hearing before the board on the surveyor's maintenance report and on the schedule of assessments.

(b) Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedule of assessments.

(c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:

(1) identify the drainage proceedings;

(2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and

(3) state that:

(A) the maintenance report of the surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and

(B) a hearing will be held before the board on the schedule of assessments, specifying the time and place of the hearing.

(d) Not less than five (5) days before the hearing, any owner of land named in the schedule of assessments may file with the board a written objection alleging that he is the owner of land assessed as benefited and the benefits assessed against his land are excessive. Each objector may file written evidence in support of his objection. The failure of an owner to file an objection constitutes a waiver of his right to subsequently object, on the ground stated in this subsection, to any final action of the board.

(e) On or before the day of the hearing, the surveyor shall, and any owner of land named in the schedule of assessments may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).

(f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(g) After considering all objections and evidence, the board may amend the schedule of assessments as justice may require. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of assessments as originally filed or as amended, mark the order filed, and publicly announce the order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the

drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(h) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the order becomes conclusive.

(i) The notice required by subsections (a) and (b) for each owner of land proposed to be assessed is not required for a joint board that includes three (3) or more counties in a drainage basin that exceeds eighty thousand (80,000) acres, except that when the proposed assessment affects land owned by a public utility or railroad the requirements of subsections (a) and (b) shall be met as to the public utility or railroad.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.76; P.L.370-1983, SEC.1; P.L.239-1996, SEC.1.

36-9-27-41

Sec. 41. (a) If recommended by the county surveyor, the board may, after notice and hearing to affected owners, combine regulated drains located in the same watershed for the purpose of annually assessing the owners benefited for periodic maintenance.

(b) The notice shall be published in accordance with IC 5-3-1. Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.

(c) In combining drains, the board shall consider:

(1) whether the drains are tiled or open; and

(2) the uniformity of topography and soil types;

so that the drains that are combined represent substantially the same maintenance problem and can be kept in proper repair at a cost sufficiently uniform as to constitute no substantial inequity for any owner included in the combination of drains.

(d) The board may, from time to time, add regulated drains to a combination of drains established under this section.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.77.

36-9-27-42

Sec. 42. (a) The board may at any time increase or decrease the amount annually assessed for periodic maintenance of a regulated drain if the board finds that the county surveyor's estimate of the cost of maintaining the drain was insufficient or excessive.

(b) The board may decrease the amount annually assessed without notice to the affected owners if the percentage of benefit assigned to all tracts of land affected is not changed from that originally determined by the board.

(c) The board may increase the amount annually assessed once without notice to the affected owners if:

(1) the percentage of benefit assigned to all tracts of land affected is not changed from that originally determined by the board; and

(2) the increase does not exceed twenty-five percent (25%) of the amount initially established.

(d) If the board:

(1) finds that the percentage of benefit assigned to any particular tract or tracts of land should be increased due to a change in land use or for any other reason; or

(2) proposes an increase or decrease that would affect all of the lands assessed for the maintenance of the drain and that is not exempted from the giving of notice under subsection (b) or (c);

the board shall mail a notice to the owner or owners of the land. The notice must state the proposed change in the assessment, and specify a date, time, and place, not less than ten (10) days after the notice is mailed, when the board will hear objections to the change. An owner may file written objections to the proposed change on or before the date of the hearing. At the hearing, the board shall consider all objections and evidence filed and shall enter an order as justice may require. The board shall mail a copy of its order to the owner or owners affected. If an owner does not request judicial review of the order under section 106 of this chapter within twenty (20) days after his receipt of the copy of the order, the order becomes conclusive.

(e) A joint board that includes three (3) or more counties in a drainage basin that exceeds one hundred thousand (100,000) acres shall publish notice in accordance with IC 5-3-1 instead of mailing notice to the owner or owners of land as required by subsection (d).

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.25; P.L.370-1983, SEC.2.

36-9-27-43

Sec. 43. (a) If in any year a maintenance fund established under section 44 of this chapter has an unencumbered balance equal to or greater than four (4) times the estimated annual cost of periodically maintaining the drain for which the fund was established, the annual assessment for the maintenance of that drain may be omitted for that year.

(b) The county drainage board may collect the drain assessment even though the unencumbered balance of the maintenance fund is equal to or greater than four (4) times the estimated annual cost of periodic maintenance of the drain for which the fund was established if the drainage board does the following:

(1) Conducts a public hearing in accordance with section 40 of this chapter.

(2) At the public hearing estimates what the unencumbered balance of the maintenance fund would be, as a multiple of the estimated annual cost of periodic maintenance of the drain, after the collection of the total amount that the board intends to collect in assessments.

However, the annual assessment for the maintenance of the drain shall be omitted if, according to the estimate of the board, the collection of the intended total amount of assessments would increase the unencumbered balance of the maintenance fund to equal or exceed eight (8) times the estimated annual cost of periodic maintenance of the drain for which the fund was established.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.13.

36-9-27-44

Sec. 44. (a) A maintenance fund is established for each regulated drain and for each combination of drains established under section 41 of this chapter. A maintenance fund consists of:

(1) money received from annual assessments upon land benefited by the periodic maintenance of a drain;

(2) penalties received on collection of delinquent annual assessments made for the periodic maintenance of a drain; and

(3) money received from any person as compensation for damages suffered to a drain.

(b) The county auditor shall:

(1) set up a separate ledger account for each regulated drain or combination of drains whenever the board fixes an annual assessment for the periodic maintenance of the drain or combination; and

(2) extend the assessments upon the ditch duplicate in each year that the assessments are to be made.

(c) Whenever the county surveyor's estimate for annual maintenance of any drain is not more than one thousand five hundred dollars ($1,500), the board may exempt that drain from the requirement that a maintenance fund be established. Expenses up to one thousand five hundred dollars ($1,500) in each year for the drain shall be paid from the general drain improvement fund established under section 73 of this chapter. The surveyor may make these minor repairs without advertising or letting a contract or contracts, but the total of these expenditures in any one (1) county in each year may not exceed ten dollars ($10) per mile of regulated drains in the county. Expenditures under this subsection may not be assessed to the affected owners.

(d) The board may deposit money that is in a maintenance fund in the manner and to the extent provided by IC 5-13-6.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.351-1985, SEC.1; P.L.19-1987, SEC.55.

36-9-27-45

Sec. 45. A maintenance fund established under section 44 of this chapter is subject to the use of the board for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains, which may be done whenever the board, upon the recommendation of the county surveyor, finds that it is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund. However, if:

(1) a maintenance fund has not been established for the drain or combination of drains; or

(2) a maintenance fund has been established but it is not sufficient to pay for the work;

the general drain improvement fund shall be used to pay the cost of the work or to pay for the deficiency, and the general drain improvement fund shall be reimbursed from the appropriate maintenance fund when it is established or becomes sufficient.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.14.

36-9-27-45.5

Sec. 45.5. (a) This section applies when a county surveyor advises the drainage board that in the county surveyor's opinion a maintenance fund has a balance in excess of the amount reasonably needed in that fund for maintenance work in the foreseeable future.

(b) The board may transfer an amount up to a maximum of seventy-five percent (75%) of the money in the maintenance fund to a reconstruction fund that covers the same watershed as the maintenance fund from which the money is transferred.

As added by P.L.154-1993, SEC.6.

36-9-27-46

Sec. 46. (a) When a regulated drain is obstructed or damaged by logs, trees, brush, unauthorized structures, trash, debris, excavating, filling, or pasturing livestock, or in any other way, the county surveyor shall immediately remove the obstruction and repair any damage.

(b) Notwithstanding subsection (a), if the obstruction or damage is caused by an owner of land affected by the drain, the county surveyor shall first mail a notice to the owner, with return receipt requested, requiring the owner to remove the obstruction and repair the damage. If the owner fails to comply within ten (10) days after receipt of the notice, the surveyor shall perform the work, and the cost of the work shall be paid out of the annual maintenance fund of the drain if one has been established, or, if no such fund has been established, out of the general drain improvement fund.

(c) If the obstruction or damage has been caused by the acts or omissions of an owner of land affected by the drain, the board may, after a hearing with written notice served on the owner, add an amount sufficient to pay for the damage to the next annual assessment made against the land of the owner. The board shall certify the assessment to the county auditor in the same manner as any other assessment.

(d) If the obstruction or damage is caused by the acts or omissions of a person other than the owner of land affected by the drain, the board may bring an action against that person in court. The board is entitled to recover the reasonable value of removing the obstruction and repairing the damage, plus a reasonable attorney's fee.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-47

Sec. 47. (a) Whenever any person:

(1) goes upon any land under any contract, easement, or statute; and

(2) damages a regulated drain or impedes the flow of such a drain by placing pipe, cable, or other material over, under, or through the drain;

the board shall serve upon the person an order requiring him to immediately repair the damages and remove the obstruction.

(b) If the person fails to comply with the order, the county surveyor shall repair the damage and remove the obstruction. The board may then bring an action against the person to recover damages, including the reasonable cost of repairing the damage and removing the obstruction, along with reasonable attorney's fees.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-48

Sec. 48. (a) Whenever, in the construction or reconstruction of a regulated drain, the county surveyor determines that:

(1) the proposed drain will cross a pipeline, cable, or similar equipment of a public utility; and

(2) the equipment will interfere with the proper operation of the drain;

he shall include in his plans the relocation requirements of the equipment. The surveyor shall, by registered mail, send a copy of the requirements to the public utility owning the equipment.

(b) If requested by the public utility, the county surveyor shall meet with the public utility at a time and place to be fixed by the surveyor and hear objections to the requirements. After the hearing, the surveyor may change the requirements as justice may require.

(c) If the board finds that the relocation of a pipeline, cable, or similar equipment owned by a public utility is necessary in the construction or reconstruction of a regulated drain, the cost of relocation shall be paid by the public utility.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-49

Sec. 49. (a) When the board refers a regulated drain to the county surveyor for a reconstruction report, the surveyor shall determine and set forth in his report the best and cheapest method of reconstructing the drain so that it will adequately drain all affected land.

(b) The county surveyor shall make the necessary surveys, maps, profiles, plans, and specifications, and he may include in them:

(1) all of the repairs or changes specifically set forth in section 34(b) of this chapter; and

(2) any other repairs or changes that good engineering practice requires, including arms where none existed before.

(c) The county surveyor shall estimate the costs of the proposed reconstruction, including costs of notices and advertising, and he shall also estimate the annual cost of periodically maintaining the proposed reconstruction.

(d) The county surveyor shall include in his report the name and address of each owner of land that will be affected by the proposed reconstruction, and the legal description of the land of each owner as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. If the name of an owner is not known, and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-50

Sec. 50. When the county surveyor files a reconstruction report, he shall consult with the board, and the board shall take the following actions:

(1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the reconstruction, and the name and address of the owner of the land. The name, address, and description shall be taken from the surveyor's report. The board shall enter in the assessment schedule the percentage of the total cost of the reconstruction to be assessed against each tract of land, with the percentage to be based upon the benefit accruing to the land from the reconstruction. The percentage allocated to all lands benefited must be at least one hundred percent (100%) and as near to one hundred percent (100%) as is practicable.

(2) Determine the amount of damages sustained by any owner as a result of the reconstruction, and prepare a schedule of damages containing:

(A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the surveyor's report;

(B) the amount of each owner's damages; and

(C) an explanation of the injury upon which the determination was based.

The surveyor shall add the damages to all lands as determined by the board to the estimated costs and expenses contained in his report, and the result constitutes the total estimated cost of the reconstruction.

(3) Set forth the amount of each owner's assessment based on the total estimated cost of the reconstruction.

(4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the reconstruction. The percentage used in computing the annual assessment may, but need not be, the same for each tract of land as the percentage used in computing the general assessment.

The board may consider the factors listed in section 112 of this chapter in preparing the schedules.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-51

Sec. 51. Whenever it becomes necessary to reconstruct a regulated drain that has become inadequate due to an increased flow of drainage resulting, in whole or in part, from a change in land use by one (1) or more owners of land affected by the drain, the board shall consider that fact in assessing benefits to pay the cost of the reconstruction, and the owner or owners necessitating the reconstruction shall be assessed accordingly.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-52

Sec. 52. (a) When the schedules of damages and assessments are completed and marked filed, the board shall fix a date, time, and place for a hearing on the reconstruction report of the county surveyor and on the schedules of damages and assessments, and shall prepare a notice for each owner of land affected by the reconstruction. The notice must state:

(1) the name and identifying number by which the proposed reconstruction is known;

(2) that the reconstruction report of the surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the surveyor;

(3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of _____ dollars;

(4) that the land of the owner is shown by the schedule of assessments to be assessed _____ percent of the total cost of reconstruction, and that _____ percent of the estimated total cost of the reconstruction is in the sum of _____ dollars;

(5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for estimated periodic maintenance of the reconstruction; and

(6) the date, hour, and place of the hearing on the surveyor's reconstruction report and on the schedules of damages and assessments.

(b) Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedules of damages and assessments.

(c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:

(1) identify the proposed reconstruction;

(2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and

(3) state that:

(A) the reconstruction report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and

(B) a hearing will be held before the board on the report and schedules, specifying the time and place of hearing.

(d) Not less than five (5) days before the board's hearing on a reconstruction report, an owner of lands affected by the report or by the schedules of damages and assessments may file with the board written objections to the report, schedules, or both. The objections may be for one (1) or more of the following causes:

(1) The costs, damages, and expenses of the proposed reconstruction will exceed the benefits that will result to the owners of all land benefited.

(2) The objector is the owner of land assessed as benefited, and the benefits assessed against his land are excessive.

(3) The objector is the owner of land damaged by the reconstruction, and:

(A) the board failed to find that his land is damaged; or

(B) the damages assessed to his land are inadequate.

Each objector may file written evidence in support of his objections. The failure of an owner to file objections constitutes a waiver of his right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

(e) On or before the day of the hearing, the county surveyor shall, and any owner of land affected by the proposed reconstruction may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).

(f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(g) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments, and the county surveyor may modify his report, as justice may require.

(h) Before final adjournment of the hearing, the board shall determine in writing whether the costs, damages, and

expenses of the proposed reconstruction will be less than the benefits accruing to the owners of land benefited by the construction. If the board answers this question in the negative, it shall dismiss the proceedings. If the board answers the question in the affirmative, it shall adopt the reconstruction report of the county surveyor and the schedule of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings, and issue an order declaring the proposed reconstruction established. The board shall mark the findings and order filed and publicly announce the findings and order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

(i) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the findings and order become conclusive.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.78; P.L.180-1995, SEC.6.

36-9-27-52.5

Sec. 52.5. (a) If:

(1) a proposed project for the reconstruction of a regulated drain is presented to the board for approval;

(2) the proposed project consists exclusively of the relocation of a regulated drain from one (1) site on property owned by a person to another site on property owned by the same person;

(3) the specifications for the project have been approved by the county surveyor;

(4) the project will be completed under the supervision of the county surveyor;

(5) the person who owns the property on which the regulated drain will be relocated will pay the entire cost of the project;

(6) the county surveyor has investigated whether any other owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project, and has communicated the results of the investigation to the board;

(7) the board finds that no owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project; and

(8) the board, at a public meeting, votes to approve the proposed project;

the board may issue an order authorizing the reconstruction of a regulated drain.

(b) The board may issue an order authorizing the reconstruction of a regulated drain under subsection (a) without:

(1) the preparation and filing of a reconstruction report under sections 49 and 50 of this chapter;

(2) the preparation by the county surveyor of a schedule of damages and assessments under section 50 of this chapter; and

(3) a hearing on the reconstruction report and the schedules of damages and assessments under section 52 of this chapter.

As added by P.L.273-1995, SEC.3.

36-9-27-53

Sec. 53. (a) Whenever:

(1) the board has initiated, or is considering initiating, a proceeding to reconstruct a regulated drain under this chapter;

(2) one (1) or more other regulated drains in the same watershed are in need of reconstruction;

(3) the board finds that no substantial injustice would result from treating the drains as a single drain; and

(4) the board has given notice and a hearing to the owners of affected land;

the board may issue an order combining the drains.

(b) The notice shall be published:

(1) at least once; and

(2) not less than ten (10) nor more than thirty (30) days before the date of the hearing;

in a newspaper of general circulation in the area affected. Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.

(c) After an order is issued under this section, this chapter applies to the combined drains as if they were a single drain.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-53.5

Sec. 53.5. (a) A county surveyor or board planning to perform a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27 that:

(1) is subject to regulation under:

(A) IC 14-26-5; or

(B) IC 14-28-1; or

(2) requires an individual permit under Section 404 of the federal Clean Water Act (33 U.S.C. 1344);

shall request an onsite field review of the project through a written notification of the division of water of the department of natural resources (referred to as "the division" in this section).

(b) Not more than fourteen (14) days after it receives a notification under subsection (a), the division shall contact the county surveyor or the designee of the county surveyor and the department of environmental management to establish a date, time, and location for the onsite field review.

(c) The onsite field review shall be conducted by a team consisting of:

(1) one (1) or more representatives of the county;

(2) one (1) or more representatives of the department of natural resources, including an engineer from the division of water;

(3) one (1) or more representatives of the department of environmental management; and

(4) if applicable, representatives of the local soil and water conservation district.

(d) Not more than thirty (30) calendar days after the completion of an onsite field review under this section, the division shall provide the county surveyor with a written summary of the review. The summary must contain the following:

(1) A narrative and map defining the project location.

(2) A description of the proposed work.

(3) A list of conditions that:

(A) the department of natural resources would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work;

(B) the department of environmental management would place on a certification to comply with Section 401 of the federal Clean Water Act (33 U.S.C. 1341), if it is possible to ensure compliance with Section 401 by placing conditions on the certification; or

(C) both departments referred to in this subdivision would place on a permit or certification.

(e) The department of natural resources may not require or recommend the following as conditions for a permit for a project for the reconstruction or maintenance of a regulated drain:

(1) Deed restrictions in connection with the proposed work.

(2) Conservation easements in connection with the proposed work.

(3) Tree planting or tree retention within the easement of the regulated drain, if:

(A) the project involves construction on only one (1) side of the drain;

(B) vegetation on the opposite overbank will not be disturbed; and

(C) the board agrees to establish a suitably sized vegetated filter strip consisting of grasses and legumes along the side of the drain on which the construction will occur.

(f) For the purposes of subsection (e)(3), a project involves construction on only one (1) side of a regulated drain if the work is limited to the entire area:

(1) below the top of the banks; and

(2) within the drainage easement on one (1) side;

of the stream or open drain.

(g) A county surveyor or board that is aggrieved by the permit conditions disclosed under subsection (d)(3) has the right to enter into further negotiations with the department of natural resources and the department of environmental management in order to obtain a mutually agreeable set of permit conditions.

(h) If the permit conditions disclosed under subsection (d)(3) concerning a project for the reconstruction or maintenance of a regulated drain are acceptable to the county surveyor and board, the conditions:

(1) are binding upon the department of natural resources; and

(2) may not be changed by the department of natural resources.

However, subdivisions (1) and (2) cease to apply to the permit conditions disclosed under subsection (d)(3)

concerning a project if an application for a permit for the project is not submitted within two (2) years after the onsite field review.
As added by P.L.180-1995, SEC.7. Amended by P.L.2-1996, SEC.295.

36-9-27-54

Sec. 54. (a) When one (1) or more persons want to establish a new regulated drain, and that drain cannot be established in the best and cheapest manner without affecting land owned by other persons, the person or persons seeking to establish the drain must file a petition with the board. If the proposed drain will affect land in two (2) or more counties, the petition shall be filed in each of the affected counties. The petition shall be entitled "In the Matter of the _____ Drain Petition".

(b) The petition may be filed by:

(1) the owners of:

(A) ten percent (10%) or more in acreage; or

(B) twenty-five percent (25%) or more of the assessed valuation;

of the land that is outside the corporate boundaries of a municipality and is alleged by the petition to be affected by the proposed drain;

(2) a county executive that wants to provide for the drainage of a public highway;

(3) a township executive or the governing body of a school corporation that wants to drain the grounds of a public school; or

(4) a municipal legislative body that wants to provide for the drainage of the land of the municipality.

(c) The petition must include the following items:

(1) A statement showing that each petitioner is qualified to file the petition.

(2) The legal description of each tract of land that a petitioner believes will be affected by the proposed drain, and the name and address of each owner, as shown by the tax duplicate or record of transfers of the county. However, a public way owned by a county or by the state shall be described by its name or number, and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township, and range. The petition must describe an area of land equal to three-fourths (3/4) or more in area of all the affected land.

(3) The general route of the proposed drain.

(4) A statement that in the opinion of the petitioner the costs, damages, and expenses of the proposed drain will be less than the benefits accruing to the owners of land likely to be benefited by the drain.

(5) A statement that in the opinion of the petitioner the proposed drain will:

(A) improve the public health;

(B) benefit a public highway in a county or a public street in a municipality;

(C) drain the grounds of a public school; or

(D) be of public utility.

(6) The name of the attorney representing the petitioner in the drainage petition.

(7) A statement that the petitioner shall pay the cost of notice and all legal costs, if the petition is dismissed. The petitioner shall post a bond sufficient to pay the cost of notice and all legal costs if the petition is dismissed.

(d) The petition must be signed by each petitioner and filed in duplicate with the county surveyor, who shall receive it on behalf of the board. The surveyor shall examine the petition and if it is in proper form he shall mark it filed, showing the date of filing, and give it a distinguishing name by insertion in its caption. If the petition is not in proper form, the surveyor shall return it to the attorney for the petitioner, pointing out in what respects the petition fails to comply with this chapter. The attorney may then amend the petition and refile it with the surveyor.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-55

Sec. 55. When the county surveyor has accepted a petition and marked it filed under section 54 of this chapter, he shall make a personal inspection of the land described in the petition and file with the board a written preliminary report stating:

(1) whether the proposed drain is practicable;

(2) whether the proposed drain will improve the public health, benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school, or be of public utility; and

(3) whether the costs, damages, and expenses of the proposed drain will probably be less than the benefits accruing to the owners of land likely to be benefited.

In determining whether the proposed drain is practicable, the surveyor may consider changing the route of the proposed drain from that set forth in the petition to conform with sound engineering principles.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-56

Sec. 56. (a) If the county surveyor's report concerning any of the three (3) subdivisions of section 55 of this chapter is wholly in the negative, the board shall have a copy of the surveyor's preliminary report served upon the attorney for the petitioner.

(b) Within twenty (20) days after service is made under subsection (a), the petitioner may file with the board written objections to the report, along with written evidence in support of the objections.

(c) The board shall consider any objections and written evidence filed by petitioner, and may then adopt the surveyor's preliminary report as filed or amend it as justice may require. However, if the board finds that the report concerning any of the three (3) subdivisions of section 55 of this chapter should be wholly in the negative, it shall dismiss the petition, whether or not the petitioner has filed objections and evidence.

(d) The board shall serve a copy of its findings and the notice of dismissal, if any, on the attorney for the petitioner. The petitioner may file an appeal from the order of the board under section 106 of this chapter within twenty (20) days after service of the order on his attorney.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-57

Sec. 57. (a) If the county surveyor, in his preliminary report, or the board, after a hearing under section 56 of this chapter, finds that the report concerning each of the three (3) subdivisions of section 55 of this chapter should be in the affirmative, the surveyor shall determine if any land other than that described in the petition will be affected by the proposed drain. If the surveyor finds that additional land will be affected, he shall make a written report to the board, setting forth the boundary of the additional area of affected land.

(b) After receiving the county surveyor's report under subsection (a), the board shall determine if the petition describes an area of land equal to three-fourths (3/4) or more of all the affected land.

(c) If the board's determination under subsection (b) is in the negative, the board shall enter an order dismissing the petition, unless within a time specified by the board a supplementary petition describing a sufficient area contiguous to the area described in the original petition, with the signatures required to qualify the supplementing petition, is filed with the board. The board shall serve a copy of the report of the county surveyor and order of dismissal upon the attorney for petitioner. The dismissal does not prohibit the subsequent filing of a proper petition.

(d) If the county surveyor determines that additional land will be affected by the proposed drain, and that the petition described a sufficient area of land, he shall prepare a written report describing the boundary of the additional area and have a copy of the report served on the attorney for the petitioner. The petitioner, within thirty (30) days after service of the report upon his attorney, shall file with the surveyor an amendment to the petition, including:

(1) the names and addresses of the owners of all land within the additional area described in the surveyor's report; and

(2) a legal description of each owner's land.

The names, addresses, and legal descriptions shall be described in the manner prescribed by section 54(c)(2) of this chapter. If the petitioner fails to file the amendment to the petition within the thirty (30) day period, or within any additional time granted to the petitioner by the surveyor or the board, the surveyor shall report that fact to the board at its next meeting. The board shall then enter an order dismissing the petition and serve a copy of the order on the attorney for petitioner.

(e) If the county surveyor determines that the petition described all of the land that may be affected by the proposed drain, or if the surveyor determines otherwise and a proper amendment to the petition is filed under subsection (d), the surveyor shall immediately fix a date, hour, and place for a hearing before the board on the petition and shall have written notice of the hearing served on the attorney for the petitioner. The date of the hearing may not be less than thirty (30) nor more than forty (40) days after the date of service of notice upon the petitioner's attorney. The surveyor shall call a special meeting of the board for the date, time, and place fixed in the notice unless a meeting of the board is already scheduled for the date, time, and place.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-58

Sec. 58. (a) Within seven (7) days after the attorney for the petitioner is served with notice of a hearing under section 57(e) of this chapter, he shall prepare a written notice setting forth:

(1) the fact of the filing and pendency of the petition;

(2) the name and identifying number by which the petition is known;

(3) the general route of the proposed drain; and

(4) the date, hour, and place of the hearing before the board.

(b) The attorney for the petitioner shall, within the seven (7) day period, mail a copy of the notice in a five (5) day return envelope to each owner named in the petition.

(c) The attorney for the petitioner shall have a copy of the notice published in accordance with IC 5-3-1. The published notice shall be directed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered.

(d) On or before the day of the hearing, the attorney for the petitioner shall file with the board affidavits showing the mailing of the notices under subsection (b) and the publication of notice under subsection (c). The mailing and publication of the notice under this section constitute public notice to all owners of the pendency of the petition, whether or not they were individually named and notified, and are sufficient to give the board jurisdiction over those owners.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.79.

36-9-27-59

Sec. 59. (a) At least five (5) days before the board's hearing on a petition to establish a new regulated drain, one (1) or more persons who own two-thirds (2/3) in the area of the acreage and fifty-one percent (51%) of the assessed valuation of the land named in the petition, or that may be affected by an assessment of benefits or damages, may file with the board a written remonstrance, signed by each remonstrator, against the construction of the proposed drain.

(b) At least five (5) days before the board's hearing on a petition to establish a new regulated drain, any person named in the petition as the owner of land likely to be affected by the proposed drain may object to any member of the board acting in the proceedings to establish the drain, if that member has an interest in any of the land described in the petition. The objection must be in writing, filed with the board, and verified by the signer.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-60

Sec. 60. (a) At its hearing on a petition to establish a new regulated drain, the board shall consider:

(1) any remonstrance filed under section 59(a) of this chapter; and

(2) any objection filed under section 59(b) of this chapter.

(b) If the board finds that a proper remonstrance has been filed, it may dismiss the petition. If the board does not dismiss the petition, it shall forward the petition to the county surveyor for a final report.

(c) If the board finds that a proper objection has been filed, the person against whom the objection is made shall disqualify himself from any further action in the proceedings to establish the drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.26.

36-9-27-61

Sec. 61. When the board refers a petition to the county surveyor for a final report under section 60(b) of this chapter, the surveyor shall do the following:

(1) Make the necessary survey for the proposed drain.

(2) Prepare plans for structures other than bridges or culverts crossing a railroad right-of-way or a highway owned by the state. In preparing the plans, the surveyor shall include all appurtenances needed to complete the proposed drain.

(3) Prepare maps showing the location of the land proposed to be assessed.

(4) Prepare profiles showing the cuts and gradient of the proposed work.

(5) Determine the best and cheapest method of drainage, which may be by:

(A) removing obstructions from a natural or artificial watercourse;
(B) diverting a natural or artificial watercourse from its channel;
(C) deepening, widening, or changing the channel of a natural or artificial watercourse;
(D) constructing an artificial channel, with or without arms or branches;
(E) tiling all or part of an open drain;
(F) converting all or part of a tiled drain to an open drain;
(G) constructing a new drain as a part or the whole of the work; or
(H) any combination of these methods.
(6) Determine and describe the termini, route, location, and character of the proposed work, including grades, bench marks, and all necessary arms. The surveyor may vary the line of the work from the line described in the petition, and he may fix the beginning and outlet so as to secure the best results.
(7) Divide the proposed drain into sections of not more than one hundred (100) feet in length, and compute and set out the number of cubic yards of excavation in each section.
(8) Estimate the cost of the proposed drain, including construction, seeding or sodding of disturbed areas and the banks of open drains, notices, advertising, and the attorney's fee for the petitioner's attorney. The amount of the attorney's fee is computed as follows:
(A) If the estimated cost of constructing the drain is less than one thousand five hundred dollars ($1,500), the fee is fifteen percent (15%) of that cost.
(B) If the estimated construction cost is one thousand five hundred dollars ($1,500) or more, but less than twenty-five thousand dollars ($25,000), the fee is two hundred twenty-five dollars ($225) plus five percent (5%) of the amount by which that cost exceeds one thousand five hundred dollars ($1,500).
(C) If the estimated construction cost is twenty-five thousand dollars ($25,000) or more, the fee is one thousand four hundred dollars ($1,400) plus one percent (1%) of the amount by which that cost exceeds twenty-five thousand dollars ($25,000).
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-62

Sec. 62. (a) When the county surveyor has completed the maps, profiles, and plans required by section 61 of this chapter, he shall meet with the board, and the board shall take the following actions:
(1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the proposed drain and the name and address of the owner of the land. The name, address, and description shall be taken from the petition. The board shall enter in the assessment schedule the percentage of the total cost of the drain to be assessed against each tract of land. The percentage allocated to all lands benefited must be at least one hundred percent (100%) and as near to one hundred percent (100%) as is practicable.
(2) Determine the amount of damages sustained by all owners as a result of the proposed drain, and prepare a schedule of damages containing:
(A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the petition;
(B) the amount of each owner's damages; and
(C) an explanation of the injury upon which the determination was based.
The surveyor shall add the damages to all lands as determined by the board to the estimated costs and expenses contained in his report, and the result constitutes the total estimated cost of the proposed drain.
(3) Set forth the amount of each owner's assessment based on the total estimated cost of the proposed drain.
(4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the proposed drain. The percentage used in computing the annual assessment may, but need not, be the same for each tract of land as the percentage used in computing the general assessment.
The board may consider the factors listed in section 112 of this chapter in preparing the schedules.
(b) If land that was not included in the petition is determined to be benefited or damaged, the names of the owners and a description of the land shall be taken from the tax duplicates or record of transfers of the county.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-63

Sec. 63. (a) When the schedules of assessments and damages prepared under section 62 of this chapter are completed and marked filed, the board shall fix the date, time, and place for a hearing on the county surveyor's report and on the schedules of assessments and damages. The board shall serve notice of the hearing, along with a copy of the schedules, upon the attorney for the petitioner. The date fixed by the board for the hearing may not be less than thirty (30) nor more than forty (40) days after service of notice upon the petitioner's attorney.

(b) Within five (5) days after service upon him of the notice of hearing, the attorney for the petitioner shall mail a notice in a five (5) day return envelope addressed to each owner named in the schedule of benefits and damages. The notice must state:

(1) the name and identifying number by which the proposed drain is known;

(2) that the report of the surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the county surveyor;

(3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of _____ dollars;

(4) that the land of the owner is shown by the schedule of assessments to be assessed _____ percent of the total cost of the drain, and that _____ percent of the estimated total cost of the drain is in the sum of _____ dollars;

(5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of _____ dollars for the estimated periodic maintenance of the drain; and

(6) the date, hour, and place of hearing on the surveyor's report and on the schedules of damages and assessments.

(c) The attorney for the petitioner shall publish a notice in accordance with IC 5-3-1. The notice:

(1) shall be entitled "In the matter of the _____ drain petition";

(2) shall be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and

(3) must state that:

(A) the report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the surveyor; and

(B) a hearing will be held before the board on the report and schedules, specifying the time and place of the hearing.

(d) When the plans and specifications of the county surveyor disclose that part or all of the proposed drain will involve the construction of an open drain, the attorney for the petitioner shall mail a notice to the Indiana department of natural resources. The notice must give the time, date, and place of the hearing and state that the proposed drain will involve the construction of an open drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.80.

36-9-27-64

Sec. 64. (a) Whenever:

(1) a new open drain is to be constructed under this chapter; and

(2) the drain will cross a tract of land in such a manner that the owner of the tract will be deprived of ingress and egress to part of the tract unless a private crossing is constructed across the drain;

the board shall award damages to the owner in an amount equal to the cost of constructing a proper crossing. In determining the type and quality of the crossing, the board shall consider the use of the inaccessible land, the frequency of the crossing's use, the purpose of the crossing's use, and any other appropriate factors.

(b) When an owner is entitled to damages under subsection (a), he may, in lieu of accepting damages awarded by the board, file with the board his written consent to the construction of the crossing as part of the construction of the drain. The county surveyor shall then include the construction of the crossing in his plans and specifications for the drain, but the future maintenance of the crossing will then be the responsibility of the owner.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-65

Sec. 65. (a) Not less than five (5) days before the board's hearing on a petition for a new regulated drain, any owner of land affected by the report of the county surveyor or by the schedules of damages and assessments may file with the board written objections to the report, schedules, or both. The objections may be for one (1) or more of

the following causes:

(1) The proposed drain, as reported by the surveyor, is not practicable and will not adequately drain the affected land. An objection on this ground must point out the impracticable aspects of the proposed drain and describe the specific lands that will not be adequately drained.

(2) The costs, damages, and expenses of the drain will exceed the benefits that will result to the owners of all land benefited.

(3) The proposed drain will not:

(A) improve the public health;

(B) benefit a public highway in a county or a public street in a municipality;

(C) drain the grounds of a public school; or

(D) be of public utility.

(4) The objector is the owner of land damaged by the drain, and:

(A) the board failed to find that his land is damaged; or

(B) the damages assessed to his land are inadequate.

(5) The objector is the owner of lands assessed as benefited, and the benefits assessed against his lands are excessive.

Each objector may file written evidence in support of his objections. The failure of an owner to file objections constitutes a waiver of his right to subsequently object, on the gounds stated in this subsection, to any final action of the board.

(b) On or before the day of the hearing, the county surveyor shall, and any owner of affected land may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (a).

(c) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(d) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments, and the county surveyor may modify his report, as justice may require.

(e) Before final adjournment of the hearing, the board shall determine in writing:

(1) whether the proposed drain, as reported by the county surveyor, is practicable and will adequately drain the affected land;

(2) whether the costs, damages, and expenses of the proposed drain will be less than the benefits accruing to the owners of land benefited by the drain; and

(3) whether the proposed drain will improve the public health, benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school, or be of public utility.

If the board finds the issues set forth in subdivision (1), (2), or (3) in the negative, it shall dismiss the petition. If the board finds the issues set forth in subdivisions (1), (2), and (3) in the affirmative, it shall adopt the schedules of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings, and issue an order declaring the proposed drain established. The board shall mark the findings and order filed and publicly announce them at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

(f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the findings and order become conclusive.

(g) When the proposed drain is finally and conclusively established, the board shall allow the attorney for the petitioner the fee computed under section 61(8) of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.81.

36-9-27-66

Sec. 66. (a) Whenever:

(1) land has been assessed as benefited by the construction, reconstruction, or maintenance of a regulated drain;

(2) there is no open or tiled drain connecting the land with the regulated drain; and

(3) the waters from the land flow over or through land owned by others to reach the regulated drain;

the owner of the land assessed may petition the board to construct through the land of the other owners a new drain that will connect the petitioner's lands with the regulated drain. The petition must describe the land through which the new regulated drain will run, state the name and address of each owner of that land, describe the general route of the proposed new regulated drain, and state the proposed method of construction.

(b) The board shall refer the petition to the county surveyor for a report.

(c) If the county surveyor determines that the proposed drain is not practicable, he shall report that fact to the board and the board shall deny the petition.

(d) If the county surveyor determines that the proposed drain is practicable, he shall, in the manner presecribed by sections 49 through 52 of this chapter, prepare plans and specifications and all things necessary for the construction of the drain. The board shall, in the manner prescribed by sections 49 through 52 of this chapter, prepare a schedule of benefits and damages, serve the schedule upon the owners of land benefited or damaged, and hold a hearing on the schedule. Objections to the proceedings may be filed only on the grounds that:

(1) the objector is the owner of land damaged by the proposed drain and the board failed to so find or, if it did so, find, the damages awarded were insufficient; and

(2) the objector is the owner of land found by the board to be benefited, and the benefits assessed are excessive.

After the hearing, the board shall enter its order and findings in the manner prescribed by section 52 of this chapter.

(e) Any owner aggrieved by the final award of damages under subsection (d) may obtain judicial review under section 106 of this chapter. When the order of the board becomes conclusive, the board shall proceed to construct the drain in the manner prescribed by this chapter.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-67

Sec. 67. (a) In his written report setting forth his order of priority for regulated drains under section 35 of this chapter, the county surveyor may designate any drain that is classified as in need of reconstruction as an urban drain. In adopting the classification and in making public the long-range plan, the board shall consider each designation of an urban drain and shall indicate the order of priority of action on urban drains.

(b) A drain shall be designated as an urban drain when:

(1) the drain will not, without construction or reconstruction, provide proper drainage for urban land or will not properly impound water in a small lake;

(2) it appears that after a practicable construction or reconstruction proper drainage for urban land can be provided; and

(3) either or both of the following factors is present:

(A) A reasonable part of the land within the watershed has been or is being converted from rural land to urban land.

(B) It appears to the board that one (1) or more tracts within the watershed is or will be changing from rural land to urban land, and that change requires the drainage provided by an urban drain.

(c) A petition for a new regulated drain under section 54 of this chapter may state, or may be amended to state, that in the opinion of the petitioners the new regulated drain should be designated as an urban drain. The board shall consider that statement in referring the petition to the county surveyor for a final report.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.7.

36-9-27-68

Sec. 68. The county surveyor shall perform the following duties with respect to all urban drains within his jurisdiction:

(1) Prepare and make available to the public design standards of rainfall intensity and frequency for urban land, design standards of storm water runoff for urban land, or both. In preparing these standards, the surveyor shall consider official weather bureau information, design criteria of the Indiana department of natural resources, the published recommendations of the United States bureau of public roads, and all available local, topographical, geological, and statistical information that may affect the design standard of runoff from urban land. The surveyor may give special consideration to those weather events in which rainfall occurs under conditions when soil tends to be impervious due to frost or other natural causes.

(2) Prepare hydraulic calculations for the channel design of the urban drain, taking into consideration hydraulic gradients, friction factors, dimensions, and other engineering variables.

(3) Design the channel or dam required for the urban drain, including any necessary rerouting and taking into consideration the structures and structural characteristics of the soil.
(4) Furnish design information for all new drainage structures (including local flood control dikes) that may be needed to properly drain urban land or impound water in a small lake in the most efficient and economical manner.
(5) Keep available maps, listings, or other information showing current land use and projections of future land use in the area affected by the urban drain. In preparing this information, the surveyor shall consider recommendations of state and local planning agencies, plan commissions, zoning boards, and similar bodies.
(6) Include in his report to the board on the construction or reconstruction of an urban drain his recommended designation of each parcel of affected land in the watershed of the urban drain as either urban land or rural land.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.166-1983, SEC.8.

36-9-27-69

Sec. 69. (a) After the county surveyor has filed his report on the construction or reconstruction of an urban drain, he shall consult with the board, and the board may adopt or modify the designations recommended by the surveyor. The board shall then prepare a schedule of benefits, assessments, and damages.

(b) The board shall determine and compute benefits, assessments, damages, total estimated cost, and percentage allocations in the manner provided by section 50 or section 62 of this chapter. However, in determining benefits and assessments for an urban drain, the board shall consider the following factors:

(1) The watershed, or entire land area drained or affected by the urban drain, shall be considered to be benefited and shall be assessed.
(2) If specific parts of urban land are to be served by new drainage arms, routings, special structures, or other similar new features that are part of the total cost of the urban drain, those specific parts of urban land may be considered to have extra benefits greater than the benefits to the other affected urban land.
(3) Except for urban land that has extra benefits, all urban land within the watershed shall be considered to be equally benefited, and the benefits shall be computed in proportion to the number of acres in each tract.
(4) If a tract of urban land has been platted or subdivided into lots, and the subdivision contains streets, parkways, parks, or similar common use areas, the board may determine the per lot benefits by:
(A) ascertaining the total approximate benefits in proportion to the area of the tract before the subdividing; and
(B) apportioning the total benefits in substantially equal amounts to each lot.
Additional assessments may not be imposed on a right-of-way apportioned to the lots under this subdivision.
(5) Rights-of-way of a public highway, railroad company, pipeline company, or public utility that lie within or adjoin urban land shall be considered to be benefited and shall be assessed in the same manner as urban land.
(6) Rural land affected by an urban drain is benefited only as rural land and shall be assessed on that basis. Whenever the board finds that a drain would have drained rural land without reconstruction, the board may reduce the assessment apportioned to rural land, subject to section 84(c) of this chapter.

(c) The notice to landowners in the case of an urban drain must:

(1) state that the drain has been designated as an urban drain;
(2) describe the land of the owner to whom the notice is addressed; and
(3) state that the land described is shown by the schedule of assessments to be assessed as either rural land or urban land.

(d) Before final adjournment of the hearing, the board shall find in writing that the drain is an urban drain or that it is a rural drain and is not an urban drain. If the board finds that the drain is not an urban drain, the board shall then request the county surveyor to deny all future connections to the drain, as provided in section 17 of this chapter, and the board shall make this request and finding public.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-69.5

Sec. 69.5. (a) As used in this section, "development" does not include utility infrastructure owned, controlled, installed, or constructed by a public or municipally owned utility.

(b) Unless otherwise required by an ordinance of the county, a person who lays out a:

(1) subdivision of lots or lands; or

(2) commercial, industrial, or other land development;
outside the corporate boundaries of any municipality must submit plans and specifications for the drainage of the subdivision or other development in accordance with this section. The county drainage board must approve the drainage plan before the person may proceed with the subdivision or other development.

(c) A drainage plan and specifications submitted under subsection (b) to the county drainage board must comply with this chapter. Except as provided in subsection (d), the plan must comply with the following standards:

(1) The plan must maintain the amount of drainage through the tract that existed when the tract was created. If any tiles are cut, broken down, or rendered useless during the construction activity on the tract, the landowner is responsible for the repair, replacement, or relocation of the tile.

(2) The plan may not change the locations where surface water enters the tract and exits the tract from the locations that existed when the tract was created.

(3) Water that sheds off of a new structure, especially when the new structure is elevated or near a property line, or both, must exit the tract in the same location where it did when the tract was created.

(d) The county drainage board may approve an alternate plan that does not comply with the standard set forth in subsection (c)(2).

As added by P.L.97-2001, SEC.1. Amended by P.L.125-2011, SEC.2.

36-9-27-70

Sec. 70. (a) This section applies whenever the plans and specifications for the construction or reconstruction of any regulated drain disclose that the center line of the drain at any point will come within three hundred (300) feet of any levee that is subject to or was constructed under any statute.

(b) The county surveyor in charge of the work on the drain shall mail the plans and specifications for the drain by certified mail with return receipt requested to the Indiana department of natural resources. The department shall approve or disapprove the plans and specifications within forty-five (45) days after receiving them. If the department fails to act within the time limit, the plans and specifications are considered approved. If the department disapproves the plans and specifications, it shall issue an order stating the reasons for the disapproval, shall recommend specific changes in the plans and specifications that would make them acceptable to the department, and shall serve a copy of the order on the surveyor.

(c) Work on the drain may not be commenced until the plans and specifications have been approved by the department, or until the board is satisfied that the county surveyor has changed the plans and specifications to conform with the department's recommendations.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-71

Sec. 71. (a) When, in the construction or reconstruction of a regulated drain, the county surveyor determines that the proposed drain will cross a public highway or the right-of-way of a railroad company at a point where:

(1) there is no crossing; or

(2) the crossing will not adequately handle or will be endangered by the flow of water from the drain when completed;

the county surveyor shall include in the plans the grade and cross section requirements for a new crossing, or the requirements for altering, enlarging, repairing, or replacing the crossing. The surveyor shall mail a copy of the requirements addressed to the owner of the highway or right-of-way.

(b) When requested by the owner of the highway or right-of-way, the county surveyor shall meet with the owner at a time and place to be fixed by the surveyor. The surveyor shall hear objections to the requirements, and may then change the requirements as justice may require.

(c) When the board finds that in the construction, reconstruction, or maintenance of a regulated drain it is necessary to:

(1) alter, enlarge, repair, or replace a crossing; or

(2) construct a new crossing where none existed before;

the cost of the work on the crossing shall be paid by the owner of the public highway. This cost may not be considered by the county surveyor or by the board in determining the cost of the work on the drain or in assessing benefits and damages. However, if it is necessary for the owner of a public highway to construct a new crossing because of a cut-off for the purpose of shortening or straightening a regulated drain, the owner of the public highway shall pay one-half (1/2) of the cost of the new crossing, and the remainder shall be included in the cost of

the work on the drain.

(d) A railroad company with a right-of-way that is:

(1) crossed by the construction of a regulated drain; or

(2) affected by the altering or enlarging of a crossing;

shall pay one-half (1/2) of the cost of the work on the crossing and the remainder shall be included in the cost of the work on the drain.

(e) If the county surveyor is registered under IC 25-31, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced, or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(f) If the county surveyor is registered under IC 25-21.5, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(g) Approval of the plans and hydraulic data by a person who is registered under IC 25-21.5 or IC 25-31 is required before the work can take place. However, if the county surveyor is not registered under IC 25-21.5 or IC 25-31, a registered person who is selected under section 30 of this chapter shall:

(1) review and approve or disapprove the plans and specifications described in this subsection;

(2) inform the county surveyor in writing of the approval or disapproval; and

(3) submit all plans, specifications, and hydraulic data along with the approval or disapproval.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.5; P.L.76-1989, SEC.7; P.L.154-1993, SEC.7; P.L.2-1997, SEC.86; P.L.2-1998, SEC.89; P.L.241-1999, SEC.5; P.L.276-2001, SEC.15.

36-9-27-72

Sec. 72. (a) When, in the reconstruction or periodic maintenance of a regulated drain, the county surveyor determines that a private crossing will not adequately handle the flow of water from the drain or will be endangered by such flow, he shall in his plans call for the removal of the crossing.

(b) The replacement of a private crossing, when necessary, may be accomplished as a part of the work of the reconstruction or maintenance. The estimate by the county surveyor of the cost for the replacement shall be assessed against the land that would otherwise be deprived of ingress and egress. However, when a private crossing has been lawfully established and maintained, the board may assess any part of the cost of its replacement against all affected lands.

(c) A private crossing, control dam, or other permanent structure may not be placed over or through an open drain unless the plans and specifications for the structure are first approved by the county surveyor. The surveyor shall disapprove the plans and specifications if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

(d) All maintenance of a private crossing or of a private structure within the drain, whether privately constructed or constructed as a part of work on a drain under this chapter, is the responsibility of the owners of land served by the private crossing or structure. The owners are directly responsible for any obstruction or damage to the drain that results from the existence of the private crossing or structure, notwithstanding any other provisions of this chapter.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.276-2001, SEC.16.

36-9-27-73

Sec. 73. (a) There is established in each county a general drain improvement fund, which shall be used to pay the cost of:

(1) constructing or reconstructing a regulated drain under this chapter; and

(2) removing obstructions from drains under IC 36-9-27.4.

In addition, if a maintenance fund has not been established for a drain, or if a maintenance fund has been established and it is insufficient, the general drain improvement fund shall be used to pay the deficiency.

(b) The general drain improvement fund consists of:

(1) all money in any ditch or drainage fund that was not otherwise allocated by January 1, 1966, which money the county treasurer shall transfer to the general drain improvement fund by January 1, 1985;

(2) proceeds from the sale of bonds issued to pay the costs of constructing or reconstructing a drain;
(3) costs collected from petitioners in a drainage proceeding;
(4) appropriations made from the general fund of the county, or taxes levied by the county fiscal body for drainage purposes;
(5) money received from assessments upon land benefited for construction or reconstruction of a regulated drain;
(6) interest and penalties received on collection of delinquent drain assessments and interest received for deferred payment of drain assessments;
(7) money repaid to the general drain improvement fund out of a maintenance fund; and
(8) money received from loans under section 97.5 of this chapter.

(c) The county fiscal body, at the request of the board and on estimates prepared by the board, shall from time to time appropriate enough money for transfer to the general drain improvement fund to maintain the fund at a level sufficient to meet the costs and expenditures to be charged against it, after allowing credit to the fund for assessments paid into it.

(d) There is no limit to the amount that the county fiscal body may appropriate and levy for the use of the general drain improvement fund in any one (1) year. However, the aggregate amount appropriated and levied for the use of the fund may not exceed the equivalent of fifty cents ($.50) on each one hundred dollars ($100) of net taxable valuation on the real and personal property in the county.

(e) Whenever:
(1) the board finds that the amount of money in the general drain improvement fund exceeds the amount necessary to meet the expenses likely to be paid from the fund; and
(2) the money was raised by taxation under this section;

the board shall issue an order specifying the excess amount and directing that it shall be transferred to the general fund of the county. The board shall serve the order on the county auditor, who shall transfer the excess amount to the general fund of the county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.371-1983, SEC.1; P.L.206-1984, SEC.6; P.L.239-1996, SEC.2; P.L.240-1996, SEC.1; P.L.2-1997, SEC.87.

36-9-27-74

Sec. 74. (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Each year, the county shall levy the tax authorized by section 73 of this chapter at a rate on each one hundred dollars ($100) of assessed valuation that will yield three hundred thousand dollars ($300,000) per year.

(c) The county auditor shall determine a particular watershed's part of the receipts from the tax authorized by this section by multiplying the total tax receipts by a fraction determined by the county surveyor. The numerator of the fraction is the number of acres in the particular watershed, and the denominator is the total number of acres in all of the watersheds in the county. The auditor shall annually distribute these amounts to the watersheds in the county.

(d) The county legislative body shall annually appropriate, for use in the county in each of these watersheds, at least eighty percent (80%) of the watershed's part of the tax receipts.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992, SEC.187.

36-9-27-75

Sec. 75. The board may accept gifts or grants from any source for the purpose of paying all or part of the costs of constructing, reconstructing, or maintaining a drain under this chapter. The gifts or grants shall be used to reduce the costs assessed to affected owners.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-76

Sec. 76. The board may cooperate in joint effort with any state or federal agency in a proceeding to construct, reconstruct, or maintain a drain under this chapter. If the board is cooperating with a federal agency, and the rules or procedures of the agency are in conflict with this chapter in respect to issuing bids, awarding contracts, and administering contracts, the board may adopt the federal rules or procedures in those areas where conflict exists, and may proceed in accordance with the requirements of the federal rules or procedures.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-77

Sec. 77. (a) Whenever:

(1) the board orders the construction or reconstruction of a drain, and the order is not stayed under section 108 of this chapter; or

(2) the board determines that maintenance work shall be let by contract;

the board may contract for the work to be done as a whole or in sections.

(b) Except as provided in subsection (c), the board may not let a contract for the construction or reconstruction of a drain if the amount of the contract is more than ten percent (10%) above:

(1) the construction costs estimated by the county surveyor under section 61(8) of this chapter; or

(2) the reconstruction costs estimated by the surveyor under section 49(c) of this chapter.

(c) If the board does not receive a bid that complies with subsection (b), it shall readvertise for bids. If on readvertisement the board does not receive a bid that complies with subsection (b), the board shall dismiss the proceedings unless it receives a bid that does not exceed the benefits assessed against the affected land.

(d) Whenever the benefits and construction costs estimated by the county surveyor have been filed for more than five (5) years, and the board is unable to award a contract within the limitations of subsections (b) and (c), the board shall refer the surveyor's report back to the surveyor for a supplemental report.

(e) Subject to IC 36-1-12-5, the board may perform maintenance, construction, or reconstruction by its own work force without awarding a contract.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.7.

36-9-27-78

Sec. 78. (a) Whenever the board is ready to let contracts, it shall publish notice in accordance with IC 5-3-1. The notice must:

(1) state that at a date, time, and place the board will receive bids on the work;

(2) generally and concisely describe the nature of the work to be done and materials to be furnished;

(3) invite sealed bids; and

(4) state that prospective bidders may obtain plans, specifications, and forms from the county surveyor in charge of the work.

A defect in the form of the notice does not invalidate proceedings under the notice.

(b) Each bidder shall deposit with his bid, at his option, either a certified check made payable to the board in the sum of five percent (5%) of the bid or a bid bond in the sum of five percent (5%) of the bid. If a bidder elects to deposit a bid bond, the bond must be payable to the board with sufficient sureties, and the bond must be conditioned upon the bidder's execution of a contract in accordance with his bid if accepted by the board and must provide for the forfeiture of five percent (5%) of the amount of the bid upon his failure to do so. The board shall return all checks and bonds submitted by unsuccessful bidders, and shall return a successful bidder's check or bond when he enters into a contract with the board.

(c) At the hour specified in the notice for receiving the bids, the board shall open and examine all bids. The board shall then promptly award the contract or contracts to the lowest bidder or bidders it finds to be qualified. In determining whether a bidder is qualified, the board shall consider the complexity and magnitude of the work to be performed, and the skill and experience of the bidder. Within five (5) days after the acceptance of a bid, the successful bidder shall enter into a contract with the board that complies with subsection (d). If a successful bidder fails to enter into such a contract, he forfeits to the board, as liquidated damages, the check or bond deposited under subsection (b).

(d) The contract between the board and a successful bidder must provide:

(1) that the contractor will perform the work under the supervision of the county surveyor and in accordance with the plans, specifications, and profiles adopted by the board;

(2) that a claim for payment under the contract will not be approved by the board until the work for which the claim is presented has been approved by the surveyor;

(3) the time within which the work must be completed;

(4) that fifteen percent (15%) of the contract price shall be withheld by the board for a period of sixty (60) days after the completion of the work, for the purpose of securing payment of suppliers, laborers, and subcontractors; and

(5) for other terms that the board considers appropriate.

(e) Upon execution of the contract, the successful bidder shall give to the board a bond payable to the board, in an amount fixed by the board but not less than the amount of the bid, and with a corporate surety licensed to do business in Indiana. The bond must be conditioned on the faithful performance of the contract and the payment of all expenses and damages incurred under the contract, including payment of all suppliers, laborers, and subcontractors. However, in lieu of a corporate surety bond, the board may accept:

(1) a cash bond;

(2) a property bond; or

(3) a bond from a sufficiently financed private bonding company.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.82; Acts 1981, P.L.317, SEC.27; P.L.350-1983, SEC.3.

36-9-27-79 Repealed

36-9-27-79 (Repealed by Acts 1981, P.L.57, SEC.45.)

36-9-27-79.1

Sec. 79.1. Notwithstanding sections 77 and 78 of this chapter, the following provisions apply whenever the board estimates that the amount of the contracts to be let is not more than seventy-five thousand dollars ($75,000):

(1) The board need not advertise in the manner provided by section 78 of this chapter. If the board does not advertise, it shall mail written invitations for bids to at least three (3) persons believed to be interested in bidding on the work. The invitations shall be mailed at least seven (7) days before the date the board will receive bids, and must state the nature of the contracts to be let and the date, time, and place bids will be received.

(2) The board may authorize the county surveyor to contract for the work in the name of the board.

(3) The contracts may be for a stated sum or may be for a variable sum based on per unit prices or on the hiring of labor and the purchase of material.

(4) The contracts shall be let in accordance with the statutes governing public purchase, including IC 5-22.

(5) The board may for good cause waive any requirement for the furnishing by the bidder of a bid bond or surety and the furnishing by a successful bidder of a performance bond.

As added by Acts 1981, P.L.57, SEC.42. Amended by P.L.355-1987, SEC.1; P.L.49-1997, SEC.84; P.L.241-1999, SEC.6.

36-9-27-80

Sec. 80. A person who enters into a contract with the board under section 78 or 79 of this chapter may not subcontract any part of the contract without the written consent of the board. The board may withhold its consent only for good cause.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-80.5

Sec. 80.5. (a) If a change in the original specifications of a contract for the construction or reconstruction of a drain becomes necessary during the construction or reconstruction, the county surveyor may issue a change order to add, delete, or change an item in the contract. A change order issued under this subsection becomes an addendum to the contract.

(b) The county surveyor may issue a change order under subsection (a) without obtaining prior approval from the board. The county surveyor shall report a change order issued under subsection (a) to the board at the next meeting of the board following the issuance of the change order.

(c) A change order issued under subsection (a) must be directly related to the drain project that is the subject of the original contract.

(d) The amount of a contract plus the amount of all change orders to the contract issued under this section may not exceed the following by more than twenty percent (20%):

(1) The construction costs estimated by the county surveyor under section 61(8) of this chapter.

(2) The reconstruction costs estimated by the county surveyor under section 49(c) of this chapter.

As added by P.L.154-1993, SEC.8.

36-9-27-81

Sec. 81. The county surveyor may, without first obtaining the approval of the board, authorize partial or progress payments to a contractor for work performed in amounts not in excess of eighty-five percent (85%) of the contract price of the work then completed. The surveyor shall report such an approval to the board at its next meeting. The surveyor may not give an approval under this section unless he has first inspected the work done.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-82

Sec. 82. (a) Whenever a contract under this chapter calls for a payment to be made to the contractor on the completion of work, the county surveyor shall inspect the work done and file with the board a written report approving or disapproving the work. The board may not allow a claim for the payment until the surveyor's report shows the work to be approved.

(b) After the acceptance of the work by the county surveyor, the contractor shall file with the board a verified statement that all expenses incurred for labor and material, except for any expenditures specified in the statement, have been paid in full.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-83

Sec. 83. (a) A subcontractor, laborer, or other person may file a claim with the board if:

(1) at the request of a contractor, he has performed any work or other service or has furnished any material used under the contract; and

(2) he has not been paid.

The claim must be filed within sixty (60) days after the performance of the work or service or the furnishing of the material, and must state the amount due and describe the work done or materials furnished. The board shall withhold the amount of the claim from the final payment due the contractor unless the claimant files a written withdrawal of the claim with the board.

(b) If, sixty (60) days after acceptance of the work by the surveyor, the contractor files with the board a written acknowledgement of the correctness of all claims, and if the amount withheld by the board is sufficient to pay all claims, the board shall have the claims paid out of the amount withheld from the contractor and shall pay the balance remaining to the contractor.

(c) If the contractor does not file an acknowledgement under subsection (b), or if there is not a sufficient amount withheld to pay all claims, the board shall interplead all claimants and the contractor in the circuit or superior court of the county in which the board is located and have the amount of the claims, or the amount withheld by the board, whichever is smaller, paid into court. The board is then discharged from liability.

(d) This section does not relieve the surety on the contractor's bond from liability under its obligation as set forth in the bond.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-84

Sec. 84. (a) After letting a contract for the construction, reconstruction, or maintenance of a drain, the board shall determine the full cost of the construction, reconstruction, or maintenance, including the contract price, incidental expenses, damages, interest on any bonds issued under section 94 of this chapter, and attorney's fees, if any. The board shall then apportion this cost to the tracts of land assessed in proportion to the benefit percentage previously assigned to each tract. If the contract is for work on an urban drain, the board shall also designate each tract that is assessed as rural land or urban land.

(b) When determining and apportioning the full cost of construction or reconstruction under this section, the board may include for contingencies a reasonable sum not in excess of ten percent (10%) of the full cost.

(c) An improved or unimproved lot or tract of land that is benefited by the construction, reconstruction, or maintenance of a regulated drain shall be assessed each year for that construction, reconstruction, or maintenance in an amount fixed by the board.
As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.29; P.L.206-1984, SEC.8.

36-9-27-85

Sec. 85. (a) The board shall certify the list of assessments apportioned under section 84 of this chapter to the

auditor of each county in which there are lands to be assessed.

(b) Whenever the order of the board establishing an annual assessment for periodic maintenance becomes final, the board shall certify that annual assessment to the auditor of each county in which there are lands to be assessed. The annual assessment shall be collected each year until changed or terminated by the board.

(c) The county auditor shall extend assessments for construction and reconstruction upon a book to be known as the ditch duplicate, for the full period of payment allowed for all assessments for construction and reconstruction, with interest at ten percent (10%) per year upon all payments deferred beyond one (1) year from the date that the certification is made. However, the county auditor may not charge interest on assessments for construction or reconstruction financed through a bond issue under section 94 of this chapter.

(d) Whenever any sum is certified under this section and is not expended within two (2) years after payment of the most recently allowed claim for work on a drain, the county auditor, with the approval of the board, shall promptly transfer the unexpended sum to the periodic maintenance fund for that drain. If there is no periodic maintenance fund for the drain, the unexpended sum may be transferred to the general drain improvement fund or funds of the county or counties affected by the drain, in proportion to the original apportionment and certification of costs for the drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.30.

36-9-27-86

Sec. 86. (a) Not later than thirty (30) days after the county auditor receives the certification of final costs for the construction or reconstruction of a drain, the auditor shall deliver a copy of the ditch duplicate to the county treasurer. The treasurer shall either:

(1) not later than fifteen (15) days after receipt of the copy of the ditch duplicate, mail to each person owning lands assessed for the construction or reconstruction a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due; or

(2) add a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due;

to the first property tax statement mailed by the county treasurer after receipt of the copy of the ditch duplicate to each person owning lands assessed for the construction or reconstruction.

The county treasurer shall designate a statement described in subdivision (2) in a manner distinct from general taxes. A statement described in subdivision (1) or (2) must state that the owner may pay the assessment in full within one (1) year or may pay only the installment due within the current year, with deferred payments in annual installments with interest at ten percent (10%) per year (except as otherwise provided in section 85(c) of this chapter).

(b) Each year, the county treasurer shall add to the tax statements of a person owning the land affected by an assessment, designating it in a manner distinct from general taxes, the full annual assessment for periodic maintenance and all construction and reconstruction assessments due in the year the statement is sent.

(c) For purposes of the collection of any assessment, the assessments are considered taxes within the meaning of IC 6-1.1, and they shall be collected in accordance with the property tax collection provisions of IC 6-1.1, except for the following:

(1) An assessment is not the personal obligation of the owner of the land affected by the assessment, and only the land actually affected by an assessment shall be sold for delinquency.

(2) An annual assessment for periodic maintenance that is not more than twenty-five dollars ($25) shall be paid at the first time after the assessment when general property taxes are payable.

(3) An assessment of less than five dollars ($5) is increased to five dollars ($5). The difference between the actual assessment and the five dollar ($5) amount that appears on the statement is a low assessment processing charge. The low assessment processing charge is considered a part of the assessment.

(4) The exemptions under IC 6-1.1-10-2, IC 6-1.1-10-4, and IC 6-1.1-10-5 do not apply to assessments imposed under this chapter.

(d) Not later than June 1 of each year, the county treasurer shall, in the manner specified by the state land office, send to the state land office a list of all properties:

(1) for which one (1) or more assessment payments under this section are delinquent; and

(2) that are owned by:
(A) the state; or
(B) a state agency.
As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.31; P.L.352-1985, SEC.1; P.L.230-1991, SEC.1; P.L.37-1992, SEC.9; P.L.52-2006, SEC.2 and P.L.175-2006, SEC.26.

36-9-27-87

Sec. 87. If one (1) person or association owns two (2) or more separate pieces of property subject to assessment under this chapter, the board may issue one (1) itemized bill. The assessment must clearly show the pieces of property being assessed, the assessment for each piece of property, and the total assessment.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-88

Sec. 88. All final assessments, other than annual assessments for periodic maintenance, are due and may be paid upon the date of certification of the final assessment to the county auditor, except that:
(1) the owners liable for the payment of the assessments may elect to pay them in equal installments of at least fifty dollars ($50) per year, plus interest on the deferred payments, over a period of not more than five (5) years, with the yearly payments to be made semiannually at the time general taxes are payable; and
(2) when the board designates land as urban land in its certification of the list of assessments, the owners liable for the payment of assessments on the urban land may elect to pay them in equal installments of at least one hundred dollars ($100) per year, plus interest on the deferred payments, over a period of not more than twenty (20) years, with the yearly payments to be made semiannually at the time general taxes are payable.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-89

Sec. 89. (a) The lien of a ditch assessment attaches to the land assessed on the date of certification of the final assessment to the county auditor, and is inferior only to tax liens.
(b) The lien of a ditch assessment terminates on the date it is paid in full or on the last day of the fifth year after the last payment became due.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-90

Sec. 90. When any ditch assessment against land owned by a municipal corporation becomes delinquent, the county auditor shall:
(1) certify the amount of the delinquency to the state board of accounts and to the person who receives semiannual distribution of taxes on behalf of the municipal corporation; and
(2) withhold the amount from the municipal corporation at the next semiannual distribution of taxes collected.
The amount withheld by the auditor shall be credited to the appropriate drainage fund.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-91

Sec. 91. (a) This section applies whenever:
(1) a court or jury acting under section 107 of this chapter:
(A) increases an award of damages; or
(B) decreases an assessment of benefits;
that was made by the board for the construction or reconstruction of a drain; and
(2) as a result of the increase or decrease, the assessments collected are not sufficient to fully repay the general drain improvement fund for money advanced to pay for the construction or reconstruction.
(b) The deficiency shall be transferred to the general drain improvement fund from the maintenance fund established for the drain by the board. However, the board may not order the transfer in amounts or at times that will result in the annual maintenance fund's being insufficient to pay the costs of periodically maintaining the drain.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-92

Sec. 92. (a) Whenever the owner of a tract of land assessed under this chapter subdivides or otherwise transfers part of the tract to another owner, he may file with the board a written request for reassessment in recognition of the transfer. The request must include the name and address of each owner of a part of the tract, together with the description of that part.

(b) The board shall promptly determine and file a proposed reassessment or amendment to the schedule of assessments to recognize the transfer, set a date for hearing the request, and mail notice to each affected owner in a five-day return envelope. The service of further notice to the addressee of any letter that is returned undelivered is the responsibility of the owner making the request. The notice, which must describe the land to be reassessed, must state:

(1) the date, hour, and place of a hearing before the board on the proposed reassessment;

(2) that the land of the owner is shown by the proposed reassessment to be assessed in the sum of _____ dollars; and

(3) that failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the owner to object, on the grounds stated in subsection (c), to any final action of the board.

The notice shall be mailed at least twenty (20) days before the hearing. However, written consent of all the affected owners, or the presence of all those owners at the hearing, constitutes a waiver of any defect in notice.

(c) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration section 84(c) of this chapter.

(d) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board shall adopt the reassessment or amendment to the schedule of assessments into its findings and shall order the schedule amended. The board shall then announce its findings and order by certified mail to each affected owner, or shall have one (1) notice of its findings and order published in a newspaper of general circulation throughout the county. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(e) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of receipt of the announcement or after the date of publication of the notice, the findings and order become conclusive.

(f) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor of each county in which there is land assessed by the reassessment, and the auditor and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-93

Sec. 93. (a) Whenever:

(1) the board adopts a schedule of annual assessments for the periodic maintenance of a drain or a combination of drains established under section 41 of this chapter; and

(2) a transfer of a part of any tract that is assessed by the schedule is subsequently recorded with the county recorder;

the board shall reassess that part of the tract. The reassessment may be made at one (1) or more times each year and shall be made at not less than biennial intervals. However, the reassessment is not required in any year in which the annual assessment is omitted under section 43 of this chapter.

(b) The county auditor shall provide a listing of all tracts subject to reassessment and shall, from time to time or when requested by the board, file the listing with the board. The board shall determine and file a schedule of reassessments, set a date for hearing on the schedule, and prepare a written notice. The notice, which must describe the land to be reassessed, must state:

(1) the date, hour, and place of a hearing before the board on the schedule of reassessments;

(2) that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor;

(3) that the land of the owner is shown by the schedule of reassessments to be annually assessed in the sum of _____ dollars for periodically maintaining the drain from which the land derives benefits; and

(4) that failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the

owner to object, on the grounds stated in subsection (d), to any final action of the board.

Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five-day return envelope to each owner named in the schedule of reassessments.

(c) The board shall have notice published in accordance with IC 5-3-1. The notice must:

(1) identify the drainage proceedings;

(2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered;

(3) state that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor; and

(4) state that a hearing will be held before the board on the schedule of reassessments, giving the date, hour, and place of the hearing.

(d) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration section 84(c) of this chapter.

(e) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of reassessments as originally filed or as modified, mark the order filed, and make public announcement of the order at the hearing. The board shall then have notice published in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

(f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the order becomes conclusive.

(g) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor of each county in which there is land assessed by the reassessment, and the auditor and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.83.

36-9-27-94

Sec. 94. (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is in excess of that amount that the owners of land to be assessed may conveniently pay in installments over a five (5) year period, it shall authorize the sale of bonds to finance the construction or reconstruction.

(b) Whenever the board resolves to sell bonds, it shall determine:

(1) the amount of money that must be raised;

(2) the period over which the money shall be repaid; and

(3) the date the first series of bonds will mature as to principal and the date the first payment of interest will be made, which shall be fixed so that money will be available to meet the interest payments and to retire the first series of bonds as they become due.

(c) The bonds may be issued in denominations of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall be numbered in consecutive order beginning with those first maturing. Interest on the bonds is payable semiannually.

(d) The bonds shall be sold at public offering in the manner provided by statute. However, if the total issue of bonds does not exceed ten thousand dollars ($10,000) the board may sell the bonds at private sale to any individual, corporation, financial institution, or bank in Indiana at the best rate of interest for which the board may bargain. If the bonds are sold to one (1) purchaser, the form of the bonds may be in a single installment note. Acceleration of the balance of such a note in the event of partial default is not permitted, but all remedies of a bond creditor remain as to the partial default.

(e) All bonds or installment notes must provide that they may be called by the board for refunding or for prepayment without penalty. If the bonds are called for prepayment, interest ceases to run on them upon the date stated for presentment in the call as to those persons actually receiving notice of the call by registered mail as shown by the return receipt, whether their bonds are presented for payment or not. If the bonds are called for refunding, interest continues to run from the date stated for presentment in the call whether actually presented or not, at the rate provided for with respect to the refunding issue.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-94.1 Repealed

36-9-27-94.1 (Repealed by Acts 1981, P.L.317, SEC.39.)

36-9-27-95

Sec. 95. Neither a member of the board, the county surveyor, nor any other officer may receive any fees for the sale of bonds to finance the construction or reconstruction of a drain. However, the attorney for the board is not required to perform services under a general retainer in preparation for the sale of the bonds, and may contract separately for those services with the board.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-96

Sec. 96. (a) Bonds issued to finance the construction or reconstruction of a drain are not the general obligation of the county, the board, or any person. The bonds are a lien only upon the land assessed for benefits for the construction or reconstruction in the ratio of the assessment.

(b) If bonds issued under this chapter become in default, the officers responsible for the collection of delinquent taxes shall take the steps provided by law to collect all delinquencies, and for that purpose the officers shall cooperate with any bond holder or committee of bond holders and shall pursue any remedies available for the collection of the delinquent assessments.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-97

Sec. 97. (a) A bond redemption fund is established for each construction or reconstruction project for which the board authorizes the sale of bonds. The fund consists of all assessments paid by the owners assessed as benefited by the construction or reconstruction, and may be used only to redeem:

(1) the bonds issued to finance the construction or reconstruction; or

(2) any installment note given in lieu of bonds.

(b) The county auditor shall maintain a separate ledger sheet for all assessments to be received into each bond redemption fund.
As added by Acts 1981, P.L.309, SEC.101.

36-9-27-97.5

Sec. 97.5. (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is an amount that the owners of land to be assessed may conveniently pay in installments over a five (5) year period, it may ask the county fiscal body to:

(1) obtain a loan from a bank, trust company, savings association, or savings bank authorized to engage in business in the county; or

(2) obtain funds in the manner prescribed by IC 36-2-6-18, IC 36-2-6-19, and IC 36-2-6-20;

to finance that construction or reconstruction.

(b) A loan obtained under this section:

(1) must have a fixed or variable interest rate;

(2) must mature within six (6) years after the day it is obtained;

(3) shall be repaid from installments collected from assessments of landowners over a five (5) year period; and

(4) is not subject to the provisions of section 94 of this chapter that concern interest.

(c) The proceeds of loans obtained under this section shall be deposited in the general drain improvement fund.

(d) The board shall determine whether interest on the loan is to be a part of the final assessment under section 84(a) of this chapter.

(e) Notwithstanding section 85(c) of this chapter, interest on the loan may be charged back to the benefited landowner at a rate that is set in accordance with subsection (b).
As added by P.L.371-1983, SEC.2. Amended by P.L.76-1989, SEC.8; P.L.79-1998, SEC.110.

36-9-27-98

Sec. 98. (a) Whenever a regulated drain is:

(1) located wholly or partly within a municipality; and

(2) constructed, reconstructed, or maintained under this chapter;
the municipal fiscal body may, on behalf of the owners assessed or to be assessed within the municipality, pay the total assessment for the construction, reconstruction, or maintenance within the municipality. The payment may be made from any appropriation provided by law, including a cumulative drainage fund established under section 99 of this chapter.

(b) Whenever a regulated drain is:

(1) located outside the corporate boundaries of any municipality within a county; and

(2) constructed, reconstructed, or maintained under this chapter;

the county fiscal body may, on behalf of the owners assessed or to be assessed outside any municipality and within the county, pay all or part of the assessment for the construction, reconstruction, or maintenance outside any municipality and within the county. The payment of all or part of the assessment by the county fiscal body may be made only from a cumulative drainage fund established under section 99 of this chapter.
As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.9.

36-9-27-99

Sec. 99. A municipal or county fiscal body may, by resolution, establish a cumulative drainage fund under IC 6-1.1-41 for the construction, reconstruction, or maintenance of drains under this chapter. In the case of a county, however, the fund may be established only upon the recommendation of the county executive.
As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.317, SEC.32; P.L.17-1995, SEC.39.

36-9-27-100

Sec. 100. To provide money for a cumulative drainage fund established under section 99 of this chapter, the fiscal body may levy a tax in compliance with IC 6-1.1-41 not to exceed five cents ($0.05) on each one hundred dollars ($100) of assessed valuation of all taxable personal and real property:

(1) within the corporate boundaries, in the case of a municipality; or

(2) within the county but outside the corporate boundaries of all municipalities, in the case of a county.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.10; P.L.17-1995, SEC.40; P.L.6-1997, SEC.225.

36-9-27-101 Repealed

36-9-27-101 (Repealed by P.L.17-1995, SEC.45.)

36-9-27-102

Sec. 102. The taxes collected under section 100 of this chapter shall be held in a special fund to be known as the "(city, town, or county) cumulative drainage fund".
As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.17-1995, SEC.41.

36-9-27-103

Sec. 103. Notwithstanding any other provision of this chapter, after the establishment of a cumulative drainage fund, a hearing shall be held before the board undertakes any project to construct or reconstruct a regulated drain or to maintain a regulated drain when the total cost of the maintenance project is more than twenty-five thousand dollars ($25,000). The board shall:

(1) publish a notice of the hearing in accordance with IC 5-3-1; and

(2) mail a notice of the hearing, at least fifteen (15) days before the hearing, to the owner of each piece of property adjoining the proposed or established regulated drain.

As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.84; P.L.206-1984, SEC.11; P.L.154-1993, SEC.9.

36-9-27-104

Sec. 104. (a) Whenever:

(1) a petition to construct a new drain is filed under sections 54 through 65 of this chapter, a board initiates proceedings to reconstruct a drain under sections 49 through 52 of this chapter, or proceedings are initiated in Illinois, Kentucky, Michigan, or Ohio to construct or reconstruct a drain; and

(2) the proposed construction or reconstruction will affect land in both Indiana and the other state;

the board may join with the proper officials of the other state in a joint effort to construct or reconstruct the drain.

(b) Whenever proceedings are instituted in Indiana under subsection (a), the board shall fix a date, time, and place for a joint meeting with the proper officials of the other state for the purpose of forming an interstate board, and shall have a notice of the meeting served on those officials.

(c) Upon receipt by the board of an acceptance of the offer to meet, or, when the offer to meet has come from the other state, upon acceptance by the board, the board and the officials of the other state shall proceed at the specified date, time, and place to form an interstate board by electing one (1) of their number chairman and one (1) of their number clerk. The chairman and the clerk may not be residents of the same state.

(d) Without regard to the number of members of the interstate board who are present, the members from Indiana are entitled to cast one-half (1/2) of all votes on all questions, and that vote shall be represented equally by the different members from Indiana who are present.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-105

Sec. 105. (a) The county surveyor representing a board from Indiana that is part of an interstate board shall work with the surveyor or engineer representing the officials of the other state in the performance of the duties required of him by this chapter. The interstate board may employ an engineer to work with and assist the surveyor or surveyors, but an engineer may not be permanently employed unless the interstate board has determined that the proposed construction or reconstruction is necessary for the public health, welfare, or convenience, and that the cost of the construction or reconstruction will probably be less than the benefits to the affected land.

(b) The surveyors and engineer, if one is employed, shall:

(1) prepare all surveys, plans, specifications, and other things required by this chapter for construction or reconstruction solely within Indiana;

(2) estimate the total cost of the construction or reconstruction for the part of the drain located in each state, together with an estimate of the total cost of location; and

(3) in their report, make a fair and just apportionment between the two (2) states of the cost of location and construction or reconstruction.

The report shall be filed with the interstate board and, when that board adopts the report by proper resolution, a certified copy of the report shall be filed with the board in Indiana.

(c) Upon receiving the report, the board in Indiana shall assess the benefits and damages to each tract of land affected in Indiana, in accordance with this chapter as applied to a drain located solely within Indiana.

(d) All provisions of this chapter, including the giving of notices, the right to object and remonstrate, and the right to judicial review, apply to the board, the surveyor, and all affected persons.

(e) When the construction or reconstruction is finally and conclusively established in both states, and when money is available in both states to pay for the proposed work, the interstate board shall meet and let the work contracts. Payment from funds in Indiana shall be made by voucher approved by the interstate board, countersigned by the chairman of the board in Indiana, and filed with the county auditor. The payments shall be limited to the amount apportioned to Indiana under subsection (b).

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-106

Sec. 106. (a) Any owner of land affected by a final order or determination of a board is entitled to judicial review of that order or determination in the circuit or superior court of the county in which the board is located. The owner must file in the court a petition:

(1) setting out the order or determination complained of; and

(2) alleging specifically that the order or determination is arbitrary, capricious, unlawful, or not supported by substantial evidence;

and pay the fee required under IC 33-37-4-4. If the order or determination to be appealed was made by a joint board, the petition must be filed in the circuit or superior court of the county that elected the surveyor who serves as an ex officio member of the joint board.

(b) A petition for judicial review under subsection (a) must be filed within twenty (20) days after:

(1) the date of publication of notice by the board that the order or determination has been made; or

(2) the order or determination was served on the person seeking the judicial review, if the order was served on that person.

(c) A copy of the petition shall be served on the board within five (5) days after the petition is filed. If the order

or determination arose in a proceeding initiated by petition for the construction of a new drain under section 54 of this chapter, a copy shall also be served on the attorney for the petitioner, unless the petitioner is the person seeking the judicial review. Service under this subsection:

(1) is sufficient to bring the board and any petitioner for a new drain into court;

(2) may be made on the board by serving a copy of the petition on the county surveyor personally or by leaving it at the surveyor's official office; and

(3) may be made on the attorney for the petitioner by serving a copy of the petition on the attorney personally or by leaving a copy of it at the attorney's address as set forth in the petition.

(d) Within twenty (20) days after receipt of notice that any person has filed a petition for review, the board shall prepare a certified copy of the transcript of the proceedings before the board and file it with the clerk of the court. The petitioner shall pay the cost of preparing this transcript. An extension of time in which to file the transcript shall be granted by the court upon a showing of good cause.

(e) On the filing of a petition for review, the clerk of the court shall docket the cause in the name of petitioner and against the board. The issues shall be considered closed by denial of all matters at issue without the necessity of filing any further pleadings.

(f) When the owners of less than ten percent (10%) of the affected lands petition for judicial review, issues not triable de novo do not operate to stay work unless an appeal bond is posted.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.351-1985, SEC.2; P.L.192-1986, SEC.40; P.L.305-1987, SEC.37; P.L.98-2004, SEC.163.

36-9-27-107

Sec. 107. (a) Whenever a petition for judicial review is filed on the ground that:

(1) the board found that the petitioner's land would be benefited by the construction, reconstruction, or maintenance of a drain, and the benefits assessed were excessive; or

(2) the petitioner's lands would be damaged by the construction, reconstruction, or maintenance of a drain, and:

(A) the board failed to so find; or

(B) the amount of damages awarded was inadequate;

the court shall proceed to hear the issue of benefits or damages de novo. A change of venue may be taken from the judge and from the county, and a jury trial may be obtained, in accordance with the rules governing the trial of civil actions. An appeal may be taken in accordance with the rules governing appellate procedure.

(b) Whenever a petition for judicial review is filed on any ground other than those set forth in subsection (a), the review shall be heard by the court without the intervention of a jury. The court may not try or determine the cause de novo, but shall consider and determine the cause exclusively upon the record made before the board and filed with the court. A change of venue may be taken from the judge under the rules governing a change of venue in civil actions, but a change of venue may not be taken from the county. The proceedings shall be advanced upon the docket of the court. If the court finds from the record before it that:

(1) the person filing the petition for review has complied with all procedures required under this chapter to properly present the matters set forth in the petition for review, and has exhausted his administrative remedies; and

(2) the decision or determination of the board is arbitrary, capricious, unlawful, or not supported by substantial evidence;

the court shall order the decision or determination of the board set aside and shall remand the matter to the board for further proceedings consistent with the findings and order of the court. If the court finds otherwise, the decision of the board shall be affirmed.

(c) In affirming or setting aside a decision or determination of the board, the court shall enter its findings and order or judgment on the record.

(d) When a petition for judicial review presents issues that shall be heard de novo and issues that may not be heard de novo, the court shall separate the issues and shall proceed to determine the issues that may not be heard de novo. When the court's judgment on the issues that may not be heard de novo becomes final, or when the appeal is decided if an appeal is taken, the board shall proceed in accordance with the final judgment or appellate decision despite the fact that the issues to be heard de novo may be undecided and pending before the court or on appeal.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-108

Sec. 108. (a) Whenever:

(1) a petition for judicial review of a board's final order for construction, reconstruction, or maintenance of a drain is filed in the circuit or superior court; and

(2) the petition presents an issue or issues that may not be heard de novo by the court;

all work under the order shall be stayed pending final disposition of the issue or issues by the court, or, if an appeal is taken, then until the issue or issues are finally decided by the supreme court or the court of appeals.

(b) Whenever issues that shall be heard de novo are pending in the circuit or superior court, or on appeal, work under the order may not be stayed by the court. However, the board may, by resolution, stay all or any part of the work until the issues presented by the judicial review are finally decided or until the board revokes its resolution.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.3-1989, SEC.232.

36-9-27-109

Sec. 109. (a) All petitions, evidence, requests, and other documents required to be filed with the board under this chapter, including all material and documents of every kind prepared by the county surveyor or on the surveyor's behalf, shall be filed in the office of the surveyor, who shall receive them for the board. The surveyor shall:

(1) mark each document filed, showing the date it was received; and

(2) record the fact of filing, designating the nature of the document and by whom it was filed, in a journal maintained for that purpose.

(b) The county surveyor shall maintain the documents described in subsection (a) in permanent files under the name of each regulated drain in the county. These copies shall be made available to the trial court, the supreme court, or the court of appeals in any proceedings pending under sections 106, 107, and 108 of this chapter.

(c) The county surveyor shall maintain a copy of each document described in subsection (a) for the use of the board.

(d) Whenever this chapter permits the filing of written evidence with the board, that evidence shall be subscribed to under oath by the person or persons having knowledge of the facts contained in the evidence.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.12; P.L.3-1989, SEC.233.

36-9-27-110

Sec. 110. (a) Whenever this chapter provides for the mailing of a notice to owners of affected land, the notice shall be addressed to the owner at the owner's home address as last entered by the county auditor for property tax purposes. If the owner is a railroad company or utility and is not assessed for taxes locally, the notice shall be addressed to the department of local government finance for forwarding to the railroad company or utility. If the owner is a unit or a school corporation, the notice shall be addressed to the persons authorized by law to accept service of process in civil actions on behalf of that owner. If the owner is the state, copies of the notice shall be addressed to the department or agency, if any, charged by law with the maintenance, supervision, or control over the state owned land that is affected.

(b) Whenever sections 54 through 65 of this chapter provide for the service of any document upon the attorney for a petitioner, the service shall be made by personally handing the document to the attorney, by leaving the document at the attorney's address, or by mailing the document to the address of the attorney as set forth in the petition.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.180-1995, SEC.8; P.L.90-2002, SEC.514.

36-9-27-111

Sec. 111. Whenever the last day for filing any document under this chapter falls on a legal holiday, the time for the filing shall be extended to the next day that is not a legal holiday.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-112

Sec. 112. (a) In determining benefits to land under sections 39, 50, and 62 of this chapter, the board may consider:

(1) the watershed affected by the drain to be constructed, reconstructed, or maintained;

(2) the number of acres in each tract;
(3) the total volume of water draining into or through the drain to be constructed, reconstructed, or maintained, and the amount of water contributed by each land owner;
(4) the land use;
(5) the increased value accruing to each tract of land from the construction, reconstruction, or maintenance;
(6) whether the various tracts are adjacent, upland, upstream, or downstream in relation to the main trunk of the drain;
(7) elimination or reduction of damage from floods;
(8) the soil type; and
(9) any other factors affecting the construction, reconstruction, or maintenance.

(b) In determining benefits or damages to land under sections 39, 50, and 62 of this chapter, the board may examine aerial photographs and topographical or other maps, and may adjourn the hearing to the site of the construction, reconstruction, or maintenance in order to personally view the affected land.

(c) In determining percentages of benefit under sections 39, 50, and 62 of this chapter, the board may consider the percentage of the total cost that was assessed to each tract in the initial construction or in any reconstruction of the drain. However, that percentage is not binding on the board in its current determination, and the board may vary from it as justice requires.

As added by Acts 1981, P.L.309, SEC.101.

36-9-27-113

Sec. 113. (a) For the purpose of investment, the county treasurer may consolidate part or all of the money in any fund established under this chapter with the money in any other fund established under this chapter or other money held by the county treasurer.

(b) Unless the invested money is from a maintenance fund established under section 44 of this chapter, the county treasurer shall credit interest from an investment of a fund created under this chapter to that fund.

(c) The county treasurer may credit interest earned from an investment of a maintenance fund established under section 44 of this chapter into the general drainage improvement fund established under section 73 of this chapter.

(d) Within an account, the county treasurer may credit interest to particular drainage accounts in any fair and rational manner.

As added by P.L.206-1984, SEC.13.

36-9-27-114

Sec. 114. (a) This section applies to a county that:
(1) receives notification from the department of environmental management that the county will be subject to regulation under 327 IAC 15-13; and
(2) has not adopted an ordinance to adopt the provisions of IC 8-1.5-5.

(b) As used in this section, "storm water improvements" means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.

(c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.

(d) Fees established under this chapter after a public hearing with notice given under IC 5-3-1 are presumed to be just and equitable.

(e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.

(f) The board shall use one (1) or more of the following factors to establish the fees:
(1) A flat charge for each lot, parcel of property, or building.
(2) The amount of impervious surface on the property.
(3) The number and size of storm water outlets on the property.
(4) The amount, strength, or character of storm water discharged.
(5) The existence of improvements on the property that address storm water quality and quantity issues.

(6) The degree to which storm water discharged from the property affects water quality in the district.
(7) Any other factors the board considers necessary.
(g) The board may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on:
(1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations;
(2) variations in the number of users in various locations; and
(3) whether the property is used primarily for residential, commercial, or agricultural purposes.
As added by P.L.282-2003, SEC.40.

Chapter 27.4. Removal of Obstructions in Mutual Drains and Natural Surface Watercourses

36-9-27.4

36-9-27.4-1

Sec. 1. As used in this chapter, "drain" refers to a mutual drain (as defined in IC 36-9-27-2).
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-2

Sec. 2. As used in this chapter, "drainage board" means the following:
(1) Except as provided in subdivision (2):
(A) the county board of commissioners, as provided in IC 36-9-27-5(a)(1); or
(B) the drainage board appointed by the board of commissioners under IC 36-9-27-5(a)(2).
(2) In a county having a consolidated city, the board of public works of the consolidated city, as provided in IC 36-9-27-5(b).
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-3

Sec. 3. As used in this chapter, "natural surface watercourse" means an area of the surface of the ground over which water from falling rain or melting snow occasionally and temporarily flows in a definable direction and channel.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2. Amended by P.L.276-2001, SEC.17.

36-9-27.4-4

Sec. 4. (a) As used in this chapter, "obstruction" means a condition that:
(1) exists within or near a drain; and
(2) prevents or significantly impedes the flow of water through the drain.
(b) The term includes the following:
(1) The presence of:
(A) one (1) or more objects inside or near a drain;
(B) a quantity of materials inside or near a drain; or
(C) damage to a drain;
that prevents or significantly impedes the flow of water through the drain.
(2) Obstructions that:
(A) are created intentionally; and
(B) occur naturally or are created unintentionally.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-5

Sec. 5. As used in this chapter, "owner" means a person who holds a possessory legal interest in land.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-6

Sec. 6. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a

partnership, or any other legal entity.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-7

Sec. 7. As used in this chapter, "respondent" means an owner of the tract of land that is the subject of a petition seeking the removal of an obstruction under this chapter.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-8

Sec. 8. As used in this chapter, "tract" means an area of land that is:
(1) under common fee simple ownership;
(2) contained within a continuous border; and
(3) a separately identified parcel for property tax purposes.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-9

Sec. 9. If:
(1) a person who owns a tract of land seeks the removal of an obstruction from a drain or natural surface watercourse located outside the person's tract in order to promote better drainage of the person's tract; and
(2) the owner of the land on which the obstruction is located, upon request, does not remove the obstruction;
the person seeking the removal of the obstruction may file a petition under this chapter asking the drainage board in the county in which the obstruction is located to remove, or authorize or order the removal of, the obstruction under this chapter.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-10

Sec. 10. A petition filed by a person described in section 9(1) of this chapter must include the following:
(1) A general description of the tract of land owned by the petitioner.
(2) A general explanation of the need for the removal of the obstruction.
(3) A general description of the site of the obstruction.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-11

Sec. 11. The drainage board may require, as a condition of filing a petition under this chapter, the payment of a filing fee. The drainage board may not set the filing fee at an amount greater than is reasonably necessary to defray the expenses incurred by the board in processing a petition.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-12

Sec. 12. (a) If a petition filed under this chapter alleges the obstruction of:
(1) a drain; or
(2) a natural surface watercourse;
the county surveyor of the county in which the obstruction is alleged to exist shall promptly investigate whether the obstruction exists.

(b) If the county surveyor, upon investigation, finds an existing obstruction in a drain or natural surface watercourse in the location alleged in the petition, the county surveyor shall report the existence of the obstruction to the drainage board.

(c) Upon receiving a report from the county surveyor under subsection (b), the drainage board shall:
(1) set a date for a hearing on the petition; and
(2) serve notice of the hearing on each owner of the land on which the obstruction exists who can be identified in the records of the county recorder.

(d) The hearing must be held at least thirty (30) days but less than ninety (90) days after the date of the filing of the petition.

(e) Notice of a hearing must be mailed to each respondent with return receipt requested.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2. Amended by P.L.276-2001, SEC.18.

36-9-27.4-13

Sec. 13. Before or on the date of a hearing held under this chapter, the drainage board may postpone and reschedule the hearing if:

(1) it appears that a respondent has not been served with notice; or

(2) the interests of fairness otherwise compel a postponement.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-14

Sec. 14. (a) If, after a hearing held under this chapter, the drainage board finds that:

(1) the obstruction of a drain or a natural surface watercourse that is alleged in the petition exists; and

(2) the removal of the obstruction will:

(A) promote better drainage of the petitioner's land; and

(B) not cause unreasonable damage to the land of the respondents;

the drainage board shall find for the petitioner.

(b) If, after a hearing held under this chapter, the drainage board is unable to make the findings described in subsection (a), the drainage board shall deny the petition.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-15

Sec. 15. If the drainage board finds for the petitioner under section 14(a) of this chapter, the board shall determine, based upon a preponderance of the evidence, whether the obstruction of the drain or natural surface watercourse was created intentionally by any of the respondents.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-16

Sec. 16. (a) If the drainage board finds:

(1) for the petitioner under section 14(a) of this chapter; and

(2) under section 15 of this chapter that the obstruction of the drain or natural surface watercourse was created intentionally by at least one (1) of the respondents;

the drainage board shall enter an order directing the respondents to remove the obstruction at their own expense, or directing the county surveyor to remove the obstruction at the expense of the respondents.

(b) A respondent against whom an order is entered under subsection (a) is subject to an action under section 22 of this chapter if the respondent fails to pay the amount for which the respondent is responsible under the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-17

Sec. 17. If the drainage board:

(1) finds for the petitioner under section 14(a) of this chapter; and

(2) does not find under section 15 of this chapter that the obstruction of the drain or a natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under section 18 or 19 of this chapter concerning the removal of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-18

Sec. 18. (a) If:

(1) a petition filed under this chapter concerns a natural surface watercourse; and

(2) the drainage board:

(A) finds for the petitioner under section 14(a) of this chapter; and

(B) does not find under section 15 of this chapter that the obstruction of the natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

(1) authorizing the petitioner to remove the obstruction; or

(2) directing the county surveyor to remove the obstruction at the expense of the petitioner.

(c) The drainage board shall consult with the:

(1) petitioner;

(2) respondents; and

(3) county surveyor;

before deciding whether to enter an order under subsection (b)(1) or (b)(2).

(d) If the drainage board enters an order under subsection (b), the order may require the petitioner to bear the expenses of removing the obstruction, including the monetary value of the harm and inconvenience that the respondents will incur as a result of the removal of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-19

Sec. 19. (a) If:

(1) a petition filed under this chapter concerns a drain; and

(2) the drainage board:

(A) finds for the petitioner under section 14(a) of this chapter; but

(B) does not find under section 15 of this chapter that the obstruction of the drain was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

(1) authorizing the petitioner to remove the obstruction;

(2) authorizing the respondents to remove the obstruction;

(3) directing the county surveyor to remove the obstruction; or

(4) directing that the obstruction be removed through the joint efforts of at least two (2) of the persons referred to in this subsection.

(c) If an order is issued under subsection (b), the costs of removing the obstruction must be borne by the owners of all the tracts of land that are benefited by the drain. The order of the board must do the following:

(1) Identify all tracts of land that are benefited by the drain.

(2) Identify the owners of the tracts of land referred to in subdivision (1):

(A) who are known to the drainage board; or

(B) whose identity can be determined through the records of the county auditor.

(3) Apportion the costs of removing the obstruction among the tracts of land that are benefited by the drain, assigning to each tract a certain percentage of the total costs.

(4) Order the owners of each tract of land referred to in subdivision (1) to pay an amount equal to the product of the total costs of removing the obstruction multiplied by the percentage assigned to the tract under subdivision (3).

(d) The percentage of the total costs assigned to a tract under subsection (c)(3) must correspond to the ratio of the total length of the drain to the length of the particular segment of the drain that benefits the tract.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2. Amended by P.L.276-2001, SEC.19.

36-9-27.4-20

Sec. 20. (a) All the owners of a tract that is the subject of an order issued under section 19 of this chapter are jointly and severally responsible for the payment of the amount determined under section 19(c)(4) of this chapter.

(b) An owner of a tract who pays all of or a portion of the amount may bring an action to obtain contribution from an owner of the tract who did not pay an equal or a greater portion of the amount.

(c) An owner of a tract that is the subject of an order issued under section 19 of this chapter is subject to an action under section 22 of this chapter if the owner fails to pay the amount for which the owner is responsible under the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-21

Sec. 21. In entering an order concerning the removal of an obstruction under this chapter, a drainage board may:

(1) provide for the costs of the removal work to be paid directly by one (1) or more of the persons subject to the order; or

(2) authorize an advance on the general drain improvement fund established in the county under IC 36-9-27-73 for the payment of the costs of the removal work and provide for the amount advanced to be reimbursed by one (1) or more of the persons subject to the order.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-22

Sec. 22. (a) If a person who is required by an order of a drainage board under this chapter to pay an amount or bear an expense does not comply with the requirement, the amount for which the person is responsible may be recovered by:

(1) the drainage board, as custodian of the general drain improvement fund, if the amount was advanced from the general drain improvement fund; or

(2) another person subject to the order who has paid the amount and is entitled to reimbursement.

(b) An amount may be recovered from a person under subsection (a) through an action in a court having jurisdiction in the same manner that a creditor may recover an amount owed under a contract. In an action brought under this subsection, the plaintiff may also be awarded costs and reasonable attorney's fees.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-23

Sec. 23. (a) If the drainage board finds for a petitioner after a hearing held under this chapter, a respondent may file an action in the circuit or superior court of the county in which the alleged obstruction exists seeking to have the order entered by the drainage board vacated.

(b) An action filed under subsection (a) must be based on at least one (1) of the following assertions by the respondent:

(1) The drainage board lacked authority to act under this chapter.

(2) The drainage board erred in making the findings described in section 14(a) of this chapter.

(3) The respondent should have been awarded compensation for harm and inconvenience, or the amount awarded to the respondent for harm and inconvenience is insufficient.

(4) The drainage board did not follow the procedure required by this chapter.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-24

Sec. 24. (a) In an action filed under section 23 of this chapter, the court:

(1) shall enter an order vacating the order of the drainage board directing the county surveyor to remove the obstruction; and

(2) may issue an injunction against the removal of the obstruction;

if the court makes a finding under subsection (b).

(b) The court is required or authorized to act under subsection (a) if the court finds that the drainage board:

(1) was clearly in error in making its findings under section 14(a) of this chapter with respect to the alleged obstruction; or

(2) exceeded its authority or discretion under the law in authorizing the removal of the obstruction.

As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

36-9-27.4-25

Sec. 25. (a) For the purposes of this chapter:

(1) a county surveyor;

(2) a member of a drainage board; or

(3) an authorized representative of a county surveyor or drainage board;

has a right of entry over and upon a tract of land containing a drain or natural surface watercourse that is the subject of a petition filed under this chapter.

(b) The right of entry granted by this section is limited to the land lying within seventy-five (75) feet of the drain or natural surface watercourse. The seventy-five (75) feet must be measured at right angles to:

(1) the center line of any tiled drain; and

(2) the top edge of each bank of an open drain; and

(3) the edge of any natural surface watercourse;
as determined by the county surveyor.

(c) A person exercising a right of entry under this section shall, to the extent possible, use due care to avoid damage to:

(1) crops, fences, buildings, and other structures located outside the right-of-way; and

(2) crops and approved structures located inside the right-of-way.

(d) Before exercising a right of entry under this section, an individual must give oral or written notice of the entry on the land to the property owner of record. The notice must state the purpose for the entry.

(e) A right of entry under this section is not criminal trespass under IC 35-43-2-2, and an individual exercising a right of entry under this section may not be arrested or prosecuted for criminal trespass under IC 35-43-2-2.
As added by P.L.239-1996, SEC.3 and P.L.240-1996, SEC.2.

Chapter 28. Certain Watercourse, Levee, Sewer, and Drain Improvements

36-9-28

36-9-28-1

Sec. 1. This chapter applies to all municipalities other than a consolidated city.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-2

Sec. 2. A municipal works board acting under this chapter may issue an order to construct or improve a levee, change or improve a natural or artificial watercourse, drain a section of land, or construct a sewer or drain, if:

(1) the proposed project is designed to benefit land inside and outside the corporate boundaries of the municipality; and

(2) the works board finds that the proposed project is necessary for the welfare of all or part of the municipality.

If the works board issues such an order, it shall have the necessary drawings and specifications for the project prepared and filed in its office.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-3

Sec. 3. (a) In making an order for a project under this chapter, the municipal works board shall consider whether the project will beneficially or injuriously affect any property outside the corporate boundaries of the municipality.

(b) If the works board finds that the proposed project will injuriously or beneficially affect property outside the corporate boundaries of the municipality, it shall file with the circuit court for the county a record of all the proceedings concerning the project, including:

(1) a list of all persons whose property will be affected, as determined from the records of the county at the time the works board passes the order for the project; and

(2) a description of the boundaries of the affected area.

The proceedings shall be docketed in the circuit court in the same manner as other civil actions, and the court shall fix a time when the proceedings shall be heard.

(c) If the works board finds that the proposed project will not affect property outside the corporate boundaries of the municipality, it may not proceed with the project under this chapter.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-4

Sec. 4. (a) After the record is filed under section 3 of this chapter, the clerk of the circuit court shall give notice to all persons who are mentioned in the record or who will be affected by the proposed project. The notice must:

(1) be published in accordance with IC 5-3-1;

(2) name a date on which the court will hold a hearing on the proposed project; and

(3) describe the boundaries of the area affected by the proposed project.

(b) At the hearing, which may be adjourned from time to time, persons who own property in the area affected by the proposed project may file an answer showing why the works board should not proceed with the project. The

court shall hear the evidence and determine whether the works board should proceed.

(c) If the court finds that the works board should proceed with the project substantially as described in the record, it shall enter judgment accordingly. Otherwise, the court shall dismiss the proceedings.

(d) The court's judgment under this section may not be appealed.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.85.

36-9-28-5

Sec. 5. If, under section 4 of this chapter, the court finds that the municipal works board should proceed with a proposed project, the works board shall control and supervise work for the project. The works board shall:

(1) advertise for bids for the work; and

(2) let a contract or contracts for the work, subject to financing.

The works board shall report the letting of the contract or contracts to the court, together with an estimate of other project costs, to be filed with the proceedings concerning the project.

As added by Acts 1981, P.L.309, SEC.104.

36-9-28-6

Sec. 6. (a) After the letting of a contract or contracts under section 5 of this chapter, the circuit court shall appoint three (3) competent, disinterested residents of the county to serve as the board of assessors for the project. The assessors shall take an oath to honestly and faithfully perform their duties as assessors.

(b) The board of assessors shall:

(1) inspect the line of the proposed project and the property within the area affected by the project;

(2) estimate and assess the benefits against each piece of property to be benefited by the project;

(3) award damages to each piece of property to be injuriously affected by the project; and

(4) prepare and file with the clerk of the circuit court an assessment roll of the assessment against each property owner.

The clerk shall then give written notice of the assessment and the right to appeal by certified mail or personal service upon each of the property owners being assessed as his name and address appears on the tax records of the county. The clerk shall make and file in his records an affidavit of the giving of the notice.

(c) Appeals from the assessments may be made to the circuit court within fifteen (15) days after the time of the filing of the clerk's affidavit of service. The appeals shall be conducted in the manner directed by the circuit court.

(d) In hearing appeals of assessments, the board of assessors shall:

(1) sit at the times and places directed by the court;

(2) administer oaths;

(3) send for persons and papers; and

(4) hear testimony concerning the question of benefits and damages to be assessed.

The hearing may be continued from day to day.

(e) After hearing any appeals, the board of assessors shall finalize the roll of property owners whose property will be benefited or injured by the project, including:

(1) a description of the property affected; and

(2) the amount of the benefits or damages to the property, listed opposite each description;

and shall file it with the circuit court.

(f) The board of assessors may correct a mistake or supply an omission in the roll at any time. Proceedings under this chapter are not defective or void because of an omission or defect in the roll, and a property owner may not object to the proceedings on the ground of any mistake in or omission of:

(1) the name of any person; or

(2) the description of any property.

The circuit court may call the board together to make any necessary additions or corrections to the roll.

(g) An action to contest the assessments and the acts of the board of assessors must be commenced within:

(1) thirty (30) days after the affidavit of service by the clerk of the circuit court; or

(2) if an appeal is taken, within thirty (30) days after the filing of the final report with the court.

(h) The circuit court shall make reasonable allowances to the board of assessors and for attorney's fees, and shall tax these allowances with the other costs of the proceedings. The allowances are payable out of money available from bond proceeds, assessments, or the municipal treasury.

As added by Acts 1981, P.L.309, SEC.104.

36-9-28-7

Sec. 7. Except as otherwise provided by this chapter, the statutes concerning street and sewer improvement assessments apply to assessments made under this chapter.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-8

Sec. 8. If any real or personal property inside or outside the municipality is required for a project under this chapter:

(1) it may be condemned and paid for in the manner provided by law; or
(2) the municipal works board may purchase and take a conveyance for it for the use and benefit of the municipality, in the manner prescribed for other purchases by the municipality.

All further proceedings concerning a project under this chapter must be performed in accordance with the statutes governing public improvements in municipalities.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-9

Sec. 9. (a) If the financing for a project under this chapter is to be provided by the federal government, one (1) or more bonds may be issued at any time after the filing of the assessment roll with the circuit court under section 6 of this chapter.

(b) Bonds issued under this section are payable solely from:

(1) the assessments made or to be made against the property benefited; or
(2) the money appropriated for that purpose by the municipality;

and are not a general obligation of the municipality.

(c) Notwithstanding any other law, a financing agreement with the federal government may provide that a municipal ordinance may determine:

(1) the interest rate or rates on the bonds and the assessments;
(2) the time or times of maturities or of principal and assessment payments;
(3) the terms, if any, for redemption of the bonds;
(4) the medium and the place or places for payment of the bonds, including payment by mail to an owner of any fully registered bond; and
(5) any other necessary terms and conditions.

(d) Bonds issued under this section need not be advertised for public sale.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-10

Sec. 10. (a) When the municipal works board finally accepts a project under this chapter, it shall certify the completion and acceptance of the project to the circuit court. The court shall then direct the clerk of the court to make out two (2) copies of a list showing:

(1) the owners of the property affected by the project;
(2) a description of each parcel of property affected by the project; and
(3) the benefits and damages assessed upon or in favor of each parcel.

The clerk shall certify the copies under the seal of the court, and shall deliver one (1) copy to the municipal fiscal officer and one (1) copy to the county treasurer.

(b) If the works board finds that the project is necessary for the public welfare of the municipality and that the benefits assessed will fall below the amount required to pay the damages awarded and to pay for the project, the board shall order that any balance required for this purpose shall be paid by the municipality out of the general fund or out of any other available money. If the works board finds that the benefits assessed exceed the amount of financing needed, each assessment shall be reduced on a pro rata basis.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-11

Sec. 11. (a) After a project is completed and approved under this chapter, the care, management, control, repair, and maintenance of the project may be placed under the jurisdiction of a board of directors appointed under this

section.

(b) A petition requesting the appointment of a board of directors for the project may be filed with the clerk of the circuit court. The petition may be signed by:

(1) the municipal works board, if all or part of the municipality is located in the area affected by the project;

(2) the executive and legislative body of a township, if all or part of the township is located in the area affected by the project;

(3) any twenty-five (25) landowners who reside in a municipality and whose lands are located in the area affected by the improvement; or

(4) any twenty-five (25) landowners who do not reside in a municipality and whose lands are located in the area affected by the project.

The petition shall be docketed as a pending action, and the court shall fix a time when the petition shall be heard.

(c) After the petition is filed and docketed, the clerk of the circuit court shall give notice of the hearing by publication in accordance with IC 5-3-1. The notice shall be addressed to all persons who were originally assessed for the construction of the project.

(d) Any person owning land located in the area affected by the project may appear at the hearing and be heard, either in person or by his attorney.

(e) If the circuit court determines that a board of directors should be appointed and assessments should be imposed for the care, management, control, repair, and maintenance of the project, the court shall enter a judgment accordingly. If the court enters such a judgment, two (2) members of the board of directors shall be appointed by the county executive and one (1) member of the board of directors shall be appointed by the municipal executive. The three (3) appointed persons must be qualified under section 12 of this chapter.

(f) If the court determines that a board of directors should not be appointed, it shall dismiss the petition.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.86; P.L.7-1983, SEC.40.

36-9-28-12

Sec. 12. (a) A board of directors appointed under this chapter consists of three (3) directors, who must own land assessed for the construction of the project. One (1) of the directors must be a resident of the municipality affected by the improvement, and two (2) of the directors must be residents of an unincorporated area.

(b) One (1) of the original directors shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years. After the expiration of the original terms, all directors shall be appointed for terms of three (3) years.

(c) The appointing authority shall fill any vacancy on the board of directors by appointment for the remainder of the unexpired term.

As added by Acts 1981, P.L.309, SEC.104. Amended by P.L.7-1983, SEC.41.

36-9-28-13

Sec. 13. Each member of a board of directors appointed under this chapter is entitled to compensation, at a rate fixed by the circuit court but not to exceed thirty-five dollars ($35) per day, for his services under this chapter. The compensation of the board shall be paid from the assessments made under section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.317, SEC.33.

36-9-28-14

Sec. 14. A board of directors appointed under this chapter may employ the assistants necessary to perform its duties under this chapter. The compensation of the assistants shall be paid from the assessments made under section 16 of this chapter.

As added by Acts, 1981, P.L.309, SEC.104.

36-9-28-15

Sec. 15. (a) A board of directors appointed under this chapter shall make all repairs necessary to keep the project in its original condition. If, in making the repairs, it is necessary to change the line and location of a ditch at any point, the board may do so, but the board may not change its general line or location.

(b) The board of directors shall keep a record of its proceedings and shall note in that record all expenses incurred in making repairs. The board shall file with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due to each person. The auditor shall then draw his warrant in favor

of each person for the amount due them. The amounts due shall be paid out of county revenues and shall be reimbursed to the county from the assessments made under section 16 of this chapter.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-16

Sec. 16. (a) The money necessary to pay costs incurred by a board of directors in the management and maintenance of a project, including money to be reimbursed to a county under section 15 of this chapter, shall be derived from assessments made under this section.

(b) The board of directors shall determine:

(1) the total number of acres of land benefited by the project and located outside the municipality;

(2) the total number of lots benefited by the project and located outside the municipality; and

(3) the total number of lots benefited by the project and located inside the municipality.

Each lot, whether it is located inside or outside the municipality, shall be counted as one-half (1/2) acre of land, and each major fraction of an acre shall be counted as one (1) full acre.

(c) When the board of directors has determined the total number of acres subject to assessment and the total amount of money required for the next year, the board shall divide the total amount required by the total number of acres assessed. The quotient obtained is the amount per acre to be assessed for the next calendar year.

(d) If repairs have been rendered necessary by the act or negligence of the owner or occupant of any lands, or of his employee or agent, the cost of the repairs shall be assessed against only his lands.

(e) All assessments shall be made before August 2 of each year.

(f) The board of directors shall certify the total amount assessed against lots located inside the municipality to the municipal fiscal officer. This amount shall be included in the municipal budget, appropriated by the municipal legislative body, and paid out of the municipal general fund.

(g) The board of directors shall make out a certified copy of the assessments made on land outside the municipality, and shall file the copy with the auditor of the county in which the lands and lots are located. The auditor shall place the assessments against the land upon the next tax duplicate. The assessment is a lien from the time the certified copy of the assessments is filed, and shall be collected as other state and county taxes are collected. All the laws regulating the payment and collection of state and county taxes, the assessment of penalties and interest, and the sale of property for delinquent taxes apply to the payment and collection of assessments placed upon tax duplicates under this subsection.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-17

Sec. 17. If a board of directors finds that the cost of maintaining a project exceeds the amount that can be raised in any year, the board may issue bonds in the manner in which bonds are issued for construction of levees. However, the bonds and the interest on the bonds shall be paid by assessments made in the manner prescribed by section 16 of this chapter.
As added by Acts 1981, P.L.309, SEC.104.

36-9-28-18

Sec. 18. The board of directors in charge of a project may pump out or remove from lands drained by a ditch any standing water that has no means of outlet. The board may purchase pumps or adopt other suitable means for the removal of the water, and the costs necessarily incurred on account of any work done under this section shall be assessed against the lands benefited by the removal of the water. The costs shall be paid, assessed against the lands benefited, and collected in the manner prescribed by section 16 of this chapter.
As added by Acts 1981, P.L.309, SEC.104.

Chapter 28.5. Management of Stormwater Runoff From Developed Real Property

36-9-28.5

36-9-28.5-1

Sec. 1. This chapter applies to counties and municipalities.
As added by P.L.168-1999, SEC.2.

36-9-28.5-2

Sec. 2. As used in this chapter, "policy" refers to a policy adopted under this chapter for the management of stormwater runoff from developed real property.
As added by P.L.168-1999, SEC.2.

36-9-28.5-3

Sec. 3. By January 1, 2001, the legislative body of a unit shall establish a policy of the unit for the management of stormwater runoff from developed real property in the unit. The legislative body may establish the policy by resolution or ordinance.
As added by P.L.168-1999, SEC.2.

36-9-28.5-4

Sec. 4. The policy may, but is not required to, provide for the actual management of stormwater runoff from developed real property.
As added by P.L.168-1999, SEC.2.

36-9-28.5-5

Sec. 5. (a) If the unit is a city, the geographic scope of the city's policy must include all territory located within the city.

(b) If the unit is a town, the geographic scope of the town's policy must include all territory located within the town unless the legislative body of the town specifies by resolution that the territory of the town be included in the policy of the county where the town is located.

(c) If the unit is a county, the geographic scope of the county's policy must include:

(1) all territory of the county that is not located within a municipality; and

(2) all territory of a town located in the county that has adopted a resolution under subsection (b).

As added by P.L.168-1999, SEC.2.

Chapter 28.7. Storm Water Nuisances

36-9-28.7

36-9-28.7-1

Sec. 1. (a) As used in this chapter, "artificial conveyance" means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.

(b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.
As added by P.L.125-2011, SEC.3.

36-9-28.7-2

Sec. 2. As used in this chapter, "channel" means a part of a natural watercourse or artificial conveyance that:

(1) periodically or continuously contains moving water; and

(2) has a defined bed and banks that serve to confine the water.

As added by P.L.125-2011, SEC.3.

36-9-28.7-3

Sec. 3. As used in this chapter, "runoff" means the part of precipitation that flows from a drainage area on the land surface, in open channels, or in storm water conveyance systems.
As added by P.L.125-2011, SEC.3.

36-9-28.7-4

Sec. 4. As used in this chapter, "storm water conveyance system" means all methods, natural or manmade, used for conducting storm water to, through, or from a drainage area to any of the following:

(1) Conduits and appurtenant features.

(2) Canals.

(3) Channels.
(4) Ditches.
(5) Storage facilities.
(6) Swales.
(7) Streams.
(8) Culverts.
(9) Roadways.
(10) Pumping stations.
As added by P.L.125-2011, SEC.3.

36-9-28.7-5

Sec. 5. As used in this chapter, "storm water nuisance" means a condition:
(1) that arises out of or is related to storm water that is transferred through runoff or an artificial conveyance that:
(A) is directed to the property of another person;
(B) discharges storm water at or near the property line of another person; or
(C) accelerates or increases the flow of storm water onto another person's property; and
(2) to which one (1) or both of the following apply:
(A) The condition is injurious to health.
(B) The condition substantially obstructs the free use of property.
As added by P.L.125-2011, SEC.3.

36-9-28.7-6

Sec. 6. As used in this chapter, "swale" means an elongated depression in the land surface that:
(1) is at least seasonally wet;
(2) is usually vegetated;
(3) is a conduit for storm water flow; and
(4) conducts storm water into primary drainage channels.
As added by P.L.125-2011, SEC.3.

36-9-28.7-7

Sec. 7. As used in this chapter, "unit of government" means:
(1) the town council or its designee if the storm water nuisance is located within the boundaries of a town;
(2) the city board of works or its designee if the storm water nuisance is located within the boundaries of a city; or
(3) the county surveyor or its designee if the storm water nuisance is located within the boundaries of an unincorporated part of a county.
As added by P.L.125-2011, SEC.3.

36-9-28.7-8

Sec. 8. (a) If:
(1) a person who owns a tract of land seeks the removal of a storm water nuisance; and
(2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request;
the person seeking the removal may file a request under this chapter asking the unit of government to investigate the storm water nuisance.
(b) The request must be filed on a form published by the unit of government that includes:
(1) a general description of the tract of land owned by the person making the request;
(2) a general description of the site of the nuisance; and
(3) a general explanation of the need for the removal of the nuisance.
As added by P.L.125-2011, SEC.3.

36-9-28.7-9

Sec. 9. (a) An ordinance may be adopted to allow for the payment of a fee to the unit of government as a

condition of filing a request under this chapter. The fee may not be an amount greater than is reasonably necessary to defray the expenses incurred in processing the request, conducting the investigation, and completing the assessment under this section.

(b) A unit of government shall investigate and make a visual assessment limited to the following:

(1) Determine whether the storm water nuisance exists.

(2) Assess whether the removal of the storm water nuisance will:

(A) remove the negative effect of the storm water nuisance from the land of a person making the request; and

(B) cause unreasonable damage to the land on which the storm water nuisance is located.

(3) Make any other observations that may be useful in solving an alleged storm water nuisance problem.

(c) A unit of government, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 8 of this chapter:

(1) An oral or written report that may include:

(A) a general description of the investigation and its findings;

(B) whether the storm water nuisance exists;

(C) the need for the removal of the storm water nuisance;

(D) whether the removal of the storm water nuisance will:

(i) remove the negative effect of the storm water nuisance from the land of a person that filed the request under section 8 of this chapter; and

(ii) cause unreasonable damage to the land on which the storm water nuisance is located; and

(E) any other considerations that may be useful in solving the storm water nuisance.

(2) Information concerning alternative dispute resolution options.

(d) A unit of government is not required to use funds to meet the requirements under this chapter.

(e) Except under subpoena, a unit of government may not be compelled to testify in a legal proceeding related to its functions under this chapter.

(f) For purposes of this chapter, the unit of government has a right of entry as provided by IC 36-9-27.4-25.

(g) An artificial conveyance or runoff that was constructed and that operates in compliance with a permit issued by a political subdivision is not subject to this chapter.

As added by P.L.125-2011, SEC.3.

Chapter 29. Flood Control Districts in Certain Cities

36-9-29

36-9-29-1

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.44, SEC.60.

36-9-29-2

Sec. 2. A city acting under this chapter may:

(1) construct or install the flood control works necessary to exclude, divert, remove, reduce, or prevent flood waters caused by the overflowing of watercourses or by storm or surface waters in or about a flood control district established under this chapter; and

(2) construct or elevate highways and bridges necessary to provide reasonable traffic facilities through or over any structures constructed as part of the flood control works.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-3

Sec. 3. (a) Whenever a city works board determines that:

(1) it is necessary for the general welfare, safety, and security of the city and its inhabitants to carry out any project for the protection of the city and its inhabitants from floods;

(2) the project cannot be carried out in the best or most economical manner without beneficially or injuriously affecting land or other property located outside the corporate boundaries of the city; and

(3) the required flood control works can best be provided for and maintained by the establishment of a special

taxing district for that purpose;

it may adopt the declaratory resolution described in subsection (b).

(b) The declaratory resolution must include the following items:

(1) The necessity for providing flood protection for all or part of the city and for all or part of the contiguous territory within four (4) miles outside the corporate boundaries of the city, including all or part of any town within the four (4) mile limit. The necessity must be based upon floods that have occurred in the city and the contiguous territory in the preceding ten (10) years.

(2) The general character of the flood control works that the works board considers necessary to afford proper protection, and the general location and route of the levees, dikes, retaining walls, and other structures that the board considers necessary as part of those works.

(3) A general description of the boundaries of the territory that will be beneficially affected by the construction of the proposed works.

(4) A general estimate of the cost of the property that must be acquired for the construction of the proposed works, including the estimated amounts of damages to property injuriously affected but not acquired.

(5) A general estimate of the cost of construction and installation of the proposed works, based on the available information.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-4

Sec. 4. (a) Upon the adoption of a declaratory resolution under section 3 of this chapter, the city works board shall file with the circuit court for the county in which the city is located a petition requesting the establishment of a flood control district to include the territory described in the resolution. A copy of the resolution shall be attached to the petition. The petition shall be docketed in the court as a pending cause, and shall be entitled "In the matter of the city of _____, petition for the establishment of flood control district".

(b) Upon the filing of the petition, the circuit court shall fix a time when the petition shall be heard, which may not be less than fifteen (15) nor more than thirty (30) days after the filing. The clerk of the court shall publish a notice of the hearing in accordance with IC 5-3-1. The notice must:

(1) contain a brief summary of the petition;

(2) set out the description of the boundaries of the proposed district, as set out in the resolution attached to the petition;

(3) state the time and place fixed for the hearing on the petition; and

(4) advise all interested parties that they may appear and be heard.

(c) The clerk of the circuit court shall certify and send to the attorney general, by registered mail, a copy of the petition, together with a copy of the resolution attached to the petition and a copy of the notice of hearing.

(d) After the publication and mailing of the notice, all persons having any interest in property or highways located in the petitioning city, or within four (4) miles outside the corporate boundaries of the city, are conclusively presumed to have notice of the pendency of the petition and all subsequent proceedings had under the petition.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.87.

36-9-29-5

Sec. 5. (a) The circuit court shall hear a petition filed under section 4 of this chapter without a jury. The hearing may be continued and adjourned from time to time as the court may direct. There may be a change of judge as in civil cases, but no change of venue from the county.

(b) All persons affected by the establishment of the proposed flood control district or the construction of the proposed flood control district or the construction of the proposed flood control works may file objections showing any reason why:

(1) the district should not be established;

(2) the works should not be constructed; or

(3) their property should or should not be included in the proposed district.

The court shall hear evidence and determine the facts upon these issues. All objections shall be filed at least two (2) days before the date fixed for the hearing.

(c) If the court finds that a necessity exists for the establishment of a flood control district and the construction and installation of flood control works as requested by the petition, the court shall render judgment accordingly and shall enter a decree establishing the district, describing it in such a manner that the property included in it may be

sufficiently identified and segregated to permit the levy and collection of the special taxes provided for by this chapter. There is no appeal from such a judgment, and, after the entry of such a decree, the establishment of the district may not be questioned in any action or proceeding, except as otherwise provided by this chapter.

(d) If the court finds that no necessity exists for the establishment of the flood control district, the proceedings shall be dismissed at the cost of the petitioning city.

(e) If it appears to the court that the boundaries of the flood control district as described in the declaratory resolution should be changed, or that changes in the flood control works as described in the declaratory resolution should be made, and that such changes will beneficially or injuriously affect property that would not have been so affected by the district and works proposed in the declaratory resolution, then the court may enter an interlocutory order to that effect and fix a time for further hearing on the petition.

(f) The date for a hearing under subsection (e) may not be less than ten (10) nor more than fifteen (15) days after the order. The court shall direct the clerk of the court to publish a notice of the hearing that sets out a brief summary of the order, including a brief description of the changes the court proposes to make in respect to the boundaries or works. The notice shall be published in accordance with IC 5-3-1. The notice must state the time and place for the continuation of the hearing on the petition, and advise all parties affected by the proposed changes that they may appear and be heard. Objections may be filed in the manner prescribed by subsection (a), but must be filed at least two (2) days before the time fixed for the continuation of the hearing and must be based solely on the changes proposed to be made. If, at the conclusion of the continued hearing, the court finds that all or part of the proposed changes should be made, or that the district should be established and the works constructed as provided for in the declaratory resolution, the court shall render judgment accordingly and enter a decree as provided under subsection (c).

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.88.

36-9-29-6

Sec. 6. (a) If twenty-five percent (25%) or more of the territory included within the corporate boundaries of the city petitioning for the establishment of a flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the corporate boundaries of the city is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation from floods and will not be included within or protected by the proposed flood control works.

(b) If twenty-five percent (25%) or more of the territory within the corporate boundaries of any town included in whole or in part in the flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the town is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation and will not be included within or protected by the proposed flood control works.

(c) Territory that:

(1) is outside the corporate boundaries of a municipality; and

(2) lies at an elevation higher than three (3) feet above the highest flood stage during the preceding ten (10) years;

may be included in a flood control district only if it will be included within or protected by the proposed flood control works.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-7

Sec. 7. Upon the entry of a decree under section 5 of this chapter, a flood control district constitutes a special taxing district for flood control purposes. All property in the district is subject to a special benefit tax for the purpose of providing money to pay the cost of constructing and maintaining the flood control works. The special benefit tax, which shall be levied in the manner prescribed by this chapter, constitutes the amount of special benefits accruing to property in the district on account of the construction and maintenance of the works.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-8

Sec. 8. (a) If a flood control district is established under this chapter, the construction of the flood control works shall be carried out under the control of a flood control board, to be known as "Board of Commissioners, _____ Flood Control District" (designating the name of the city instituting the proceedings for the

establishment of the district).

(b) The flood control board consists of:

(1) the members of the works board of the city petitioning for the establishment of the flood control district; and

(2) the executive of each town or township included in whole or in part in the district.

(c) Before entering upon his duties, each commissioner of the flood control board shall take and subscribe the usual oath of office, and shall file it with the clerk of the circuit court.

(d) If any commissioner of the flood control board fails or refuses to qualify, or after qualifying fails or refuses to take part in the proceedings of the board, then the board, by a majority vote, may petition the circuit court for the appointment of a new commissioner. After a hearing and a showing of cause, the court may remove the offending commissioner. If the court removes a commissioner, the executive of the city shall appoint a new commissioner. The new commissioner must be a freeholder residing in the part of the district previously represented by the commissioner removed.

(e) Each commissioner of a flood control board is entitled to a salary fixed by the board, subject to the approval of the legislative body of the city petitioning for the establishment of the flood control district.

(f) Within ten (10) days after the entry of the decree establishing the flood control district, the commissioners of the flood control board shall meet at the office of the works board of the city petitioning for the establishment of the district, and shall organize by electing one (1) of their number president and one (1) vice president. These officers shall perform the duties usually pertaining to their offices, and shall serve for a period of one (1) year or until their successors are elected and qualified. The board shall also appoint a secretary pro tempore to keep the records of the proceedings until the board appoints a permanent secretary. The minutes of the board shall be kept in a permanent minute book, and the first entry in the book must be a copy of the decree establishing the district and fixing its boundaries.

(g) A majority of the commissioners of the flood control board constitutes a quorum for the transaction of any business. If the board consists of an even number of commissioners and there is a tie vote on any question, the vote of the president on the question is controlling.

(h) The flood control board may:

(1) sue and be sued;

(2) exercise the power of eminent domain;

(3) adopt rules governing the holding of regular meetings, the calling of special meetings, methods of procedure, and similar matters; and

(4) perform all acts necessary and proper for carrying out the purposes of the flood control district.

(i) The office of the flood control board shall be maintained at the office of the works board of the city petitioning for the establishment of the district, or at another place furnished by the city. All records of the board shall be kept at the office and are public records, open to inspection by the public during business hours.

(j) A commissioner, appointee, or employee of the flood control board may not have any direct or indirect interest in any contract let by the board, or in the furnishing of supplies or materials to the board.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.34; P.L.7-1983, SEC.42.

36-9-29-9

Sec. 9. (a) The flood control board shall appoint an executive secretary. The executive secretary may not be a commissioner of the board before the completion of the flood control works, but may be after their completion.

(b) The salary of the executive secretary shall be fixed by the flood control board.

(c) The executive secretary may be required to furnish bond in the amount the flood control board finds necessary. The cost of the bond may be borne by the district.

(d) The executive secretary:

(1) is the custodian of the records of the district;

(2) shall assist the board in the performance of its duties, as directed by the board; and

(3) shall certify copies of the official records and files of the district that may be required of him by this chapter, or by any person ordering copies and paying the reasonable cost of transcription.

Certification of a record by the executive secretary is prima facie evidence of the record's accuracy.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.35.

36-9-29-10

Sec. 10. (a) The flood control board shall appoint a district engineer, who shall perform the duties assigned by the board.

(b) The engineer's compensation shall be fixed by the flood control board. However, when the engineering services are performed by the engineer of the city, the city engineer may receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.36.

36-9-29-11

Sec. 11. (a) The flood control board shall appoint one (1) or more attorneys, who shall perform the duties assigned by the board.

(b) The compensation of the attorney or attorneys shall be fixed by the board. However, when the legal services are performed by an attorney of the city legal department, that attorney is entitled to receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.37.

36-9-29-12

Sec. 12. The flood control board may employ and fix the compensation of all the employees necessary to enable it to perform its duties under this chapter without undue delay.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-13

Sec. 13. All the employees of a flood control district, including the executive secretary, engineer, and attorneys, serve at the pleasure of the flood control board.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-14

Sec. 14. (a) The county treasurer shall act as treasurer of the flood control board and the flood control district. The county treasurer shall make all collections of the special benefit taxes levied by the board, without any additional compensation other than that allowable in the case of the collection of general taxes by the treasurer.

(b) The county treasurer shall give bond in the amount and with the surety prescribed by the flood control board. The cost of the bond shall be paid out of the revenues of the district.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-15

Sec. 15. The county auditor shall include on the tax duplicates for the county the special benefit taxes levied for the flood control district and shall perform the same duties in connection with the levy and collection of these taxes as are performed for general taxes levied by any political subdivision in the county.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.38.

36-9-29-16

Sec. 16. (a) The flood control board may, on behalf of the flood control district, accept any legal, engineering, financial, construction, or other aid from the federal government or any other source.

(b) If the federal government agrees to construct or furnish and install all or part of the flood control works required by the flood control district, and to furnish the necessary plans and specifications, the flood control board shall accept the offer and adopt the plans and specifications as its own, unless they do not conform to the decree establishing the district.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-17

Sec. 17. (a) If the state or a political subdivision has territory that will be affected in whole or in part by flood control works, it may grant to the flood control district the use of any property in which it has an interest, including its rights in public ways, for use in connection with the construction of the flood control works, upon the terms agreed upon. Such a grant must be authorized by:

(1) the governor and the state agency having jurisdiction of the property, for the state; or

(2) the fiscal body, for a political subdivision.

(b) Grants under this section shall be made in the form of a deed or other written instrument that may be recorded. The grant may provide that when property is no longer needed for the purposes of the flood control

district, the property reverts to the state, or the political subdivision, making the grant.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-18

Sec. 18. (a) After its organization, the flood control board shall prepare and adopt:

(1) plans and specifications for the flood control works to be constructed or installed by or for the flood control district;

(2) estimates of the cost of that part of the works to be contracted for or constructed at the expense of the district;

(3) maps and plats showing the general scope of the works and the boundaries of all lands considered necessary to be acquired for the works or that will be injuriously affected in connection with the construction of the works; and

(4) an acquisition and damage roll showing the separate descriptions of all land and other property to be acquired or injuriously affected by the construction and installation of the works, and an estimate of the total cost of the acquisition or damages.

It is not necessary to prepare, adopt, and file the plans, specifications, and other items required by this section at one (1) time.

(b) In adopting plans under this section, the flood control board, with the approval of the circuit court, may deviate from the general plans approved at the time of the establishment of the district if the board finds that:

(1) it is not practicable to construct or install the works in accordance with that plan; or

(2) the deviation will provide greater protection.

(c) Upon adoption of the plans, specifications, and other items, one (1) copy shall be placed on file at the flood control board's office, and one (1) copy shall be filed in the office of the clerk of the circuit court. These copies are open to inspection by the public. The board shall have notice of the filing published in accordance with IC 5-3-1. The board shall file proofs of publication of the notice with the clerk of the court. The notice must refer to the title and number of the cause in which the district was established and state that the plans, specifications, estimates, maps, plats, and roll required by this section are on file at the offices of the board and clerk of the court, and may be inspected by all interested parties.

(d) Any person owning property injuriously affected by the construction or installation of the proposed flood control works may file separate objections with the circuit court within fifteen (15) days after the first publication of notice under subsection (c). The sole ground of objection is that, due to an unnecessary deviation from the general plan approved at the time of the establishment of the district, the property of the objectors will be injuriously affected or should not be included in the district. The court shall set the objections for hearing without delay, hear evidence, and determine the facts. However, the filing of objections does not delay or interfere with the letting of contracts or the construction of the flood control works, except to the extent that the court may direct by temporary order before the hearing or by judgment after the hearing.

(e) If, after a hearing under subsection (d), the court finds that there has been an unnecessary deviation from the general plan approved at the time of the establishment of the district, or that any of the property included in the district as originally established should be eliminated from the district, the court shall:

(1) render judgment accordingly; and

(2) enter a decree:

(A) setting out the deviation to be corrected; and

(B) describing, by metes and bounds, the property eliminated.

A copy of the decree shall be entered in the records of the board, and the plans shall be changed to meet the requirements of the decree.
As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.89.

36-9-29-19

Sec. 19. After the flood control board has published notice of the filing of the acquisition and damage roll under section 18(c) of this chapter, it may acquire the property described in the roll by purchase, by contract, or by the exercise of the power of eminent domain under IC 32-24.
As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.2-2002, SEC.125.

36-9-29-20

Sec. 20. (a) All contracts of the flood control district for the construction of flood control works shall be let by the flood control board under the statutes concerning the letting of contracts for public improvements by the works board of the city. The flood control board may let one (1) contract for the entire works or separate contracts for parts of the works.

(b) All contracts shall be awarded to the lowest and best bidder. However, a contract may not be let at a bid higher than the cost of the work, as shown by the estimates previously adopted and filed, unless approved by the circuit court on petition of the flood control board.

(c) All contracts must be in writing and signed by the flood control board's president or vice president and by its executive secretary.

(d) The validity of a contract may be questioned only in an action to enjoin the execution of the contract, filed within ten (10) days after the date of its execution.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-21

Sec. 21. If the federal government or another source agrees to furnish all or part of the labor, material, machinery, and equipment required for any construction or installation, the flood control board may accept the offer. The board may supply the necessary additional labor, material, machinery, and equipment to carry out the agreement.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-22

Sec. 22. (a) To facilitate the carrying out of preliminary proceedings and provide money for the payment of expenses before the issuance of bonds under this chapter, the flood control board may, by resolution, authorize the making of loans in amounts approved by the circuit court. The loans shall be evidenced by callable warrants payable out of the proceeds of bonds, when available, and the warrants may bear interest at any rate. If the amount of warrants to be issued at any one (1) time exceeds five thousand dollars ($5,000), they shall be sold at public sale after notice given in accordance with IC 5-3-1. The warrants shall be sold to the bidder offering to purchase them at the lowest actual interest cost to the district, and shall be executed in the name of the district by the board's president or vice president and by its executive secretary.

(b) Any unit having territory included within the flood control district may advance money to the district. The advances must be authorized by the fiscal body of the unit. The advances may be made without appropriation, and warrants evidencing the advances shall be issued by the district, bearing the rate of interest provided for in the resolution or other action authorizing the advances.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.90.

36-9-29-23

Sec. 23. (a) The flood control board shall, by resolution, direct that bonds be issued in the name of the flood control district:

(1) for the purpose of procuring money to pay the cost of acquisition of property, the cost of construction or installation of flood control works, or both; and

(2) in anticipation of the collection of the special benefit taxes to be levied under this chapter.

(b) The amount of the bonds may not exceed:

(1) the total cost of property to be acquired and the total amount of damages to be awarded on account of property injuriously affected but not acquired, as shown by the acquisition and damage roll previously adopted and filed by the flood control board or as determined by court action;

(2) the contract price of the works contracted for, or the estimated cost of additional labor, materials, machinery, and equipment when the federal government or others have agreed to supply a part of those items for use on the construction of any part of the works and no construction contract is to be let;

(3) an amount sufficient to pay the cost of supervision and inspection during the period of construction;

(4) all other general, administrative, legal, engineering, and incidental expenses previously incurred on account of or in connection with the establishment of the district, the administration of its affairs, the acquisition of property, and the construction of the works, together with the expenses to be incurred in

connection with the issuance and sale of bonds; and

(5) an amount sufficient to pay any outstanding warrants issued for the purpose of obtaining money for expenses before the issuance of bonds.

(c) If different parcels of land are to be acquired or more than one (1) contract for work is let by the flood control board at approximately the same time, the board may provide for the total cost of the land or work in one (1) issue of bonds. If the cost of acquiring property or the amount required for the payment of damages to property not acquired exceeds the board's estimate of the amount required for that purpose, additional bonds may be issued to supply the deficiency.

(d) The bonds shall be issued in any denomination not exceeding one thousand dollars ($1,000), and in not less than twenty (20) nor more than sixty (60) series, which must be as nearly equal as possible considering the amount of the issue, the number of serial maturities, and the denominations to be used.

(e) The bonds are payable one (1) series each six (6) months. The first payment shall be made on January 1 in the second year following the date of their issue, if a tax levy to meet the requirements of the bonds is made in the year in which the bonds are issued. Otherwise, the first series of bonds is payable on January 1 of the third year following the date of their issue.

(f) The bonds are negotiable instruments.

(g) The bonds may bear interest at any rate, with the exact rate to be determined by bidding. The interest is payable semiannually on January 1 and July 1 of each year, with the first interest payable on July 1 preceding the maturity date of the first series of bonds.

(h) The bonds shall be signed by the president or vice president of the flood control board, and attested by the executive secretary of the board. The interest coupons shall be executed by placing on them the facsimile signature of the president or vice president whose signature appears on the bonds.

(i) The flood control board may not issue any bonds of the flood control district payable out of special benefit taxes when the total amount outstanding for that purpose, including the bonds issued and to be issued, is in excess of five percent (5%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not a corporate obligation or indebtedness of any unit having territory included in the district, but are an indebtedness of the flood control district as a special taxing district. The bonds are payable solely out of the special benefit taxes levied under this chapter. The bonds must state these facts upon their face, together with the purpose for which they are issued.

(k) The bonds of any issue may be sold in parcels or as a whole. Notice of the sale must be given by publication in accordance with IC 5-3-1.

(l) The bonds shall be sold to the highest qualified bidder, but may not be sold for less than their par value. The highest bidder is the person who offers the lowest net interest cost to the district, as determined by computing the total interest on all of the bonds to their maturities and then deducting the premium bid, if any.

(m) When the flood control board sells the bonds, the executive secretary of the board shall have the bonds prepared and executed, and shall deliver them to the county treasurer, together with a certificate showing the amount to be paid by the purchaser. Upon the payment of the purchase price the treasurer shall deliver the bonds to the purchaser. The executive secretary shall furnish the successful bidder a transcript of the proceedings relating to the authorization and issuance of the bonds, together with the other documents necessary to establish the validity of the bonds. The transcript and other documents are presumptive evidence of the validity of the bonds, and shall be accepted in evidence in any litigation relating to or affecting the bonds.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.91; P.L.6-1997, SEC.226.

36-9-29-24

Sec. 24. If the flood control board finds that:

(1) it is necessary to replace, enlarge, or extend any part of the flood control works or construct additional works in order to protect the district properly; and

(2) the cost of the replacement, enlargement, extension, or construction will exceed the amount then available out of current maintenance and repair funds;

the board may issue bonds under section 23 of this chapter for that purpose. However, the board must first comply with sections 18, 19, and 20 of this chapter.

As added by Acts 1981, P.L.309, SEC.105.

36-9-29-25

Sec. 25. If the flood control district is unable to pay any bonds or the interest on them at the times fixed for payment, refunding bonds may be issued and sold under section 23 of this chapter to obtain money for that purpose. The refunding bonds are payable within the period fixed by the flood control board, which may not exceed ten (10) years.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-26

Sec. 26. All bonds issued under this chapter, together with the interest on them, are exempt from taxation.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-27

Sec. 27. An action to question the validity of any of the bonds issued under this chapter, or to prevent their issuance, must be brought by the time fixed in the bond sale notice for the receiving of bids. After that time, the bonds may not be contested for any cause.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-28

Sec. 28. (a) The county treasurer shall keep all proceeds from the sale of bonds under this chapter in a separate fund designated as the "_____ flood control district construction fund". The fund shall be used only to pay the costs listed in section 23(b) of this chapter. Any money remaining out of the proceeds of the bonds after all of the costs are paid shall be paid into the district bond fund established under section 30 of this chapter.

(b) The flood control board shall approve and order all payments made from the flood control district construction fund, and shall determine the amounts and times of the payments. However, a payment to a contractor may not exceed eighty percent (80%) of the district engineer's estimate of work done by the contractor, and the whole amount of a contract may not be paid until all work to be done under the contract has been accepted by the board as fully completed in accordance with the plans and specifications.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-29

Sec. 29. (a) If property is acquired by purchase or contract, payment of costs shall be made according to the terms of the purchase or contract.

(b) If property is condemned, the amount of damages assessed shall be paid as soon as the proceeds from the sale of bonds are available. Upon the payment of the damages, the title of the property paid for is fixed and vested in the flood control district in the manner, to the extent, for the purpose, and subject to the limitations provided by this chapter.

(c) Title to all property acquired shall be taken in the name of the flood control district. Within sixty (60) days after any conveyance or grant of any interest in real property is received by the flood control board, the board shall have recorded the deed or other instrument of conveyance or grant, signed by the grantor, in the recorder's office in the county in which the property is located. In case of condemnation, a copy of the decree, certified by the clerk of the circuit court and showing the amount paid to the clerk on account of the damages awarded, shall be recorded.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-30

Sec. 30. (a) For the purpose of obtaining money to pay the bonds and the interest on them, the flood control board shall levy a special benefit tax each year upon all of the property in the flood control district. The tax shall be levied in the amount necessary to pay the principal of the bonds as they mature, together with the interest accruing on them.

(b) The flood control board shall cause the tax levied to be certified to the auditor of the county in which the property subject to the tax is located, before October 2 of each year. The tax levied and certified shall be estimated and entered upon the tax duplicates by the county 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.

(c) As the tax is collected by the county treasurer, it shall be accumulated in a separate fund to be known as the "_____ flood control district bond fund", and shall be applied only to the payment of the bonds and the

interest on them.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-31

Sec. 31. (a) The flood control board may levy a special benefit tax each year for the purpose of providing for the cost of operation, maintenance, and repair of the flood control works after the completion of the works, including the general expenses of the board, such as salary and wages, that the board finds are not properly chargeable to the proceeds of bonds issued under this chapter. The tax may not exceed eleven and sixty-seven hundredths cents ($0.1167) on each hundred dollars ($100) of taxable property in the district, as it appears on the tax duplicates.

(b) The property within the flood control district is conclusively presumed to be benefited to the extent of the annual tax by the maintenance of the district and the maintenance, operation, and repair of the flood control works.

(c) The county auditor shall estimate the tax and enter it upon the tax duplicates, and the county treasurer shall collect and enforce the tax in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(d) The county treasurer charged with the duty of collecting the taxes shall, between the first and tenth days of each month, notify the flood control board of the amount of the tax collected during the preceding month. Upon the date of notification, the treasurer shall credit the amount collected to a fund designated as "_____ flood control district maintenance fund", which may be used only for the purposes stated in this section.

(e) The flood control board has complete and exclusive authority to expend, on behalf of the flood control district, all revenues realized under this section.

(f) The flood control board may, by resolution, authorize and make temporary loans in anticipation of the collection of the special benefit taxes actually levied and in course of collection under this section. The loans mature and shall be paid within the year in which they are made, and may bear interest at any rate payable at the maturity of the loan. The temporary loans shall be evidenced by warrants, and, if the amount of warrants to be issued exceeds five thousand dollars ($5,000), they shall be sold at public sale in the same manner as the bonds of the district.
As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.6-1997, SEC.227.

36-9-29-32

Sec. 32. (a) The flood control board may establish an "emergency flood control district fund", which may not exceed at any time one hundred thousand dollars ($100,000). The emergency fund shall be established out of money transferred from the flood control district maintenance fund.

(b) Whenever the emergency fund is reduced below one hundred thousand dollars ($100,000), the flood control board may transfer from the maintenance fund the sum it considers necessary for the purpose of replenishing the emergency fund.

(c) The county treasurer shall keep the emergency fund separate from the other funds of the flood control district. Any unexpended sum in the fund shall be retained from year to year to meet flood emergencies as they arise.

(d) The sum in the emergency fund may not be considered in making up the budget of the flood control district, except for the purpose of determining the amount to be levied in order to replenish the fund.

(e) All withdrawals from the emergency fund shall be used solely for emergency purposes, and shall be made upon order of the flood control board in the same manner as withdrawals from other funds of the flood control district.
As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.356-1987, SEC.1.

36-9-29-33

Sec. 33. The money in the funds of the flood control district shall be deposited and held in the same manner as other public funds under IC 5-13.
As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.3-1990, SEC.138.

36-9-29-34

Sec. 34. (a) Except as provided in subsection (b), revenues raised under this chapter may be expended only upon a warrant drawn by the executive secretary of the flood control board for items approved by the board, with the date of approval indicated on the warrant over the signature of the president or vice president of the board.

(b) The county treasurer may pay bonds and interest coupons:

(1) issued by the flood control board; and
(2) presented at or after their maturity;
out of the bond fund established under section 30 of this chapter, without the issuance of warrants or other orders of the board.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-35

Sec. 35. After the docketing of the petition for the establishment of the flood control district, and until the flood control works have been completed and accepted, the cause remains on the docket of the circuit court as a pending action for the filing of the further petitions and the making of the further orders that are authorized by this chapter or found necessary to facilitate the completion of the works.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-36

Sec. 36. All court proceedings relating to the establishment or maintenance of the flood control district, or the performance of any act under this chapter, must be brought and determined only in and by the circuit court establishing the district. The jurisdiction of the court in all such matters is conclusive and its judgment is final, except as otherwise provided in this chapter. All proceedings had under this chapter shall be heard by the court without the intervention of a jury, except as otherwise provided in this chapter. Laws with respect to change of venue from the county do not apply to proceedings under this chapter, but changes of venue from the judge may be had as in other civil cases.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-37

Sec. 37. (a) If any defects or irregularities occur in any of the proceedings had under this chapter, the defects or irregularities may be cured by supplementary proceedings of the same general nature as those provided for by this chapter. Only those parties whose interests or property are directly and adversely affected by the defects or irregularities may object to them.

(b) It is not necessary to delay the general course of the proceedings while defects or irregularities are being corrected or supplied.

(c) If an objection is filed with the circuit court and the objection is overruled or decided adversely to the objecting party, the court costs incurred in the filing, hearing, and determination of the objection shall be taxed to the objecting party. If the objection is sustained or determined in favor of the objecting party, then the costs shall be taxed to the flood control district.
As added by Acts 1981, P.L.309, SEC.105.

36-9-29-38

Sec. 38. Only the proceedings and notices prescribed by this chapter are required for acts performed under this chapter, notwithstanding any other statute to the contrary.
As added by Acts 1981, P.L.309, SEC.105.

Chapter 29.1. Flood Control District in Marion County

36-9-29.1

36-9-29.1-1

Sec. 1. This chapter applies to each county having a consolidated city.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-2

Sec. 2. As used in this chapter, "board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-3

Sec. 3. The flood control district referred to in IC 36-3-1-6 constitutes a special taxing district for the purpose of protecting the county and its residents from floods and flood hazards.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-4

Sec. 4. (a) To carry out this chapter, the board has jurisdiction to authorize projects of flood control and prevention over all watercourses, and property affected by these projects, within the flood control district and in or along any watercourse in any adjacent county that is a tributary to any watercourse in the district.

(b) In carrying out such a project, the board has the following powers:

(1) To construct and maintain levees, dikes, retaining walls, dams, reservoirs, drains, and all other improvements in or along any watercourse designed to prevent damage and injury through floods and to conserve water resources.

(2) To provide for the disposal of excess water from any reservoir on such terms as the board considers best, so long as this does not impair the function of flood prevention provided by the improvements.

(3) To construct, reconstruct, repair, relocate, widen, or resurface any public way connected with such a project.

(4) To remove obstructions in, to dredge or control, to straighten, or to change the channel of any watercourse.

(5) To reconstruct any new public structure, or any new public bridge or bridges; or to alter, relocate, remove or require the removal of, repair, lengthen, widen, or reconstruct any public structure, or any public bridge or bridges, designed or used for vehicular or pedestrian traffic, and already built and located, whether originally built by a municipal corporation or any other person, across any watercourse.

(6) To regulate and establish channel, bank, and harbor lines on watercourses; to remove or to require to be removed any obstruction or encroachment in, beneath, above, along, or beyond channel, bank, and harbor lines; and to prevent any future obstructions or encroachments beyond these lines by dumping or filling with any material or in any other manner.

(7) To regulate the manner in which all sewers, drains, conduits, viaducts, aqueducts, cables, power lines, and pipelines of any description crossing the bed of any watercourse, or along its banks, or carried across, over, or under it on any bridge, trestle, support, or other structure, shall be located or relocated, replaced, altered, repaired, constructed, reconstructed, lengthened, widened, or removed, whether already constructed or proposed to be constructed or reconstructed by a municipal corporation or any other person.

(8) To regulate the general manner of construction of all temporary or permanent bridges, dikes, moorings, landings, dams, and spillways over, along, or in any watercourses proposed to be constructed or reconstructed by a municipal corporation or any other person.

(9) To regulate the removal by any persons of sand and gravel from watercourses and to establish the distance from bridges and other structures crossing them, and also the uniform grade lines to which sand and gravel may be excavated by any persons.

(10) To regulate the depth, waterway, height, alignment, location, and general manner of construction, reconstruction, and repair of any railroad bridge and of any person crossing over any watercourses or affected by carrying out of projects.

(11) To regulate the general manner of locating, relocating, constructing, reconstructing, altering, repairing, lengthening, widening, raising, and aligning any private bridge, including all its piers, abutments, and supports.

(12) To regulate and order that any of the matters described in this subsection shall be done by the person owning or controlling them, in carrying out projects, all subject to supervision and approval by the board.

(13) To cooperate with any department or agency of the federal government, and with any department or agency of the state, that is established for the purpose of developing a comprehensive plan or program for the protection of life and property from floods or flood hazards.

(c) A project for flood control may not be carried out until it is submitted to and approved by the department of natural resources of the state.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-5

Sec. 5. Whenever the board determines that it is necessary for the general welfare, safety, or security of the flood control district to undertake and carry out any project to protect the district and its residents from floods or flood

hazards, the board shall adopt a resolution declaring this necessity and its purpose to proceed with the project.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-6

Sec. 6. (a) The board, as a part of the resolution, shall adopt the general plans then proposed for the entire project, including a plat showing the general scope of it and the location and bounds of all real property then considered necessary to be acquired or removed, or that would be injuriously affected, in connection with the project. It shall also determine the estimated cost of all the work, including the estimated damages to be awarded to the owners of the real and personal property. An appraisal is not required for those estimates.

(b) The adoption or filing of any specifications covering all or parts of the project and details of other matters is optional with the board, and it may also receive and file alternate plans and specifications, submitted by any person for all or any parts of the project. The board may, at the final hearing, adopt all or any of these materials in place of the board's plans and specifications.
As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.6.

36-9-29.1-7

Sec. 7. (a) The resolutions and plans, plat, descriptions, and estimates and specifications, if any, shall be filed and opened to inspection by the public at the board's office.

(b) The board shall then give notice in accordance with IC 5-3-1 of the adoption and general purport of the resolution and of the fact that the resolution, plans, plat, descriptions, and estimates and specifications, if any, have been prepared, are on file in the office of the board, and can be inspected. The notice must name a date on which the board will receive and hear objections from any person interested in or who will be affected by the resolution.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-8

Sec. 8. (a) At or before the time fixed for the hearing, any person interested in or who will be affected by the proposed project may file with the board a written remonstrance against the proposed project, in whole or in part.

(b) At the hearing, which may be adjourned from time to time, the board shall hear all persons who are interested in the proceedings and shall finally determine whether or not the proposed project, in whole or in part, is necessary for the general welfare, safety, and security of the flood control district, in order to provide flood prevention and control. The board may then confirm, modify and confirm as modified, or rescind the resolution.

(c) The final decision shall be entered in the records of the board and is final, binding, and conclusive upon all persons.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-9

Sec. 9. Upon final action of the board confirming the resolution in its original or any modified form, all property, real and personal, located within the flood control district is subject to a special tax for the purpose of providing money to pay the total cost of the construction of the project or projects, and of acquiring all necessary lands or rights-of-way, as described and provided in the resolution, including all necessary incidental expenses. This special tax is declared to constitute the amount of benefits resulting to all the property from the proceedings and shall be levied as provided in this chapter.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-10

Sec. 10. If the board has finally confirmed any resolution for all or any part of any project of flood prevention and control, and any property is required to be condemned, appropriated, or purchased, or is damaged or injuriously affected by the carrying out of the flood prevention project and work, the board shall proceed with reference to this property and awards of damages in all respects, whenever necessary, in accordance with IC 32-24. Any part of the appropriation proceedings as to any property may be included in either the original resolution or any subsequent resolutions.
As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.2-2002, SEC.126.

36-9-29.1-11

Sec. 11. If the board finally confirms the resolution, it shall then proceed to award a contract for the project in

accordance with IC 36-1-12.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-12

Sec. 12. (a) For the purpose of raising money to pay for the property and the construction, and in anticipation of the special tax to be levied as provided in section 14 of this chapter, the board may cause to be issued, in the name of the consolidated city, the bonds of the flood control district, not to exceed the amount of the estimated total cost of all lands, rights-of-way, and other property so to be acquired and the estimated cost of all work or construction as provided for in the resolution, and including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the cost of supervision and inspection during the period of construction of the work.

(b) The expenses to be covered in the amount of the bond issue must include all expenses of every kind actually incurred preliminary to the acquiring of the property and the construction of the work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses necessary to be incurred before and in connection with the acquiring of the property, the amending of the contract, and the sale of bonds.

(c) In case different parcels of land are to be acquired, or more than one (1) contract for work is amended, at approximately the same time, whether under one (1) or more resolutions, the board may provide for the estimated total cost of these items in one (1) issue of bonds.

(d) The bonds shall be issued in accordance with IC 36-3-5-8.

(e) The bonds are negotiable instruments and bear interest payable semiannually, on the first days of January and July of each year, with the first interest to be payable on July 1 preceding the maturity of the first series of the bonds.

(f) On adopting a resolution ordering the bonds, the board shall certify a copy of it to the fiscal officer of the consolidated city, who shall prepare the bonds. The bonds shall be executed by the city executive and attested by the fiscal officer.

(g) The bonds are exempt from taxation as provided by IC 6-8-5.

(h) All bonds issued by the board shall be sold by the city fiscal officer in accordance with IC 5-1-11.

(i) Bonds of the flood control district payable by special taxation may not be issued when the total issue for that purpose, including the bonds already issued and to be issued, exceeds two percent (2%) of the adjusted value of the taxable property within the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the flood control district as a special taxing district, and the bonds and interest on them are payable only out of a special tax levy upon all the property of the district. The bonds must recite these terms upon their face, together with the purpose for which they are issued.

(k) An action to question the validity of any bonds issued for the flood control district or to prevent their issue must be brought before the date set for the sale of the bonds, and all bonds, from and after that date, are incontestable for any reason.
As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.27-1986, SEC.7; P.L.6-1997, SEC.228.

36-9-29.1-13

Sec. 13. (a) All proceeds from the sale of bonds under section 12 of this chapter shall be kept as a separate and specific fund, to pay the cost of land, rights-of-way, and other property acquired and of construction of the work under the resolution, and all costs and expenses incurred in connection with these things, and no part of the proceeds may be used for any other purpose.

(b) The fund shall be deposited at interest with the depository or depositories of other public funds in the consolidated city, and all interest collected on it belongs to the fund.

(c) Any surplus remaining out of the proceeds of the bonds, after all of the costs and expenses are fully paid, shall be paid into and becomes a part of the flood control district bond fund.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-14

Sec. 14. (a) For the purpose of raising money to pay all bonds issued under section 12 of this chapter and the interest on them, the city-county legislative body shall levy each year a special tax upon all the property of the flood

control district, in such manner as to meet and pay the principal of the bonds as they severally mature, together with all accruing interest. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county before August 2 in each year.

(b) The tax levied and certified shall be estimated and entered upon the tax duplicate by the county 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. As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the "flood control district bond fund," and shall be applied to the payment of the flood control district bonds and interest as they severally mature and to no other purpose. All accumulations before their use for the payment of bonds and interest shall be deposited, at interest, with the depository or depositories of other funds in the consolidated city, and all interest collected on them belongs to the fund.

As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-15

Sec. 15. (a) For the purpose of:

(1) providing for the payment of all general expenses of the board, including salaries of officers and employees and other items of expense not properly chargeable into the cost of any property acquired or work done under any resolution of the board for which flood control district bonds are issued; and

(2) providing for the operation, maintenance, and repair of any levees, dikes, retaining walls, reservoirs, drains, and other works and improvements in or along any watercourse designed to prevent damage and injury through floods, and other permanent works constructed, including the repair and maintenance of equipment or the performance of any duty imposed by this chapter;

a tax of not exceeding one and thirty-three hundredths cents ($0.0133) on each one hundred dollars ($100) of taxable property in the district as it appears on the tax duplicates, in addition to all other taxes, shall be levied annually by the city-county legislative body for flood control purposes. The county auditor shall estimate the taxes and enter them upon the tax duplicate, and the county treasurer shall collect and enforce the taxes, in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(b) The county treasurer shall, between the first and tenth days of each month, notify the board of the amount of such taxes collected for flood control purposes during the preceding month, and upon the date of notification the county treasurer shall credit an account to be known as the "flood control maintenance and general expense fund" with such amount of taxes for flood control purposes as may have been collected at that time. The fund shall be used and expended only for the purposes prescribed by this chapter. The board may expend on behalf of the district all sums of money thus realized. Warrants for these expenditures shall be drawn by the fiscal officer of the consolidated city upon the vouchers of the board.

(c) The board may by resolution authorize and make temporary loans in anticipation of revenues actually levied under this section, which loans mature and shall be paid within one (1) year from the date of the making of the loan, with interest payable at the maturity of the loan. The warrants or other evidence of these loans shall be sold for not less than par, and before the making of the loan, notice of the time, place, amount, and terms of making of the loan shall be given by publication in accordance with IC 5-3-1. The warrants import no personal obligation for their payment and are payable only out of the tax so levied.

(d) All money remaining in any of the funds to the credit of the board at the end of the calendar year continues to belong to these funds respectively, to be used by the board for the respective purposes for which the funds are created. All funds raised under this section shall be deposited at interest with the depository or depositories of other public funds of the consolidated city, and all interest collected on them belongs to them.

(e) In the event that the revenues in the "flood control maintenance and general expense fund" of the district are at any time insufficient, the consolidated city may appropriate money out of its general fund for the use and benefit of the district, which amount so appropriated and used shall be returned and repaid to the city out of the first available funds by the board.

As added by Acts 1982, P.L.77, SEC.24. Amended by P.L.6-1997, SEC.229.

36-9-29.1-16

Sec. 16. (a) From the separate and specific fund derived from sale of the bonds as provided in this chapter, and from no other source, the board shall pay to the parties entitled to it the amounts respectively due them for any lands, rights-of-way, or other property taken or purchased, or for work done by contract or otherwise.

(b) In case the lands, rights-of-way, or other property is secured by purchase or contract, the payment shall be

made according to the terms of the contract. In case of any such property taken by condemnation as provided in this chapter, the amount of damages assessed shall be paid or tendered as provided in this chapter, within ninety (90) days after the final determination of the condemnation proceedings, or as soon after that as the fund arising from the bonds is available. The title to the lands, rights-of-way, or other property, or that part so paid for or otherwise acquired then becomes vested in the consolidated city, in the manner, to the extent, for the purpose, and subject to the limitations provided in this chapter.

(c) The board shall order payments from the fund to be made to contractors in accordance with IC 36-1-12.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-17

Sec. 17. Within sixty (60) days after any land or right in it is paid for and acquired under this chapter, the board shall file and cause to be recorded in the recorder's office of the county in which the land is situated, a description sufficiently accurate for its identification, with a statement of the purpose for which it is acquired or taken, which shall be signed by a majority of the board.
As added by Acts 1982, P.L.77, SEC.24.

36-9-29.1-18

Sec. 18. No part of any of the funds raised under this chapter may be expended except upon warrants drawn by the fiscal officer of the consolidated city, upon vouchers of the board. No appropriation in any form is necessary, but all funds arising under this chapter are considered appropriated to the respective purposes named in this chapter, and are under the control of the board, which has complete and exclusive authority to expend these funds for these purposes.
As added by Acts 1982, P.L.77, SEC.24.

Chapter 35. Water Departments in Certain Cities

36-9-35

36-9-35-1

Sec. 1. This chapter applies to each city in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), in which the legislative body has, by ordinance, established a water department as a municipal utility or a department of waterworks.
As added by P.L.320-1989, SEC.3. Amended by P.L.12-1992, SEC.189.

36-9-35-2

Sec. 2. Notwithstanding IC 36-1-8-10, whenever the city's ordinance establishing a water department requires that an appointment to the board of trustees of the water department be conditioned upon the political affiliation of the appointee, or that the membership of the board not exceed a stated number of members from the same political party, at the time of an appointment the appointee must:

(1) have voted in the two (2) most recent primary elections held by the party with which the appointee claims affiliation; or

(2) if the appointee did not vote in the two (2) most recent primary elections or only voted in one (1) of those elections, be certified as a member of the party with which the appointee claims affiliation by that party's county chairman for the county in which the appointee resides.

As added by P.L.320-1989, SEC.3.

36-9-35-3

Sec. 3. Notwithstanding IC 8-1.5, IC 36-9-23, IC 36-9-24, IC 36-9-25, or any other law, if a vacancy occurs on the board of trustees, the vacancy must be filled within thirty (30) days after the vacancy occurs.
As added by P.L.320-1989, SEC.3.

36-9-35-4

Sec. 4. (a) Notwithstanding IC 8-1.5, IC 36-9-23, IC 36-9-24, IC 36-9-25, or any other law, a board member may not be removed from office except upon charges preferred before the city executive and a hearing held on them. The only permissible reasons for removal are neglect of duty and incompetence. The board member must be given at least ten (10) days notice of the time and place of the hearing and the opportunity to produce evidence and examine and cross-examine witnesses. All testimony shall be given under oath. The city executive shall prepare written findings and file them with the city clerk.

(b) If the charges are sustained and the board member removed, the board member may appeal the findings within ten (10) days after the date they are filed with the clerk to the circuit or superior court of the county in which the city is located. The board member must file the appeal against the executive stating the charges preferred and the findings made. The court shall hear the appeal de novo without a jury within thirty (30) days after the appeal is filed and shall either ratify or reverse the findings of the executive. The judgment of the court is final and an appeal may not be taken.
As added by P.L.320-1989, SEC.3.