

IC 8-1-2.2

Chapter 2.2. Municipal Electric Utility Programs

IC 8-1-2.2-1

Findings and purpose

Sec. 1. Municipalities owning facilities for the distribution of electric power and energy are required by law to provide, and serve a public purpose by providing, customers with an adequate, a reliable, and an economical supply of electric power and energy. Individually, such municipalities or joint agencies are not financially capable of providing the planning, financing, locating, and building of needed new facilities for generation and transmission or operating or managing these facilities. Therefore, the general assembly finds it necessary and proper to provide a method for certain of those municipalities to jointly finance, develop, own, manage, and operate, either by themselves or with public utilities, electric generation and transmission facilities appropriate to the present and projected electric energy needs of such municipalities and to the changes in the electric utility industry affecting these municipalities or joint agencies.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.54-1992, SEC.1; P.L.81-1997, SEC.1.

IC 8-1-2.2-2

Definitions

Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Bonds" means electric utility revenue bonds, notes, and other evidences of indebtedness of a municipality or a joint agency issued under the provisions of this chapter.

(c) "Cost" or "cost of a project" means but may not be limited to the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning, or disposal of any project or part thereof, including:

- (1) the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;
- (2) the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications thereof;
- (3) administrative, legal, engineering, and inspection expenses;
- (4) financing fees, expenses, and costs;
- (5) working capital;
- (6) initial fuel costs;
- (7) interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency;
- (8) establishment of reserves for the payment of debt service, for renewals and replacements, for working capital, for operating expenses, and for any other purposes deemed reasonable and proper; and

(9) all other expenditures of the issuing municipality or joint agency incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, extension, decommissioning, or disposal of any project and the placing of the same in operation.

(d) "Governing body" means the legislative body of a city or town or commissioners of a joint agency.

(e) "Joint agency" means an agency created by two (2) or more municipalities pursuant to section 8 of this chapter.

(f) "Municipality" means a city or town in the state or any board, agency, or commission thereof owning and operating on January 1, 1980, an electric utility which furnishes retail electric service to the public.

(g) "Project" means any plant, works, system, or facilities, and other real and personal property of any nature whatsoever necessary or convenient in the generation, transmission, transformation, purchase, sale, exchange, or interchange of electric power and energy or steam, or the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing, or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, by any means whatsoever or any interest therein or any rights to the use, output, or capacity thereof. A transmission contract entered into under section 9(a)(14) of this chapter is not a project.

(h) "Public utility" means any corporation, company, limited liability company, partnership, or other form of legal entity, individual, association of individuals, or public agency organized under the laws of Indiana or another state of the United States authorized to own, operate, or control any plant or equipment for the generation, transmission, or distribution of electric power and energy and to sell electric power and energy to:

- (1) the public;
- (2) public or municipally owned utilities (as defined in IC 8-1-2); or
- (3) cooperatives.

(i) "State" means the state of Indiana.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.23-1988, SEC.29; P.L.82-1988, SEC.1; P.L.8-1989, SEC.39; P.L.179-1991, SEC.12; P.L.1-1992, SEC.29; P.L.54-1992, SEC.2; P.L.1-1993, SEC.48; P.L.81-1997, SEC.2.

IC 8-1-2.2-3

Authorization to cooperate

Sec. 3. Authorization to Cooperate. (a) In addition and supplemental to the powers otherwise conferred on municipalities by law, and in order to accomplish the purposes of this chapter, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, own, operate and maintain an undivided interest as a tenant in common in a project jointly with one (1) or more municipalities, joint agencies or public utilities, and may plan

and enter into contracts in this connection with them, not inconsistent with the provisions of this chapter.

(b) Prior to acquiring any undivided interest, the governing body shall determine the present and future needs of the municipality for power and energy based upon engineering studies and reports, and may not acquire an undivided interest as a tenant in common in a project in excess of that amount of capacity and the energy required to provide for its projected needs for power and energy for such reasonable period of time as shall be determined by the governing body and approved by the commission in a proceeding pursuant to section 19 of this chapter.

(c) The future power requirements of a municipality shall be evaluated by the governing body in accordance with the following:

- (1) the economies and efficiencies to be achieved in constructing large scale facilities for the generation and transmission of electric power and energy;
- (2) the municipality's needs for reserve and peaking capacity and obligations reasonably related to its needs for power and energy under pooling and reserve sharing agreements to which it is or may become a party;
- (3) the estimated useful life of the project; and
- (4) the estimated time for planning, development, acquisition or construction of the project and the time required in advance to obtain, acquire or construct additional power supply.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-4

Joint ownership of project

Sec. 4. (a) Each municipality, joint agency, or public utility shall own an undivided interest in any project in proportion to the amount of the money furnished or the value of property or other consideration supplied by it for the planning, development, acquisition, or construction of the project and shall be entitled to a percentage share of the project net output and capacity equal to the undivided interest. This section does not preclude a joint owner of a project from agreeing to take and pay for the project net output in a percentage share that differs from its undivided interest.

(b) Each municipality, joint agency, and public utility participating in a project shall be severally liable for its own acts and may not be held, jointly or severally liable for the acts, omissions, or obligations of others. However, nothing shall preclude each municipality, joint agency and public utility participating in a project from being severally liable for acts performed by any project manager, construction agent, or operating agent for such project. Except as otherwise provided in this chapter, no money or property or other consideration supplied by any municipality, joint agency, or public utility may be credited or otherwise applied to the account of any other municipality, joint agency, or public utility, nor shall the undivided share of any municipality, joint agency, or public utility in a project be charged directly or indirectly with any debt or obligation

of any other municipality, joint agency, or public utility, or be subject to any lien as a result thereof. The acquisition of a project may include, but is not limited to, the purchase or lease of an existing and completed project or the purchase of a project under construction or the purchase of a project to be constructed. A municipality or joint agency participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, ownership, operation, or maintenance of any project under this chapter may furnish money derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both, and provide property, both real and personal, services, and other considerations.

(c) Any contract entered into by municipalities under this chapter with respect to joint ownership in a project shall contain terms, conditions, and provisions, not inconsistent with the provisions of this section. Any contract shall be ratified by resolution of the governing body of each municipality and recorded in its minutes. Any contract shall include the following:

- (1) The purpose or purposes of the contract.
- (2) The duration of the contract.
- (3) The manner of appointing or employing personnel necessary in connection with the project.
- (4) The method of financing the project including the apportionment of costs and revenues.
- (5) Provisions specifying the ownership interests of the parties in property used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated, or when the project, for any reason, is abandoned, decommissioned, or dismantled.
- (6) Provisions relating to alienation and prohibiting partition of a municipality's undivided interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition.
- (7) Provisions for the construction of a project, which may include the determination that a municipality, joint agency, or public utility may construct the project as agent for all the parties.
- (8) Provisions for the operation and maintenance of a project, which may include the determination that a municipality, joint agency, or public utility may operate and maintain the project as agent for all the parties.
- (9) Provisions for the creation of a committee of representatives of the municipalities, joint agencies and public utilities jointly participating with such powers of supervision of the construction and operation of the project as the contract may provide, which are not inconsistent with the provisions of this chapter.
- (10) Provisions that if one (1) or more of the municipalities, joint agencies, or public utilities default in the performance or discharge of its obligations with respect to the project, the other party or parties may assume, pro rata, or otherwise, the

obligations of the defaulting party or parties and may succeed to the rights and interests of the defaulting party or parties as may be agreed upon in the contract.

(11) Methods for amending the contract.

(12) Methods for terminating the contract.

(13) Any other necessary or proper matter.

(d) For the purpose of paying its respective share of the cost of a project or projects, a municipality or joint agency may issue its bonds as provided in this chapter, and, notwithstanding the provisions of any other law to the contrary, may pledge to the payment of the principal, premium, if any, and interest on such bonds, the revenues, or any portion of revenues, derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission, or distribution of electric power or energy or its interest in any joint project or projects, or a combination of such revenues. All bonds issued under the provisions of this chapter shall be authorized and issued by the governing body. Upon the request of the issuing municipality or joint agency the commission shall approve at one (1) time sufficient bonds to be issued to finance the issuer's share of the cost of a project even though such bonds are to be issued in series from time to time and even though the exact amount of such costs have not been finally determined and such approval may be of an indeterminate amount.

(e) Municipalities and joint agencies may jointly or severally own, operate and maintain projects with any public utility. Any municipality or joint agency shall have for such purposes all powers conferred upon them by the provisions of this chapter including the power to issue revenue bonds pursuant to the provisions of this chapter to finance its share of the cost of any such project. The definitions and all other terms and provisions of this chapter shall be construed so as to include such undivided ownership interest in order to fully effectuate the power and authority conferred by the foregoing provisions of this section.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.82-1988, SEC.2.

IC 8-1-2.2-5

Sale of capacity or output by a municipality

Sec. 5. Sale of Capacity or Output by a Municipality. Whenever a municipality has capacity or output derived from its ownership share of a project or otherwise in excess of its current needs or which cannot be economically utilized immediately, it may sell or exchange the excess capacity or output, by agreement, to any municipality owning electric distribution facilities in this state, to any joint agency, or to any public utility. Sales of excess capacity or output of a project to public utilities shall not be made in such amounts, for such periods of time, and under such conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-6

Licenses and approvals

Sec. 6. Licenses and Approvals. Municipalities and joint agencies proposing to jointly plan, finance, develop, and operate a project are authorized to jointly or separately apply to any agency of the state or federal government for licenses, permits, certificates, or approvals. *As added by Acts 1980, P.L.68, SEC.1.*

IC 8-1-2.2-7

Authority to contract for energy exchange

Sec. 7. Authority to Contract for Energy Exchange. Municipalities participating in a project or projects are hereby authorized to enter into contracts for the exchange, interchange, wheeling, pooling, and transmission of electric power and energy produced by the project or projects with any municipality, joint agency, or public utility. *As added by Acts 1980, P.L.68, SEC.1.*

IC 8-1-2.2-8

Joint agency

Sec. 8. (a) The governing bodies of two (2) or more municipalities may, by resolution or ordinance, determine that it is in their best interests to create a joint agency, for the purpose of undertaking the planning, financing, ownership, and operation of a project or projects to supply electric power and energy for their present or future needs. Any joint agency created under this chapter shall be a body corporate and politic and a political subdivision of the state, and in exercising its powers under this chapter, it shall be deemed to be exercising a part of the sovereign powers of the state. The activities of the joint agency in carrying out the purposes of this chapter shall constitute state action.

(b) In determining whether or not the creation of a joint agency is in their best interests, the governing bodies shall consider the following:

- (1) Whether cost reduction, efficiencies, or other advantages may be realized by creating a joint agency.
- (2) Whether better financial market acceptance may result if a joint agency is responsible for issuing all of the bonds for the project or projects in a timely and orderly manner and with uniform credit ratings as opposed to multiple municipalities making separate issues of bonds.

If each governing body determines that it is in the best interests of the municipality to create a joint agency, each governing body shall adopt a mutually acceptable resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), which shall set forth the names of the municipalities proposed to be members of the joint agency and shall authorize any two (2) or more of such municipalities to enter into a contract for the creation of the joint agency. After the execution of the contract, each municipality shall cause notice of the execution of the contract to be given to the presiding officer of the governing body of the municipality. The

governing body shall thereupon appoint in writing one (1) commissioner of the joint agency.

(c) The appointed commissioners shall convene and issue a statement containing:

- (1) a brief description of the resolution creating the joint agency;
- (2) the name of the agency;
- (3) the participating municipalities; and
- (4) the names and addresses of the appointed commissioners.

The commissioners shall file copies of the statement with the commission, the secretary of state, and with the recorder of each county in which the member municipal utilities provide service.

(d) The joint agency shall consist of a board of commissioners. The governing body of each municipality shall appoint one (1) commissioner who may be an officer or employee of the municipality or a member or employee of the board described in IC 8-1.5-3-3(a). The appointment of a commissioner shall be made by resolution or ordinance. Each commissioner shall have not less than one (1) vote and may have such number of additional votes as a majority of the members of the joint agency shall determine. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of the oath shall be filed with the governing body of the appointing municipality and entered in its minutes.

(e) The board of commissioners of the joint agency shall annually elect, from among its membership, a chairman and a vice chairman. It shall also annually elect another person or persons, who may be commissioners, as treasurer and secretary. It may also annually elect, if desired, one (1) or more assistant secretaries. The office of treasurer may be held by the secretary or an assistant secretary. The board of commissioners may also appoint additional officers. The secretary or assistant secretary of the joint agency shall keep a record of its proceedings and the secretary shall be the custodian of all records, books, documents, and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or an assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(f) A majority of the commissioners of a joint agency constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each

resolution takes effect immediately and need not be published or posted. A contract that is approved by a resolution of the board of commissioners may provide that an action may be taken under a delegation provision in the contract if the action taken is consistent with prudent utility practice. A majority of the votes which the convened commissioners are entitled to cast shall be sufficient to take any action or to pass any resolution, so long as the convened commissioners are entitled to cast a majority of the total number of votes held by the full board.

(g) Except as provided in this subsection, no commissioner of a joint agency may receive from the joint agency any compensation for the performance of his duties under this chapter. However, each commissioner may be paid his necessary expenses incurred while engaged in the performance of his duties. In addition, a municipality may pay the commissioner it appoints up to fifteen dollars (\$15) per day for each day or fraction of a day the commissioner is engaged in the performance of duties under this chapter, but only if the commissioner is not a person holding a lucrative office.

(h) The board of commissioners of the joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee. The executive committee shall have and shall exercise such of the powers and authority of the board of commissioners during the intervals between the board's meetings as shall be prescribed in the bylaws of the joint agency. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the bylaws of the joint agency.

(i) Additional municipalities may join a joint agency upon such terms and conditions as shall be provided in the contract for the creation of the joint agency.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.90-1985, SEC.1; P.L.82-1988, SEC.3; P.L.81-1997, SEC.3.

IC 8-1-2.2-9

General powers of joint agencies

Sec. 9. (a) Each joint agency shall have all of the rights and powers necessary or convenient to carry out the purposes and provisions of this chapter, including but not limited to the following:

- (1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.
- (2) To adopt an official seal and alter the same at pleasure.
- (3) To maintain an office at such place or places as it may determine.
- (4) To sue and be sued in its own name and to plead and be impleaded.
- (5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

- (6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof.
- (7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein.
- (8) To pledge or assign any money, rents, charges, or other revenues and proceeds derived by the joint agency from the sales of bonds or property and insurance or condemnation proceeds and any contracts or other rights of the joint agency.
- (9) To issue bonds of the joint agency for the purpose of paying all or any part of the costs of any of the projects or purposes authorized by this chapter.
- (10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, better, own, operate, and maintain individually or jointly with one (1) or more other joint agencies, municipalities or public utilities one (1) or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds available to the joint agency.
- (11) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy or steam, and transmission and related services and to enter into contracts for any or all such purposes.
- (12) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities, and commodities sold, furnished or supplied by it.
- (13) To negotiate and enter into contracts with each of its member municipalities whereby each municipality may purchase power and energy and related services from the joint agency derived from any project or projects or without designation as to source and pursuant to which contracts each municipality shall agree to make payments from the revenues of its electric system adequate:
 - (A) to pay when due (whether at maturity, upon acceleration, or by sinking fund requirements) the principal, premium, if any, and interest on all bonds issued by the joint agency to finance any service provided to such member municipality, and to establish reserves therefor; and
 - (B) to pay the necessary expenses of the joint agency (including, without limitation, all amounts required to be collected pursuant to the trust agreement or resolution providing for the issuance of bonds) and to establish reserves therefor.
- (14) To make and execute contracts and other instruments necessary or convenient for the operation, maintenance, and management of a regional transmission system, including transmission facilities owned by a municipality or a joint agency. Such a contract may not be for a term that is more than

fifty (50) years. Such a contract may not make the state, a political subdivision, or a municipality a shareholder in a public utility. Such a contract may delegate responsibilities if the delegation and action taken are consistent with prudent utility practice.

(15) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this chapter, including contracts with persons, firms, corporations, limited liability companies, and others.

(16) To employ engineers, attorneys, financial advisors, and such other consultants, agents, and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor.

(17) To do all acts and things necessary, convenient, or desirable to carry out the purposes of, and to exercise the powers granted to, the joint agency herein.

(b) No joint agency may finance a project or projects, in whole or in part, without first obtaining the approval of the commission as provided in section 19 of this chapter.

(c) No joint agency may construct any transmission line without first obtaining the approval of the commission as provided in section 19 of this chapter.

(d) A determination by the joint agency approved by the commission shall be conclusive unless a party to the proceeding aggrieved by the determination of the commission shall file notice of appeal pursuant to IC 8-1-3.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.82-1988, SEC.4; P.L.8-1993, SEC.116; P.L.81-1997, SEC.4.

IC 8-1-2.2-10

Contracts with municipality

Sec. 10. Contracts with Municipality. (a) Any municipality which is a member of a joint agency may contract to purchase power and energy and related services from the joint agency derived from any project or projects or without designation as to source and pursuant to which contracts such municipality shall agree to make payments to the joint agency from the revenues of its electric system adequate:

(1) to pay when due (whether at maturity, upon acceleration, or by sinking fund requirements) the principal, premium, if any, and interest on all bonds issued by the joint agency to finance any service provided to such member municipality, and to establish reserves therefor; and

(2) to pay the necessary expenses of the joint agency (including, without limitation, all amounts required to be collected pursuant to the trust agreement or resolution providing for the issuance of bonds) and to establish reserves therefor.

Since the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits of a joint project or projects,

any contract may provide: (A) that the contracting municipality shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for; and (B) that the payments under the contract may not be subject to any reduction whether by offset or otherwise, and may not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract may also provide that if one (1) or more of the municipalities should default in the performance or discharge of its obligations under its contract, the other contracting municipalities shall assume, pro rata, or otherwise, the obligations of the defaulting municipality or municipalities and may succeed to the rights and interests of the defaulting municipality or municipalities as may be agreed upon in the contract. Any such contract may also provide for requirements, purchases or exclusive dealing arrangements if the joint agency determines that such provisions are necessary to obtain financing on favorable terms.

(b) Notwithstanding the provisions of any other law to the contrary, any contract with respect to the sale or purchase of power and energy, transmission and related services, from a joint agency may extend for a period not exceeding fifty (50) years from the date service is estimated to be first rendered under the contract; and the execution and effectiveness of the contract may not be subject to any authorizations or approvals by the state or any agency, commission or instrumentality or political subdivision thereof except as specifically required and provided in this chapter, nor shall it be subject to any publication requirements.

(c) Payments by a municipality under any contract with a joint agency shall be payable solely from the revenues derived from the ownership and operation of the electric system of that municipality and may be treated as an expense of the operation and maintenance thereof if the contract so provides, and any obligation under that contract may not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities, sold, furnished or supplied through its electric system in an amount sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues. In any proceeding before the commission for the approval of rates set by a municipality subject to its jurisdiction, the commission shall make specific findings of the revenue requirements referred to in the prior sentence and shall provide rates sufficient for such requirements.

(d) Any member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

(e) Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency.

(f) In the exercise of the powers enumerated in this chapter, including without limitation, the execution of contracts as provided in this section, a municipality and a joint agency shall be deemed to be exercising a part of the sovereign powers of the state and shall be exempt from any and all laws, rules and regulations prohibiting, limiting or conditioning anticompetitive conduct.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-11

Issuance of bonds

Sec. 11. Issuance of Bonds. (a) Each municipality or joint agency is hereby authorized to issue at one (1) time, or from time to time, its bonds for the purpose of paying all or any part of the cost of any of the purposes authorized by this chapter including, without limitation, the funding or refunding of the principal, interest or other obligation on any bonds issued by the municipality or joint agency whether or not such bonds to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay such bonds, the provision of working capital and the payment of all other costs or expenses incident to and necessary or convenient to carry out the purposes and powers authorized by this chapter. The principal of, premium, if any, and the interest on these bonds shall be payable solely from the revenues and other available funds of the issuer pledged or specified for their payment in accordance with this chapter. The bonds of each issue shall bear interest at a rate or rates determined by the issuer and shall not be subject to any other law of this state limiting the same. The bonds of each issue shall be dated and shall mature in amounts and at a time or times, not exceeding fifty (50) years from their respective date or dates, as may be determined by the governing body of the issuer. The bonds of each issue may be made redeemable before maturity at a price or prices, and under terms and conditions, as may be fixed by the governing body of the issuer prior to issuance of the bonds. The governing body of the issuer shall determine the form and manner of execution of the bonds, including any interest coupons to be attached, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state, provided that at

least one (1) place of payment is within the state. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds or coupons shall cease to hold that office before the delivery of his bond, that signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until delivery. The governing body of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing body of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The bonds of each issue, issued by a joint agency, shall be sold either by public or negotiated sale at such price as may be determined by the joint agency.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing body of the issuer may provide in the resolution authorizing the issuance of those bonds or in any trust agreement securing the bonds. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds have been executed and are available for delivery. The municipality or joint agency may also provide for replacement of any bonds which have become mutilated, destroyed, or lost.

(c) Except as provided in section 19 of this chapter, bonds may be issued under the provisions of this chapter without obtaining the consent of the state or of any political subdivision, or of any agency, commission or instrumentality of either of them, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things specifically required by this chapter, and provisions of the resolution authorizing the issuance of the bonds or the trust agreement securing them.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-12

Trust agreement or resolution on bondholders' rights

Sec. 12. Trust Agreement, or Resolution, on Rights of Bondholders. In the discretion of the governing body of the issuer, any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. That trust agreement, or the resolution providing for the issuance of bonds, may contain provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action

by bondholders. The trust agreement or the resolution providing for the issuance of bonds may contain covenants including, but not limited to, the following:

- (1) the pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities of a municipality or joint agency, or in the case of a joint agency from the revenues received from the municipalities;
- (2) the rents, rates, fees and charges to be established, maintained and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency;
- (3) the setting aside of reserves and the investment, regulation and disposition of reserves;
- (4) the custody, collection, securing, investment, and payment of any moneys held for the payment of bonds;
- (5) limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied;
- (6) limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds;
- (7) the procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent to an amendment, and the manner in which consent may be given;
- (8) events of default and the rights and liabilities arising upon default, the terms and conditions upon which bonds issued under this chapter shall become or may be declared due before maturity, and the terms and conditions upon which the declaration and its consequences may be waived;
- (9) the preparation and maintenance of a budget;
- (10) the retention or employment of consulting engineers, independent auditors, and other technical consultants;
- (11) limitations on or the prohibition of free service to any person, firm, limited liability company, or corporation, public or private;
- (12) the acquisition and disposal of property, provided that no project or part thereof may be mortgaged by such trust agreement or resolution;
- (13) provisions for insurance and for accounting reports and for their inspection and audit; and
- (14) the continuing operation and maintenance of the project.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.8-1993, SEC.117.

IC 8-1-2.2-13

Revenues

Sec. 13. Revenues. (a) A municipality or joint agency may fix, charge and collect rents, rates, fees and charges for electric power

and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric system or its interests in any project. For so long as any bonds of a municipality or joint agency issued under this chapter are outstanding and unpaid, the rents, fees and charges shall be so fixed as to provide revenues sufficient to pay (1) all costs of and charges and expenses in connection with the proper operation and maintenance of the municipality's or joint agency's electric system, (2) its interest in any project, (3) all necessary repairs, replacements or renewals thereof, (4) when due (whether at maturity, upon acceleration, or by sinking fund requirements), the principal, premium, if any, and interest on all bonds payable from said revenues, (5) to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, (6) when due (whether at maturity, upon acceleration, or by sinking fund requirements), the principal, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued to finance additions, and improvements to its electric system, (7) any and all amounts which the municipality may be obligated to pay from these revenues by law or contract, and (8) any additional amounts which must be realized in order to meet the requirements of any rate covenant imposed by any resolution or trust agreement authorizing and securing bonds.

(b) Any pledge made by a municipality or joint agency pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality or joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge is created need not be filed or recorded in any manner.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-14

Trust funds

Sec. 14. Trust Funds. Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be considered trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the bonds of any issue, or the trust agreement securing such bonds, may provide that any of those moneys may be temporarily invested and reinvested pending the disbursements of those moneys in securities and other investments as shall be provided in the resolution or trust agreement, and shall also provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act

as trustee of those moneys and shall hold and apply them as directed, subject to such regulation as this chapter and the resolution or trust agreement may provide.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-15

Remedies

Sec. 15. Remedies. Any holder of bonds issued under the provisions of this chapter or any of the bond coupons, and the trustee under any trust agreements, except to the extent that his rights are restricted by the trust agreement or the resolution authorizing the issuance of the bonds, may, (a) either at law or in equity, by suit, action, or other proceeding, protect and enforce any and all rights under the laws of the state or, to the extent permitted by law, under the trust agreement or resolution authorizing the issuance of the bonds or under any agreement or other contract executed by the municipality or joint agency pursuant to this chapter, and (b) may enforce and compel the performance of all duties required by this chapter or by the trust agreement or resolution to be performed by any municipality or joint agency or by any officer of any municipality or joint agency, including the fixing, charging, and collecting of rents, rates, fees, and charges.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-16

Bond eligibility for investment

Sec. 16. Bond Eligibility for Investment. Bonds issued by a municipality or joint agency under the provisions of this chapter are hereby made securities in which all public officers and agencies of the state, all insurance companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-17

Agreement of state with bondholders

Sec. 17. Agreement of the State. The state hereby covenants and agrees with the holders of any bonds that so long as any bonds of a municipality or joint agency issued under this chapter are outstanding and unpaid, the state will not limit or alter the rights vested in such municipality or joint agency to acquire, construct, reconstruct, improve, enlarge, extend, own, operate and maintain its electric system or any project or interest in any project, or to establish, maintain, revise, charge, and collect the rents, rates, fees and charges referred to in this chapter and to fulfill the terms of any

agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid, met and discharged.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-18

Limited liability on bonds

Sec. 18. Limited Liability. (a) The bonds issued under the authority of this chapter by a municipality shall not be general obligations of the municipality issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Neither the faith and credit nor the taxing power of a municipality or of the state are, or may be, pledged for the payment of the principal of, premium, if any, or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the state or a municipality or the forfeiture of any of its property in connection with any default. Every bond shall recite in substance that the principal of, premium, if any, and interest on the bond is payable solely from the revenues and other funds pledged to its payment and that the municipality is not obligated to pay the principal, premium, if any, or interest except from such revenues and other funds.

(b) The bonds issued under the authority of this chapter by a joint agency shall constitute obligations of the joint agency issuing them and neither the state nor any political subdivision thereof, other than the joint agency, shall be obligated to pay the principal of, premium, if any, or interest on the bonds and neither the faith and credit nor the taxing power of the state or any such political subdivision thereof or of any such municipality shall be pledged to the payment of the principal of, premium, if any, or interest on the bonds.

(c) Payments made under a transmission contract under section 9(a)(14) of this chapter must be paid solely from revenues of the joint agency entering into the contract. The obligation to make these payments does not constitute an indebtedness, or lend the credit of the state, a political subdivision, or a municipality to a public utility.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.81-1997, SEC.5.

IC 8-1-2.2-19

Approval of commission

Sec. 19. (a) Prior to the acquisition or the commencement of construction of any project to be financed by the issuance of bonds under this chapter, the municipality or municipalities or joint agency

shall file a verified petition with the commission for approval of the project, for approval of participation of the municipality or municipalities or joint agency in the project, and for approval of any bonds to be issued under this chapter. If the commission shall determine:

(1) that the participation of the municipality or municipalities or joint agency in the project is economically and technically feasible;

(2) that the project will be integrated with existing or planned transmission line facilities in the state in a manner that will avoid economic and physical duplication of existing or planned transmission line facilities;

(3) that the municipality or municipalities or joint agency own or have access to the transmission facilities to transmit such power and energy from the project to the municipality or municipalities or joint agency;

(4) that for a project involving a coal-consuming facility, the facility utilizes Indiana coal or is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

(5) that for a project involving the acquisition or participation in the ownership of an electric generating facility located outside Indiana, the municipality, municipalities, or joint agency has been unable to acquire or participate in the ownership of a comparable generating facility in Indiana at a comparable cost and unable to purchase sufficient amounts of electricity in Indiana at a comparable cost giving due consideration to all factors, including but not limited to the length and terms of available purchases and the expected useful life of the facility;

(6) that for a project involving the acquisition or participation in the ownership of an electric generating facility located outside Indiana, acquisition of or participation in the ownership of the facility provides the municipality, municipalities, or joint agency with greater economic benefits than either:

(A) the acquisition or participation in the ownership of a comparable generating facility in Indiana available for ownership; or

(B) the purchase of sufficient amounts of electricity in Indiana at a comparable cost giving due consideration to all factors, including but not limited to the length and terms of available purchases and the expected useful life of the facility; and

(7) that the determinations of the governing body or bodies with respect to the items listed in section 3(c) or 8(b) of this chapter have been or should be approved;

then the commission shall issue an order approving the project and the participation of the municipality or municipalities or joint agency in the project and the issuance of bonds by the municipality or municipalities or by the joint agency. 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 determinations required by this subsection are in addition to the requirements of IC 8-1-8.5-4 and IC 8-1-8.5-5.

(b) A joint agency is not a public utility (as defined in IC 8-1-2). However, with respect to proceedings initiated by a joint agency under this section, the commission is given jurisdiction to proceed in the same manner and with like power as is provided by IC 8-1-2 in the case of public utilities (as defined in IC 8-1-2).

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.82-1988, SEC.5; P.L.54-1992, SEC.3; P.L.81-1997, SEC.6.

IC 8-1-2.2-20

Acquisition and construction contracts

Sec. 20. Acquisition and Construction Contracts. A municipality or joint agency may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities within or without its corporate limits or those of its members, or may contract with other public or private entities to perform these functions, without advertising for bids or securing performance and payment bonds, except to the extent that its governing body determines that these actions are desirable in furtherance of the purposes of this chapter. Except as otherwise provided by this section, no contract shall be invalid or unenforceable by reason of nonperformance of the conditions required by any other law relating to public contracts.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-21

Tax exempt status

Sec. 21. Tax Exempt Status. Bonds, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the state or any political subdivision or any agency of either thereof, excepting inheritance or gift taxes.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-22

Payments in lieu of taxes

Sec. 22. Payments in Lieu of Taxes. That part of a project owned by a municipality or municipalities or joint agency shall be exempt from property taxes. However, each municipality participating in a project or joint agency owning all or any part of a project shall, in lieu of property taxes, pay to any governmental unit authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes

on other property. Payments in lieu of taxes made under this section shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

Except as expressly provided in this section with respect to jointly owned projects, no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-23

Personnel

Sec. 23. Personnel. Personnel employed or appointed by a municipality or joint agency to work on a project shall have the same authority, rights, privileges and immunities which officers, agents and employees of municipalities enjoy, when they are acting within the scope of their authority or in the course of their employment.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-24

Dissolution of joint agencies

Sec. 24. Dissolution of Joint Agencies. Whenever the board of commissioners of a joint agency and the governing bodies of its member municipalities by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the joint agency have been fully paid or satisfied or provision for the payment thereof has been made in accordance with the terms of the resolution or trust agreement securing the same, the board of commissioners and governing boards may declare the joint agency to be dissolved. On the effective date of the resolution or ordinance, the title to all funds and other property owned by the joint agency at the time of the dissolution shall vest in the member municipalities of the joint agency as provided in this chapter and the bylaws of the joint agency.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-25

Annual reports

Sec. 25. Annual Reports. The municipal utilities or joint agencies possessing ownership interests in a project shall, following the closing of each fiscal year, submit a consolidated or combined annual report of their activities (including the activities of any joint agency) with respect to such project for the preceding year to the respective governing bodies of such municipalities and to the commission. Each report shall set forth in a form prescribed by the commission a complete operating and financial statement covering the operations of the project during the year. The municipalities or joint agencies possessing ownership interests in a project shall cause an audit of the books of record and accounts relating to such project (including any joint agency) to be made at least once in each year by a certified

public accountant or accountants and the cost of the audit may be treated as a cost of construction of the project, or otherwise as part of the expenses of the administration of the project covered by such audit.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-26

Government grants and loans

Sec. 26. Government Grants and Loans. The governing body of any municipality or the joint agency is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing board of any municipality or joint agency may:

- (1) enter into and carry out contracts with the state or federal government or any agency or institution thereof under which such government, agency or institution grants financial or other assistance to the municipality or joint agency;
- (2) accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;
- (3) agree to and comply with any reasonable conditions which are imposed upon such grants or loans; and
- (4) make expenditures from any funds so granted.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-27

Eminent domain

Sec. 27. (a) Municipalities participating in a project and joint agencies have the power of eminent domain to the extent and in the same manner and under the same laws as municipalities or public utilities under IC 32-24-1 or IC 8-1-8. However, a municipality or joint agency exercising the power of eminent domain for a purpose authorized by this chapter may not condemn an existing facility used for the generation, transmission, or distribution of electric power and energy.

(b) The commission may order that:

- (1) the lines and rights-of-way of any public utility or subscriber owned utility, or municipality or municipalities participating in a joint project or joint agency may be crossed by any municipality participating in a joint project or joint agency; or
- (2) the lines of any municipalities participating in a joint project or joint agency may be crossed by any public utility or subscriber owned utility.

As added by Acts 1980, P.L.68, SEC.1. Amended by P.L.2-2002,

SEC.35.

IC 8-1-2.2-28

Liability of officers

Sec. 28. Liability of Officers. No officer of any municipality or joint agency or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this chapter.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-29

Construction with other laws

Sec. 29. Other Statutes. This chapter shall be considered to provide a complete method for the performance of things so authorized, and shall be considered and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. However, insofar as the provisions of this chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this chapter shall be controlling. Nothing in this chapter may be construed to authorize the issuance of bonds for the purpose of financing facilities to be owned by any private corporation and the issuance of bonds to finance an interest in any project undertaken jointly with a private corporation shall not be construed to be the issuance of bonds for the purpose of financing facilities to be owned by any private corporation.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-30

Severability

Sec. 30. Severability of Invalid Provisions. Any provisions of this chapter which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

As added by Acts 1980, P.L.68, SEC.1.

IC 8-1-2.2-31

Member participating by electronic means of communication

Sec. 31. (a) This section applies to a meeting of the board of commissioners of a joint agency at which at least a quorum of the board is physically present at the place where the meeting is conducted.

(b) A member of the board of commissioners of a joint agency may participate in a meeting of the board of commissioners by using a means of communication that permits:

- (1) all other members participating in the meeting; and
- (2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint agency who participates in a meeting by using a means of communication described in subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint agency prepared under IC 5-14-1.5-4 must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in subsection (b); and
- (3) each member who was absent.

As added by P.L.179-2007, SEC.10.