

IC 36-10-9

Chapter 9. Marion County Capital Improvement Board

IC 36-10-9-1

Application of chapter

Sec. 1. This chapter applies to each county having a consolidated city.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to a capital improvement board of managers created under this chapter.

"Bonds" means bonds issued under section 12 or section 15 of this chapter and, except as used in section 12 of this chapter or unless the context otherwise requires, lease agreements entered into under section 6(15) of this chapter.

"Excise taxes" refers to the excise taxes imposed by IC 6-9-8, IC 6-9-12, and IC 6-9-13.

"Issue", "issued", or "issuance" means in the case of lease agreements "execute", "executed", or "execution" respectively.

"Lease agreements" means lease agreements entered into under section 6(15) of this chapter.

"Net income" means the gross income from the operation of a capital improvement after deducting the necessary operating expenses of the board.

"Notes" means notes issued under section 21 of this chapter.

"Operating expenses" means:

- (1) the necessary operational expenses of the board in performing its duties under this chapter, including maintenance, repairs, replacements, alterations, and costs of services of architects, engineers, accountants, attorneys, and consultants;
- (2) the expenses for any other purpose that has been approved under section 8 of this chapter; and
- (3) the maintenance of reasonable reserves for any of the items listed in subdivisions (1) and (2) of this definition or for other purposes required under a resolution, ordinance, or trust agreement.

"Principal and interest" or "principal on and interest of" includes, unless the context otherwise requires, payments required by lease agreements.

"Pre-1981 general obligation bonds" means general obligation bonds issued before January 1, 1981.

"Trust agreements", except as used in section 13 of this chapter or unless the context otherwise requires, includes lease agreements.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.82-1985, SEC.9.

IC 36-10-9-3

Creation of county board of managers; powers of county

Sec. 3. (a) A capital improvement board of managers is created in the county.

(b) The county may finance, construct, equip, operate, and maintain a capital improvement under this chapter.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-4

County board of managers; membership; terms; vacancies; oath of office; compensation

Sec. 4. (a) The board is composed of nine (9) members. Six (6) members shall be appointed by the executive of the consolidated city, one (1) member shall be appointed by the board of commissioners of the county, one (1) member shall be appointed by the legislative body of the consolidated city from among the members of the legislative body, and one (1) member shall be appointed jointly by majority vote of a body consisting of one (1) member of the board of county commissioners of each county in which a food and beverage tax is in effect under IC 6-9-35 on January 1 of the year of the appointment. The board of county commissioners that has the greatest population of all counties in which a food and beverage tax is in effect under IC 6-9-35 on January 1 of the year of the appointment shall convene the meeting to make the joint appointment. Each county in which a food and beverage tax is in effect under IC 6-9-35 on January 1 of the year of the appointment is entitled to be represented at the meeting by one (1) member of the county's board of county commissioner, who shall be selected by that county's board of county commissioners. One (1) of the members appointed by the executive must be engaged in the hotel or motel business in the county. Not more than four (4) of the members appointed by the executive may be affiliated with the same political party.

(b) The terms of members are for two (2) years beginning on January 15 and until a successor is appointed and qualified. A member may be reappointed after the member's term has expired.

(c) If a vacancy occurs on the board, the appointing authority shall appoint a new member. That member serves for the remainder of the vacated term.

(d) A board member may be removed for cause by the appointing authority who appointed the member.

(e) Each member, before entering upon the duties of office, shall take and subscribe an oath of office in the usual form. The oath shall be endorsed upon the member's certificate of appointment, which shall be promptly filed with the records of the board.

(f) A member does not receive a salary, but is entitled to reimbursement for any expenses necessarily incurred in the performance of the member's duties.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.116-1995, SEC.8; P.L.182-2009(ss), SEC.454.

IC 36-10-9-5

County board of managers; organizational meetings

Sec. 5. (a) Immediately after January 15 each year, the board shall hold an organizational meeting. It shall elect one (1) of the members president, another vice president, another secretary, and another treasurer to perform the duties of those offices. The officers serve from the date of their election until their successors are elected and qualified.

(b) The board may adopt the bylaws and rules that it considers necessary for the proper conduct of its duties and the safeguarding of the funds and property entrusted to its care. A majority of the members constitutes a quorum, and the concurrence of a majority of the members is necessary to authorize any action.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-6

County board of managers; powers and duties as capital improvement board of managers

Sec. 6. The board may, acting under the title "capital improvement board of managers of _____ County", do the following:

- (1) Acquire by grant, purchase, gift, devise, lease, condemnation, or otherwise, and hold, use, sell, lease, or dispose of, real and personal property and all property rights and interests necessary or convenient for the exercise of its powers under this chapter.
- (2) Construct, reconstruct, repair, remodel, enlarge, extend, or add to any capital improvement built or acquired by the board under this chapter.
- (3) Control and operate a capital improvement, including letting concessions and leasing all or part of the capital improvement.
- (4) Fix charges and establish rules governing the use of a capital improvement.
- (5) Accept gifts or contributions from individuals, corporations, limited liability companies, partnerships, associations, trusts, or political subdivisions, foundations, and funds, loans, or advances on the terms that the board considers necessary or desirable from the United States, the state, and any political subdivision or department of either, including entering into and carrying out contracts and agreements in connection with this subdivision.
- (6) Exercise within and in the name of the county the power of eminent domain under general statutes governing the exercise of the power for a public purpose.
- (7) Receive and collect money due for the use or leasing of a capital improvement and from concessions and other contracts, and expend the money for proper purposes.
- (8) Receive excise taxes, income taxes, and ad valorem property taxes and expend the money for operating expenses, payments of principal or interest of bonds or notes issued under this chapter, and for all or part of the cost of a capital improvement.
- (9) Retain the services of architects, engineers, accountants,

attorneys, and consultants and hire employees upon terms and conditions established by the board, so long as any employees or members of the board authorized to receive, collect, and expend money are covered by a fidelity bond, the amount of which shall be fixed by the board. Funds may not be disbursed by an employee or member of the board without prior specific approval by the board.

(10) Provide coverage for its employees under IC 22-3 and IC 22-4.

(11) Purchase public liability and other insurance considered desirable.

(12) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including the enforcement of them.

(13) Sue and be sued in the name and style of "capital improvement board of managers of _____ County" (including the name of the county), service of process being had by leaving a copy at the board's office.

(14) Prepare and publish descriptive material and literature relating to the facilities and advantages of a capital improvement and do all other acts that the board considers necessary to promote and publicize the capital improvement, including the convention and visitor industry, and serve the commercial, industrial, and cultural interests of Indiana and its citizens. The board may assist, cooperate, and fund governmental, public, and private agencies and groups for these purposes.

(15) Enter into leases of capital improvements and sell or lease property under IC 5-1-17 or IC 36-10-9.1.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.82-1985, SEC.10; P.L.8-1993, SEC.520; P.L.255-1997(ss), SEC.21; P.L.214-2005, SEC.75.

IC 36-10-9-7

Procurement of materials and work; emergency procedure; title to or interest in property

Sec. 7. (a) The purchase or lease of material and work on a capital improvement shall be done by the board under statutes governing these activities by counties. However, if the total cost of construction or equipping of a capital improvement or of the alteration, maintenance, or repair of any building is estimated to be fifty thousand dollars (\$50,000) or less, the board may procure materials and perform the work by its own employees and with owned or leased equipment without awarding a contract. In addition, in an emergency determined and declared by the board and entered in its records, the board may make emergency alterations, repairs, or replacements and contract for them without advertising for bids.

(b) Title to or interest in any property acquired shall be held in the name of the county, and the board has complete and exclusive authority to sell, lease, or dispose of it and to execute all

conveyances, leases, contracts, and other instruments in connection with it. However, real property may not be sold without the approval of the executive of the consolidated city.
As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-8

Annual budget; capital improvement; issuance of bonds

Sec. 8. (a) The board shall prepare a budget for each calendar year covering the projected operating expenses, projected expenditures for capital improvements or land acquisition, and estimated income to pay the operating expenses and capital expenditures, including amounts, if any, to be received from excise taxes and ad valorem property taxes. It shall submit the operating and capital budget for review, approval, or rejection to the city-county legislative body. The board may make expenditures only as provided in the budget as approved, unless additional expenditures are approved by the legislative body. However, payments to users of any capital improvement that constitute a contractual share of box office receipts are neither an operating expense nor an expenditure within the meaning of this section.

(b) If the board desires to finance a capital improvement in whole or in part by the issuance of bonds under section 12 or 15 of this chapter, the board shall submit the following information to the city-county legislative body at least thirty (30) days before the adoption of a resolution authorizing the issuance of the bonds:

- (1) A description of the project to be financed through the issuance of bonds.
- (2) The total amount of the project anticipated to be funded through the issuance of bonds.
- (3) The total amount of other anticipated revenue sources for the project.
- (4) Any other terms upon which the bonds will be issued.

(c) The city-county legislative body must discuss the information provided in subsection (b) in a public hearing held before the resolution may be adopted by the board.

(d) The board shall post the board's proposed budget and adopted budget on the board's Internet web site.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.42-1994, SEC.14; P.L.182-2009(ss), SEC.455.

IC 36-10-9-8.1

Long range financial plan

Sec. 8.1. (a) During 2009, the board shall prepare a long range financial plan covering the period beginning with the year 2010 and ending with the year 2041. The long range financial plan must set forth the following:

- (1) The schedule for the retirement of all debt that is outstanding as of January 1, 2010.
- (2) An estimated operating and capital budget for each calendar year that covers the projected operating expenses, debt

obligations, expenditures for capital improvements and land acquisition, and estimated income to pay these items, including the source of each type of income.

(b) Before January 1, 2010, the board shall deliver a copy of the long range financial plan to each member of the city-county legislative body and to the legislative council in an electronic format under IC 5-14-6.

(c) The city-county legislative body shall discuss the long range financial plan in a public hearing.

As added by P.L.182-2009(ss), SEC.456.

IC 36-10-9-9

Treasurer; controller; duties; board of accounts audits

Sec. 9. (a) The treasurer of the board is the official custodian of all funds and assets of the board and is responsible for their safeguarding and accounting. The treasurer shall give bond for the faithful performance and discharge of all duties required of the treasurer by law in the amount and with surety and other conditions that may be prescribed and approved by the board. All funds and assets in the capital improvement fund and the capital improvement bond fund created by this chapter and all other funds, assets, and tax revenues held, collected, or received by the treasurer of the county for the use of the board shall be promptly remitted and paid over by the county treasurer to the treasurer of the board, who shall issue receipts for them.

(b) The treasurer of the board shall deposit all funds coming into the treasurer's hands as required by this chapter and by IC 6-7-1-30.1, and in accordance with IC 5-13. Money so deposited may be invested and reinvested by the treasurer in accordance with general statutes relating to the investment of public funds and in securities that the board specifically directs. All interest and other income earned on investments becomes a part of the particular fund from which the money was invested, except as provided in a resolution, ordinance, or trust agreement providing for the issuance of bonds or notes. All funds invested in deposit accounts as provided in IC 5-13-9 must be insured under IC 5-13-12.

(c) The board shall appoint a controller to act as the auditor and assistant treasurer of the board. The controller shall serve as the official custodian of all books of account and other financial records of the board and has the same powers and duties as the treasurer of the board or the lesser powers and duties that the board prescribes. The controller and any other employee or member of the board authorized to receive, collect, or expend money, shall give bond for the faithful performance and discharge of all duties required of the controller in the amount and with surety and other conditions that may be prescribed and approved by the board. The controller shall keep an accurate account of all money due the board and of all money received, invested, and disbursed in accordance with generally recognized governmental accounting principles and procedure. All accounting forms and records shall be prescribed or approved by the

state board of accounts.

(d) The controller shall issue all warrants for the payment of money from the funds of the board in accordance with procedures prescribed by the board but a warrant may not be issued for the payment of a claim until an itemized and verified statement of the claim has been filed with the controller, who may require evidence that all amounts claimed are justly due. All warrants shall be countersigned by the treasurer of the board or by the executive manager. Warrants may be executed with facsimile signatures.

(e) If there are bonds or notes outstanding issued under this chapter, the controller shall deposit with the paying agent or other paying officer within a reasonable period before the date that any principal or interest becomes due sufficient money for the payment of the principal and interest on the due dates. The controller shall make the deposit with money from the sources provided in this chapter, and he shall make the deposit in an amount that, together with other money available for the payment of the principal and interest, is sufficient to make the payment. In addition, the controller shall make other deposits for the bonds and notes as is required by this chapter or by the resolutions, ordinances, or trust agreements under which the bonds or notes are issued.

(f) The controller shall submit to the board at least annually a report of the board's accounts exhibiting the revenues, receipts, and disbursements and the sources from which the revenues and receipts were derived and the purpose and manner in which they were disbursed. The board may require that the report be prepared by an independent certified public accountant designated by the board. The state board of accounts shall audit annually the accounts, books, and records of the board and prepare a financial report and a compliance audit report. The board shall submit to the city-county legislative body financial and compliance reports of the state board of accounts. The board shall post the reports of the state board of accounts on the board's Internet web site. The city-county legislative body shall discuss the financial and compliance reports of the state board of accounts in a public hearing. The handling and expenditure of funds is subject to supervision by the state board of accounts.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.19-1987, SEC.57; P.L.46-1997, SEC.17; P.L.182-2009(ss), SEC.457.

IC 36-10-9-10

Capital improvement fund

Sec. 10. (a) Unless there are bonds or notes outstanding under this chapter and secured in whole or in part by money deposited in the capital improvement bond fund, the proceeds of excise taxes received from the treasurer of the state shall be deposited in a separate and distinct fund called the "capital improvement fund". The gross income received by the board from the operation of capital improvements under this chapter shall be deposited in the capital improvement fund, regardless of whether or not there are any bonds or notes outstanding. Any money in the fund may be expended by the

board without the necessity of an appropriation to pay or provide for the payment of operating expenses. Money in the fund may also be used by the board without appropriation or approval to pay the principal on, or interest of, any bonds or notes issued under this chapter that cannot be paid from funds in the capital improvement bond fund or may be used for the payment of the principal of, redemption premium, if any, for, and interest on any bonds or notes issued under this chapter, upon prior redemption, or for all or part of the cost of a capital improvement.

(b) The board may covenant in any resolution, ordinance, or trust agreement providing for the issuance of bonds or notes as to the order of application of money deposited in the capital improvement fund, including the holding or disposing of any surplus in that fund.

(c) The net income from the operation of capital improvements under this chapter shall be transferred from the capital improvement fund to the capital improvement bond fund to the extent of any deficiency in the amount required to be in the capital improvement bond fund.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-11

Capital improvement bond fund

Sec. 11. (a) If there are any outstanding bonds or notes issued under this chapter and secured in whole or in part by money deposited in the capital improvement bond fund, the treasurer of the board shall, except as otherwise provided in this section, deposit the following amounts in a separate and distinct fund called the "capital improvement bond fund":

- (1) Excise tax proceeds received by the treasurer.
- (2) Net income transferred to the capital improvement bond fund under section 10 of this chapter.
- (3) Any other amounts received for deposit in the capital improvement bond fund.

(b) Principal and interest subaccounts shall be maintained in the capital improvement bond fund. The lesser of the following amounts shall be deposited in the principal and interest subaccounts:

- (1) The total of the amounts listed in subsection (a).
- (2) The total of the following amounts:
 - (A) In the principal and interest subaccount for the pre-1981 general obligation bonds, the amount required to provide sufficient funds to pay the principal of and interest coming due within the next twelve (12) months on the pre-1981 general obligation bonds.
 - (B) In the principal and interest subaccounts for all outstanding bonds and notes issued under this chapter, other than the pre-1981 general obligation bonds, the amounts required by the resolutions, ordinances, and trust agreements under which the bonds or notes are issued.

The deposits shall be made pro rata as between pre-1981 general obligation bonds, if any, and all other bonds and notes issued under

this chapter. Deposits to principal and interest subaccounts for notes and for bonds, other than pre-1981 general obligation bonds, shall be made in the manner and in the order of priority that is provided in the resolutions, ordinances, and trust agreements under which the bonds or notes are issued. Amounts in a principal and interest subaccount may be used solely to pay the principal of and interest on the issue or issues of bonds or notes for which the principal and interest subaccount was established.

(c) The treasurer of the board shall maintain in the capital improvement bond fund a bond reserve subaccount for the pre-1981 general obligation bonds. The treasurer shall maintain the subaccount in an amount equal to the maximum amount of principal and interest coming due on the pre-1981 general obligation bonds in any subsequent year. Reserve subaccounts shall also be maintained for other bonds and for notes secured in whole or in part by money deposited in the capital improvement bond fund; these subaccounts shall be maintained to the extent and in the amount required by the resolutions, ordinances, and trust agreements under which the bonds or notes are issued. Amounts described in subsection (a) that are not required to be deposited in principal and interest subaccounts under subsection (b) shall be deposited in the reserve subaccounts to the extent of any deficiency in those subaccounts. The deposits shall be made pro rata as between the reserve subaccount for pre-1981 general obligation bonds and all other reserve subaccounts. Deposits to the reserve subaccounts for notes and for bonds, other than pre-1981 general obligation bonds, shall be made in the manner and in the order of priority that is provided in the resolutions, ordinances, and trust agreements under which the bonds or notes are issued. Subject to subsection (e), amounts in a reserve subaccount may be used solely to pay the principal of and interest on the issue or issues of bonds or notes for which the reserve subaccount was established and only to the extent amounts in the principal and interest subaccount for the issue or issues of bonds or notes are not sufficient for that purpose.

(d) Amounts described in subsection (a) that are not required to be deposited in principal and interest subaccounts or bond reserve subaccounts under subsections (b) and (c) shall be deposited in the capital improvement fund rather than the capital improvement bond fund.

(e) Unless otherwise provided in any resolution, ordinance, or trust agreement under which bonds or notes are issued, amounts in the capital improvement bond fund in excess of the amount required by this section to be on deposit in that fund shall be transferred to the capital improvement fund.

(f) The principal and interest subaccount and bond reserve subaccount for the pre-1981 general obligation bonds shall be held by the treasurer of the board. Other principal and interest subaccounts and bond reserve subaccounts shall be held by the treasurer or by an escrow agent, depository, or trustee provided in the resolutions, ordinances, or trust agreements establishing the subaccounts. One (1) principal and interest subaccount or bond reserve subaccount may be

established for two (2) or more issues of bonds or notes.

(g) Amounts in the capital improvement bond fund on June 1, 1981, shall be first used to establish the principal and interest subaccount for the pre-1981 general obligation bonds in the required amount and then to establish the bond reserve subaccount for those bonds in the required amount. Any excess remaining shall be deposited in the capital improvement fund.

(h) For purposes of this section and section 10 of this chapter, bonds issued under section 15 of this chapter shall be considered to be secured by money deposited in the capital improvement bond fund, if provided in the resolution, ordinance, or trust agreement providing for the issuance of the bonds.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-11.1

Defeased bonds; use of funds in capital improvement bond fund and capital improvement fund

Sec. 11.1. (a) Upon the defeasance of an issue of capital improvement board bonds, the board may use funds in its capital improvement bond fund for those defeased bonds for the purposes set forth in subsection (b) if the board:

(1) has sold all or part of a capital improvement to a county convention and recreation facilities authority and leased it back; or

(2) has leased all or part of a capital improvement to a county convention and recreation facilities authority and leased it back.

(b) The board may use the funds in the capital improvement fund for the defeased bonds for the following:

(1) As payment of lease rental or as a reserve for lease rental.

(2) As a deposit with the county convention and recreation facilities authority or a trustee for the authority's bond owners to be used for payment of those bonds or as a reserve for those bonds.

(3) For any purpose for which the board is authorized to expend or apply funds.

(4) For any combination of the purposes set forth in subdivisions (1), (2), and (3).

As added by P.L.82-1985, SEC.11.

IC 36-10-9-12

Revenue bonds

Sec. 12. (a) A capital improvement may be financed in whole or in part by the issuance of bonds payable, to the extent stated in the resolution or trust agreement providing for the issuance of the bonds, solely from one (1) or more of the following sources:

(1) Net income received from the operation of the capital improvement and not required to be deposited in the capital improvement bond fund under section 11 of this chapter.

(2) Net income received from the operation of any other capital improvement or improvements and not required to be deposited

in the capital improvement bond fund under section 11 of this chapter.

(3) Money in the capital improvement bond fund available for that purpose.

(4) Money in the capital improvement fund available for that purpose.

(5) Any other funds made available for that purpose.

The resolution or trust agreement may pledge all or part of those amounts to the repayment of the bonds and may secure the bonds by a lien on the amounts pledged.

(b) If the board desires to finance a capital improvement in whole or in part as provided in this section, it shall adopt a resolution authorizing the issuance of revenue bonds. The resolution must state the date or dates on which the principal of the bonds will mature (not exceeding forty (40) years from the date of issuance), the maximum interest rate to be paid, and the other terms upon which the bonds will be issued.

(c) If the city-county legislative body approves issuance of bonds under IC 36-3-6-9, the board shall submit the resolution to the executive of the consolidated city, who shall review it. If the executive approves the resolution, the board shall take all actions necessary to issue bonds in accordance with the resolution. The board may, under section 13 of this chapter, enter into a trust agreement with a trust company as trustee for the bondholders. An action to contest the validity of bonds to be issued under this section may not be brought after the fifteenth day following:

(1) the receipt of bids for the bonds, if the bonds are sold at public sale; or

(2) the publication one (1) time in a newspaper of general circulation published in the county of notice of the execution and delivery of the contract of sale for the bonds;

whichever occurs first.

(d) Bonds issued under this section may be sold at public or private sale for the price or prices that are provided in the resolution authorizing the issuance of bonds. All bonds and interest are exempt from taxation in Indiana as provided in IC 6-8-5.

(e) When issuing revenue bonds, the board may covenant with the purchasers of the bonds that any funds in the capital improvement fund may be used to pay the principal on, or interest of, the bonds that cannot be paid from any other funds.

(f) The revenue bonds may be made redeemable before maturity at the price or prices and under the terms that are determined by the board in the authorizing resolution. The board shall determine the form of 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 the principal and interest, which may be at any bank or trust company within or outside Indiana. All bonds must have all the qualities and incidents of negotiable instruments under statute. Provision may be made for the registration of any of the bonds as to principal alone or to both principal and interest.

(g) The revenue bonds shall be issued in the name of the county and must recite on the face that the principal of and interest on the bonds is payable solely from the amounts pledged to their payment. The bonds shall be executed by the manual or facsimile signature of the president of the board, and the seal of the county shall be affixed or imprinted on the bonds. The seal shall be attested by the manual or facsimile signature of the auditor of the county. However, one (1) of the signatures must be manual, unless the bonds are authenticated by the manual signature of an authorized officer or a trustee for the bondholders. Any coupons attached must bear the facsimile signature of the president of the board.

(h) This chapter constitutes full and complete authority for the issuance of revenue bonds. No law, procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things by the board or any other officer, department, agency, or instrumentality of the state or any political subdivision is required to issue any revenue bonds except as prescribed in this chapter.

(i) Revenue bonds issued under this section are legal investments for private trust funds and the funds of banks, trust companies, insurance companies, building and loan associations, credit unions, banks of discount and deposit, savings banks, loan and trust and safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, industrial loan and investment companies, and other financial institutions organized under statute.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.42-1993, SEC.100; P.L.182-2009(ss), SEC.458.

IC 36-10-9-13

Revenue bonds; trust agreement; resolution; operating expenses

Sec. 13. (a) Revenue bonds issued under this chapter may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Any resolution adopted by the board providing for the issuance of revenue bonds and any trust agreement under which the revenue bonds are issued may pledge or assign, subject only to valid prior pledges, all or a part of the amounts authorized by this chapter, but the board may not convey or mortgage any capital improvement or any part of a capital improvement.

(b) In authorizing the issuance of revenue bonds, the board may:

(1) limit the amount of revenue bonds that may be issued as a first lien against the amounts pledged to the payment of those revenue bonds; or

(2) authorize the issuance from time to time of additional revenue bonds secured by the same lien.

Additional revenue bonds shall be issued on the terms and conditions provided in the bond resolution or resolutions adopted by the board and in the trust agreement or any agreement supplemental to the trust agreement. Additional revenue bonds may be secured equally and ratably without preference, priority, or distinction with the original

issue of revenue bonds or may be made junior to the original issue of revenue bonds.

(c) Any pledge or assignment made by the board under this section is valid and binding from the time that the pledge or assignment is made, and the amounts pledged and received by the board are immediately subject to the lien of the pledge or assignment without physical delivery of those amounts or further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board irrespective of whether these parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created or an assignment need be filed or recorded in order to perfect the resulting lien against third parties. However, a copy of the pledge or assignment shall be filed in the records of the board.

(d) Any trust agreement or resolution providing for the issuance of revenue bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law. The provisions may include covenants stating the duties of the board in relation to:

- (1) the acquisition of property;
- (2) the construction, improvement, maintenance, repair, operation, and insurance of the capital improvement or capital improvements in connection with which the bonds have been authorized;
- (3) the rates of fees, rentals, or other charges to be collected for the use of the capital improvement or capital improvements;
- (4) the custody, safeguarding, investment, and application of all money received or to be received by the board or trustee;
- (5) the establishment of funds, reserves, and accounts; and
- (6) the employment of consulting engineers in connection with the construction or operation of the capital improvement or capital improvements.

(e) It is lawful for any bank or trust company incorporated under statute, and any national banking association that may act as depository of the proceeds of bonds or other funds of the board, to furnish indemnifying bonds or to pledge securities that are required by the board.

(f) Any trust agreement entered into under this section may state the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of private corporations. In addition, the trust agreement may contain other provisions that the board considers reasonable and proper for the security of the bondholders.

(g) All expenses incurred in carrying out a trust agreement entered into under this section may be treated as a part of the necessary operating expenses of the board.

As added by Acts 1982, P.L.77, SEC.28.

Tax covenant with bond purchasers

Sec. 14. (a) The Indiana general assembly covenants with the purchasers of any bonds or notes issued under this chapter that:

(1) the excise taxes pledged to the payment of those bonds and notes will not be repealed, amended, or altered in any manner that would reduce or adversely affect the levy and collection of those taxes; and

(2) it will not reduce the rates or amounts of those taxes; as long as the principal of, or interest on, any bonds or notes is unpaid.

(b) The board, on behalf of the county, may make a similar pledge or covenant in any agreement with the purchasers of any bonds or notes issued under this chapter.

(c) For purposes of this section, the principal of or interest on bonds or notes is considered paid if provision has been made for their payment in such a manner that the bonds or notes are not considered to be outstanding under the resolution, ordinance, or trust agreement under which the bonds or notes are issued.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-15

General obligation bonds

Sec. 15. (a) A capital improvement may be financed in whole or in part by the issuance of general obligation bonds of the county.

(b) If the board desires to finance a capital improvement in whole or in part as provided in this section, it shall have prepared a resolution to be adopted by the board of commissioners of the county authorizing the issuance of general obligation bonds. The resolution must state the date or dates on which the principal of the bonds is payable, the maximum interest rate to be paid, and the other terms upon which the bonds shall be issued. The board shall submit the proposed resolution to the city-county legislative body for approval under IC 36-3-6-9, together with a certificate to the effect that the issuance of bonds in accordance with the resolution will be in compliance with this section. The certificate must also state the estimated annual net income of the capital improvement to be financed by the bonds, the estimated annual tax revenues, and the maximum amount payable in any year as principal and interest on the bonds issued under this chapter, including the bonds proposed to be issued, at the maximum interest rate set forth in the resolution. The bonds issued may mature over a period not exceeding forty (40) years from the date of issue.

(c) If the city-county legislative body approves the issuance of bonds under IC 36-3-6-9, the board shall submit the resolution to the executive of the consolidated city, who shall review the resolution. If the executive approves the resolution, the board shall take all action necessary to issue the bonds in accordance with the resolution. An action to contest the validity of bonds issued under this section may not be brought after the fifteenth day following the receipt of bids for the bonds.

- (d) The provisions of all general statutes relating to:
- (1) the filing of a petition requesting the issuance of bonds and giving notice;
 - (2) 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);
 - (3) the giving of notice of the determination to issue bonds;
 - (4) the giving of notice of a hearing on the appropriation of the proceeds of bonds;
 - (5) the right of taxpayers to appear and be heard on the proposed appropriation;
 - (6) the approval of the appropriation by the department of local government finance; and
 - (7) the sale of bonds at public sale for not less than par value;

are applicable to the issuance of bonds under this section.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.90-2002, SEC.521; P.L.219-2007, SEC.147; P.L.146-2008, SEC.797; P.L.182-2009(ss), SEC.459.

IC 36-10-9-16

Bond revenue; use

Sec. 16. All money received from any bonds issued under this chapter shall be applied solely to the payment of the construction cost of the capital improvement or capital improvements or the cost of refunding or refinancing outstanding bonds or notes, for which the bonds are issued. The cost may include:

- (1) planning and development of the capital improvement and all buildings, facilities, structures, and improvements related to it;
- (2) acquisition of a site and clearing and preparing the site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the capital improvement suitable for use and operation;
- (4) architectural, engineering, consultant, and attorney fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest and for operations, extensions, replacements, renovations, and improvements;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance; and
- (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums, if any, for, and interest on the bonds or notes being refunded or refinanced.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.5-1988,

SEC.223.

IC 36-10-9-17

Rights of holders of notes or bonds

Sec. 17. Unless their rights are restricted by the appropriate bond resolution, ordinance, or trust agreement, any holder of notes or bonds (except pre-1981 general obligation bonds) issued under this chapter or a trustee under a trust agreement entered into under this chapter may, by any suitable form of legal proceeding, protect and enforce any rights provided under statute or granted by the bond resolution, ordinance, or trust agreement.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-18

Tax exemptions

Sec. 18. All property owned or used and all income and revenues received by the board are exempt from special assessments and taxation in Indiana for all purposes.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-19

Contracts of board, state, and political subdivisions

Sec. 19. The board and the state, any department, agency, or commission of the state, or any department, agency, or commission of municipal or county government, may enter into agreements, contracts, or leases with each other on the terms that are agreed upon, providing for joint and cooperative planning, financing, construction, operation, or maintenance of a capital improvement or of the buildings, facilities, structures, or improvements that are necessary or desirable in connection with the use and operation of a capital improvement.

As added by Acts 1982, P.L.77, SEC.28.

IC 36-10-9-20

State appropriation

Sec. 20. (a) Four million dollars (\$4,000,000) has been appropriated out of money in the general fund of the state not otherwise appropriated for distribution by the auditor and treasurer of state to a board that was in existence on March 11, 1967, to be expended by the board for the purpose of financing a convention center to be known as the Indiana convention exposition center. However, the four million dollar (\$4,000,000) appropriation could not be spent by the board until funds and assets, exclusive of real property, in addition to this appropriation, had been received by the board under section 6 of this chapter of a total value of two million dollars (\$2,000,000) in excess of the cost of the funds and assets to the board. The valuation of the funds and assets shall be conclusively determined by the board and the executive of the consolidated city. This appropriation does not lapse at the end of any biennium.

(b) The four million dollars (\$4,000,000), including accrued

interest, shall be repaid to the treasurer of state by December 31, 2000, in annual installments. The first payment shall be made on or before December 31, 1992. The amount of the payment must include interest at two percent (2%) per year. The repayment shall be made by the board from net income received from the operation of the convention center, from available amounts in the capital improvement fund, and from any contributions, bequests, or other sources available to the board for this purpose.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.27-1992, SEC.29.

IC 36-10-9-21

Borrowing in anticipation of funds

Sec. 21. (a) In anticipation of funds to be received from any source, the board may borrow money and issue notes for a term not exceeding ten (10) years and at a rate or rates of interest determined by the board. The notes shall be issued in the name of the "capital improvement board of managers of _____ county" and may be secured (either on a parity with or junior and subordinate to any outstanding bonds or notes) by:

- (1) the pledge of income and revenues of any capital improvement;
- (2) the proceeds of excise taxes; or
- (3) any other funds anticipated to be received.

The notes are payable solely from the income, excise taxes, revenues, and anticipated funds.

(b) The financing may be negotiated directly by the board with any bank, insurance company, savings association, or other financial institution licensed to do business in Indiana upon the terms and conditions that are agreed upon, except as specifically provided in this section, and may be consummated without public offering. The notes plus interest are exempt from taxation in Indiana as provided for bonds in IC 6-8-5.

As added by Acts 1982, P.L.77, SEC.28. Amended by P.L.79-1998, SEC.111.

IC 36-10-9-22

Defense and indemnity of officers and employees in legal actions

Sec. 22. A board established under this chapter may defend any current or former member of the board or its officers, employees, or agents in a claim or suit, at law or in equity, that arises from the exercise of powers or the performance of duties or services for the board or that arises from official acts as a member of the board. The board may indemnify a person for any liability, cost, or damages related to a claim or suit, including the payment of legal fees. Before taking action authorized by this section, the board must, by resolution, determine that the action or conduct in question was taken, done, or omitted in good faith.

As added by Acts 1982, P.L.77, SEC.28.