

## **IC 36-7-29**

### **Chapter 29. Local Environmental Response Financing**

#### **IC 36-7-29-1**

##### **Application of chapter**

Sec. 1. This chapter applies to the following units:

- (1) A city having a population of more than eight thousand seven hundred (8,700) but less than nine thousand (9,000).
- (2) A county having a population of more than one hundred seventy thousand (170,000) but less than one hundred seventy-five thousand (175,000).

*As added by P.L.44-1994, SEC.11. Amended by P.L.170-2002, SEC.161; P.L.119-2012, SEC.209.*

#### **IC 36-7-29-2**

##### **"Board" defined**

Sec. 2. As used in this chapter, "board" refers to the local environmental response financing board established by section 10 of this chapter.

*As added by P.L.44-1994, SEC.11.*

#### **IC 36-7-29-3**

##### **"District" defined**

Sec. 3. As used in this chapter, "district" refers to the special taxing district established by section 9 of this chapter.

*As added by P.L.44-1994, SEC.11.*

#### **IC 36-7-29-4**

##### **"Qualified site" defined**

Sec. 4. As used in this chapter, "qualified site" means a site that is wholly or partially located in the district and on July 1, 1994, is:

- (1) a site at which solid waste or substances are present or deposited in or on the ground as an intended place of final location; or
- (2) an industrial site where a substance is present in or on the ground.

*As added by P.L.44-1994, SEC.11.*

#### **IC 36-7-29-5**

##### **"Remedial action" defined**

Sec. 5. As used in this chapter, "remedial action" has the meaning set forth in IC 13-11-2-185.

*As added by P.L.44-1994, SEC.11. Amended by P.L.1-1996, SEC.87.*

#### **IC 36-7-29-6**

##### **"Removal" defined**

Sec. 6. As used in this chapter, "removal" has the meaning set forth in IC 13-11-2-187.

*As added by P.L.44-1994, SEC.11. Amended by P.L.1-1996, SEC.88.*

**IC 36-7-29-7****"Responsible person" defined**

Sec. 7. As used in this chapter, "responsible person" has the meaning set forth in IC 13-11-2-192(b).

*As added by P.L.44-1994, SEC.11. Amended by P.L.1-1996, SEC.89.*

**IC 36-7-29-8****"Substance" defined**

Sec. 8. As used in this chapter, "substance" has the meaning set forth in IC 13-11-2-98 for the term "hazardous substance".

*As added by P.L.44-1994, SEC.11. Amended by P.L.1-1996, SEC.90.*

**IC 36-7-29-9****Local environmental response taxing districts**

Sec. 9. (a) A special taxing district to be known as the local environmental response taxing district is created in a city described in section 1(1) of this chapter and in a county described in section 1(2) of this chapter for the purpose of funding substance removal or remedial action for a qualified site. The district shall exist for the public purpose of protecting the health, safety, and welfare of residents in the district by substance removal or remedial action. The general assembly finds that the actions and purposes set forth in this chapter are public purposes.

(b) The district is coterminous with the territory of the unit.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-10****Local environmental response financing boards**

Sec. 10. (a) The district shall be governed by a local environmental response financing board.

(b) If the unit is a city described in section 1(1) of this chapter, the board consists of five (5) members appointed by the city executive.

(c) If the unit is a county described in section 1(2) of this chapter, the board consists of the following six (6) members:

(1) Two (2) members appointed by the county executive.

(2) One (1) member appointed by the county fiscal body.

(3) Two (2) members appointed by the executive of the municipality having the largest population in the district.

(4) One (1) member appointed by the executive of the municipality that has the second largest population in the district.

All board members appointed under this subsection must be local elected officials. A board member appointed under this subsection who ceases to be a local elected official forfeits membership on the board.

(d) The term of office of a board member is four (4) years. The appointing authority shall fill a vacancy on the board for the unexpired term.

(e) Board members are not entitled to compensation or reimbursement for any services or expenses.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-11**  
**Resolutions**

Sec. 11. The board may by its resolutions provide the procedure for its actions, the manner of selection of the board's chairperson, treasurer, secretary, and the other officers or employees of the district, their titles, terms of office, duties, number, and qualifications, and any other lawful subject necessary to the operation of the district and the exercise of the power granted under this chapter. Actions of a legislative nature must be by resolution adopted by a majority of the board. Resolutions proposed may be read by title only unless a reading in full is requested by a member of the board. Actions of an administrative or executive nature may be taken by a majority of the board or by officers of the board or employees of the district as authorized by the board.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-12**  
**Powers and duties of boards**

Sec. 12. (a) The board may:

- (1) receive and disburse funds;
- (2) sue and be sued;
- (3) plan, finance, and manage substance removal or remedial action at qualified sites;
- (4) make and contract for plans, surveys, studies, and investigations necessary for the purpose of substance removal or remedial action at qualified sites;
- (5) enter upon property to make surveys, soundings, borings, and examinations;
- (6) acquire by negotiation any property or rights or interest in property reasonably required for substance removal or remedial action under the bond resolution without following any other statutory procedures for that acquisition;
- (7) accept gifts, grants, or loans of money, other property, or services from any source, public or private, and comply with the terms of the gift, grant, or loan;
- (8) borrow in anticipation of taxes;
- (9) contract for professional services;
- (10) enter into an interlocal cooperation agreement under IC 36-1-7 to obtain funds for:
  - (A) fiscal;
  - (B) administrative;
  - (C) managerial; or
  - (D) operational;services from a county or municipality;
- (11) conduct or contract for ongoing site maintenance, leachate collection, and long term monitoring at a qualified site after the substance removal or remedial action is complete;
- (12) enter into an agreement with a state or federal agency that

regulates remedial action or removal;

(13) pursue all legal remedies available as to other responsible persons who are not participating in the financing of the substance removal or remedial action through payment of property taxes that, in the sole judgment of the board, are commensurate with the responsible person's past use of the qualified site; and

(14) otherwise do all things necessary or proper to accomplish the purposes of this chapter.

(b) This subsection applies to a district located in a county described in section 1(2) of this chapter. In addition to the powers set forth in subsection (a), the board may levy a tax within the district to pay the costs of operation of the district, subject to regular budget and tax levy procedures. However, the maximum amount of taxes levied each year may not exceed fifty thousand dollars (\$50,000). The tax described in this subsection shall not be levied after substance removal and remedial action at a qualified site have been completed.

(c) Money recovered by the district from responsible persons shall be used for any of the following:

(1) To redeem bonds issued under section 13 of this chapter.

(2) To pay debt service on bonds issued under section 13 of this chapter.

(3) To reimburse a unit in the district for costs associated with removal or remediation at the qualified site prior to the issuance of bonds issued under section 13 of this chapter.

(4) To pay ongoing costs of the district associated with remediation or removal.

*As added by P.L.44-1994, SEC.11.*

### **IC 36-7-29-13**

#### **Issuance of bonds**

Sec. 13. (a) Subject to section 15 of this chapter, the board may issue district bonds under this section for the payment of the cost of substance removal or remedial action at a qualified site.

(b) On adopting a resolution ordering the issuance of district bonds, the board shall certify a copy of the resolution and a copy of the approval to the treasurer of the district, who shall prepare the district bonds.

(c) The district bonds are special obligations of indebtedness of the district. The district bonds issued under this section, and interest on the district bonds, are payable solely out of a special tax levied on all of the property of the district or other funds that may, under this chapter, or under any other law, be used to pay debt service on bonds. The district bonds must recite the terms on the face of the district bonds together with the purpose for which the district bonds are issued. For the purpose of raising money to pay district bonds issued under this section, the board shall levy each year a special tax on all of the property in the district in the amount and the manner necessary to meet and pay the principal of the district bonds as they severally mature, together with all accruing interest on them. The tax is

declared to constitute the amount of benefits resulting to all of the property of the district.

(d) All proceeds from the sale of district bonds shall be kept as a separate and specific fund, to pay the cost of substance removal or remedial action, and no part of the proceeds may be used for any other purpose, except as provided in IC 5-1-13 and IC 5-1-14.

(e) The tax levied each year shall be certified to the treasurer of the district and to the county auditor. The tax levied and certified shall be estimated and entered upon the tax duplicate by the county auditor and shall be collected and enforced. As the tax is collected by the county treasurer, the tax shall be transferred to the treasurer of the district, kept in a separate fund to be known as the district bond fund, and applied to the payment of the principal of and interest on the district bonds as the district bonds become due and to no other purpose, except as provided in IC 5-1-13 and IC 5-1-14.

(f) The special tax described in this section may not be levied after the last of the principal and interest on bonds issued under this chapter have been completely paid.

*As added by P.L.44-1994, SEC.11.*

### **IC 36-7-29-14**

#### **Form of bonds**

Sec. 14. (a) All district bonds issued under this chapter may:

- (1) be issued as serial or term bonds or as a combination of both;
- (2) be executed and delivered by the district at any time and from time to time;
- (3) bear the date or dates;
- (4) bear the maximum interest rates, if fixed rates are used, or specify any manner in which the interest rate will be determined, if variable or adjustable rates are used;
- (5) be redeemable before their stated maturities on the terms and conditions and at premiums as determined by the board;
- (6) be issued in any denomination of not less than five thousand dollars (\$5,000);
- (7) be in a form, either book entry or registered, or both;
- (8) carry registration conversion privileges;
- (9) be payable in a medium of payment and at a place or places, which may be at any one (1) or more banks or trust companies within or outside Indiana;
- (10) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;
- (11) be authenticated in a manner and upon compliance with conditions;
- (12) establish reserves from the proceeds of the sale of bonds or from other funds, or both, to secure the payment of the principal and interest on the district bonds issued under this chapter; and
- (13) contain other terms and covenants;

as provided in the resolution of the board authorizing the district bonds.

(b) The district bonds issued under this chapter may mature at the

time or times not to exceed forty (40) years.

(c) The district bonds issued under this chapter may bear either the impressed or facsimile seal of the district and shall be executed by the manual or facsimile signature of the chairperson of the board and attested by the manual or facsimile signature of the treasurer of the district, if one (1) of these signatures is manual. However, any signatures may be facsimiles if the bonds are to be manually authenticated by a fiduciary.

(d) The district bonds and the interest coupons appertaining to them, if any, issued under this chapter are valid and binding obligations of the district for all purposes in accordance with the terms of this chapter, notwithstanding that before delivery of the district bonds and any appertaining interest coupons, any of the persons whose signatures appear on the district bonds and any appertaining interest coupons have ceased to be officers of the district, as if the persons had continued to be officers of the district until after delivery.

(e) The district bonds issued under this chapter may be sold at public or private sale for the price or prices that may be provided in the resolution authorizing their issuance.

*As added by P.L.44-1994, SEC.11.*

#### **IC 36-7-29-15**

##### **Amount of bonds**

Sec. 15. (a) Except as provided in subsection (b) or (c), the amount of the district bonds issued under this chapter may not exceed the total amount that the board determines is reasonably necessary to be incurred in connection with the substance removal or remedial action. The board shall base a determination under this subsection on the best estimates available before the district bonds are issued.

(b) This subsection applies to a district located in a city described in section 1(1) of this chapter. Notwithstanding any other law, the total amount of the district bonds issued under this chapter, including district bonds already issued and outstanding under this chapter, may not exceed four percent (4%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15 of the district after deducting all mortgage exemptions in the district.

(c) This subsection applies to a district located in a county described in section 1(2) of this chapter. Notwithstanding any other law, the total amount of the district bonds issued under this chapter, including district bonds already issued and outstanding under this chapter, may not exceed two percent (2%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15.

*As added by P.L.44-1994, SEC.11. Amended by P.L.6-1997, SEC.212.*

#### **IC 36-7-29-16**

##### **Procedures for issuance of bonds**

Sec. 16. (a) District bonds may be issued by a board under this chapter without following any procedures set forth in any other

statute except that the board must:

- (1) adopt a bond resolution after a public hearing following public notice of the hearing published in accordance with IC 5-3-1;
- (2) publish notice of the determination to issue district bonds in accordance with IC 6-1.1-20-5;
- (3) obtain the approval for the appropriation of the proceeds of the district bonds as set forth in IC 6-1.1-18-5 if the appropriation is an additional appropriation; and
- (4) obtain the approval of the department of local government finance for a tax levy under IC 6-1.1-18.5-8.

(b) The bond resolution must contain a finding that substance removal or remedial action at the qualified site will be of public utility and benefit because the conditions at the qualified site are detrimental to the social and economic interests of the district.

*As added by P.L.44-1994, SEC.11. Amended by P.L.90-2002, SEC.485.*

### **IC 36-7-29-17**

#### **Notes of indebtedness**

Sec. 17. (a) A district:

- (1) pending receipt of any grant; or
- (2) in anticipation of the issuance of district bonds under this chapter;

may borrow money from any person and evidence the debt by a note or notes executed by the chairperson of the board and the treasurer of the district. The note or notes must contain the terms and provisions prescribed by the board.

(b) An issuance of a note or notes or evidence of indebtedness under this section may be sold at a public or private negotiated sale.

(c) A note or notes issued or renewed under this section must mature not more than five (5) years from the date of issuance of the original note and must pledge for the payment of the principal and interest the proceeds of the grant or district bonds.

(d) The board shall apply the proceeds of any note or notes issued under this section to the cost of the substance removal or remedial action for which the grant is to be made or bonds issued, but no purchaser of any obligations is liable for the proper application of the proceeds.

(e) Notes issued under this section must be approved by a resolution of the board.

*As added by P.L.44-1994, SEC.11.*

### **IC 36-7-29-18**

#### **Bond and note registration requirements**

Sec. 18. A district bond or note issued in connection with a financing under this chapter is exempt from the registration requirements of IC 23.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-19****Tax exemptions for bonds and notes**

Sec. 19. All district bonds, as well as bond anticipation notes, issued under this chapter and the interest on them are exempt from taxation in accordance with IC 6-8-5.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-20****Actions to contest bonds**

Sec. 20. An action to contest the validity of the district bonds or to prevent their issuance must be brought within thirty (30) days following the publication of the public notice under section 16(a)(1) of this chapter.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-21****Authority granted by chapter**

Sec. 21. This chapter constitutes full authority for the issuance of district bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things by a board, an officer, a commission, a department, an agency, or an instrumentality of the state is required to issue district bonds or to do any act or perform anything under this chapter, except as may be prescribed in this chapter. The powers conferred by this chapter are in addition to, and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by any other statute.

*As added by P.L.44-1994, SEC.11.*

**IC 36-7-29-22****Guaranty of rights**

Sec. 22. The general assembly covenants and agrees with the holders of any district bonds that as long as any district bonds issued under this chapter are outstanding and unpaid, the state:

(1) will not limit or alter the rights of the district to fulfill the terms of any agreements made with the holders of the district bonds; and

(2) will not in any way impair the rights and remedies of the holders of the district bonds;

until the district bonds, together with interest on the district bonds, 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 P.L.44-1994, SEC.11.*

**IC 36-7-29-22.5****Lien on property**

Sec. 22.5. (a) After removal or remedial action is initiated under this chapter, the district may impose a lien on the property on which the removal or remedial action is undertaken. The lien may secure the payment to the district of an amount of money equal to the amount



of money expended periodically by the district to finance the removal or remedial action.

(b) In order to perfect a lien arising under subsection (a), the district must file notice of the lien in the office of the county recorder. At least thirty (30) days before filing notice of the lien in the office of the county recorder, the district must provide by certified mail to:

- (1) the owner of the real property that would be subject to the lien, at the owner's last known address; or
- (2) the tenant or other person having control of the real property that would be subject to the lien, at the last known address of the tenant or other person, if the owner of record cannot be identified;

a written notice of the date on which the district intends to impose a lien under subsection (a). The district shall also provide the county recorder with a copy of the written notice required by this subsection.

(c) When a notice of a lien arising under subsection (a) is presented to the county recorder for filing, the county recorder shall enter the lien appropriately in the entry book and in the miscellaneous record. The entries made under this subsection must show the following:

- (1) The date of filing.
- (2) The book and page number or instrument number.
- (3) The name of the person named in the notice.
- (4) A legal description of the property if appropriate.
- (5) A serial number or other identifying number given in the notice.

(d) After a notice of a lien is filed with the county recorder under subsection (c), the district shall provide notice of the filing of the lien by certified mail to:

- (1) the owner of the property that is subject to the lien, at the owner's last known address; or
- (2) the tenant or other person having control of the property that is subject to the lien, at the last known address of the tenant or other person, if the owner of record cannot be identified.

(e) Subject to subsection (f), when a certificate of discharge of a lien arising under this section is:

- (1) issued by the board or its designated representative; and
- (2) presented for filing in the office of the county recorder;

the county recorder shall record the certificate of discharge as a release of the lien.

(f) To be recorded under subsection (e), the certificate must refer to the county recorder's book and page number or instrument number under which the lien was recorded.

(g) When recording a release of a lien under subsection (e), the county recorder shall inscribe, in the margin of each entry made to record the lien under subsection (d), a reference to the place where the release is recorded.

(h) Upon:

- (1) the recording of the certificate of discharge as a release under subsection (e); and

- (2) the inscribing of the references to the release under this section;
- a certificate of discharge of a lien arising under subsection (a) operates as a full discharge and satisfaction of the lien unless the references to the release inscribed under subsection (e) specifically note the release as a partial lien release.
- (i) A lien created under subsection (a) continues until the earlier of the following:
- (1) The full discharge and satisfaction of the lien.
  - (2) The expiration of a twenty (20) year period from the date of the creation of the lien, unless an action to foreclose the lien is pending.

*As added by P.L.60-1999, SEC.1.*

### **IC 36-7-29-23**

#### **Construction of chapter**

Sec. 23. This chapter is supplemental to all other statutes covering the funding of substance removal or remedial action.

*As added by P.L.44-1994, SEC.11.*