

IC 36-9-28

Chapter 28. Certain Watercourse, Levee, Sewer, and Drain Improvements

IC 36-9-28-1

Application of chapter

Sec. 1. This chapter applies to all municipalities other than a consolidated city.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-2

Order to construct or improve; issuance; drawings and specifications for project

Sec. 2. A municipal works board acting under this chapter may issue an order to construct or improve a levee, change or improve a natural or artificial watercourse, drain a section of land, or construct a sewer or drain, if:

- (1) the proposed project is designed to benefit land inside and outside the corporate boundaries of the municipality; and
- (2) the works board finds that the proposed project is necessary for the welfare of all or part of the municipality.

If the works board issues such an order, it shall have the necessary drawings and specifications for the project prepared and filed in its office.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-3

Order to construct or improve; considerations; filing of record of proceedings

Sec. 3. (a) In making an order for a project under this chapter, the municipal works board shall consider whether the project will beneficially or injuriously affect any property outside the corporate boundaries of the municipality.

(b) If the works board finds that the proposed project will injuriously or beneficially affect property outside the corporate boundaries of the municipality, it shall file with the circuit court for the county a record of all the proceedings concerning the project, including:

- (1) a list of all persons whose property will be affected, as determined from the records of the county at the time the works board passes the order for the project; and
- (2) a description of the boundaries of the affected area.

The proceedings shall be docketed in the circuit court in the same manner as other civil actions, and the court shall fix a time when the proceedings shall be heard.

(c) If the works board finds that the proposed project will not affect property outside the corporate boundaries of the municipality, it may not proceed with the project under this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-4

Notice of hearing; answer; judgment

Sec. 4. (a) After the record is filed under section 3 of this chapter, the clerk of the circuit court shall give notice to all persons who are mentioned in the record or who will be affected by the proposed project. The notice must:

- (1) be published in accordance with IC 5-3-1;
- (2) name a date on which the court will hold a hearing on the proposed project; and
- (3) describe the boundaries of the area affected by the proposed project.

(b) At the hearing, which may be adjourned from time to time, persons who own property in the area affected by the proposed project may file an answer showing why the works board should not proceed with the project. The court shall hear the evidence and determine whether the works board should proceed.

(c) If the court finds that the works board should proceed with the project substantially as described in the record, it shall enter judgment accordingly. Otherwise, the court shall dismiss the proceedings.

(d) The court's judgment under this section may not be appealed. *As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.85.*

IC 36-9-28-5

Control and supervision of work; letting of contract; reporting; filing

Sec. 5. If, under section 4 of this chapter, the court finds that the municipal works board should proceed with a proposed project, the works board shall control and supervise work for the project. The works board shall:

- (1) advertise for bids for the work; and
- (2) let a contract or contracts for the work, subject to financing.

The works board shall report the letting of the contract or contracts to the court, together with an estimate of other project costs, to be filed with the proceedings concerning the project.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-6

Board of assessors; duties; appeals from assessments; hearings; roll of property owners; corrections; actions to contest; costs

Sec. 6. (a) After the letting of a contract or contracts under section 5 of this chapter, the circuit court shall appoint three (3) competent, disinterested residents of the county to serve as the board of assessors for the project. The assessors shall take an oath to honestly and faithfully perform their duties as assessors.

(b) The board of assessors shall:

- (1) inspect the line of the proposed project and the property within the area affected by the project;
- (2) estimate and assess the benefits against each piece of

property to be benefited by the project;

(3) award damages to each piece of property to be injuriously affected by the project; and

(4) prepare and file with the clerk of the circuit court an assessment roll of the assessment against each property owner.

The clerk shall then give written notice of the assessment and the right to appeal by certified mail or personal service upon each of the property owners being assessed as his name and address appears on the tax records of the county. The clerk shall make and file in his records an affidavit of the giving of the notice.

(c) Appeals from the assessments may be made to the circuit court within fifteen (15) days after the time of the filing of the clerk's affidavit of service. The appeals shall be conducted in the manner directed by the circuit court.

(d) In hearing appeals of assessments, the board of assessors shall:

(1) sit at the times and places directed by the court;

(2) administer oaths;

(3) send for persons and papers; and

(4) hear testimony concerning the question of benefits and damages to be assessed.

The hearing may be continued from day to day.

(e) After hearing any appeals, the board of assessors shall finalize the roll of property owners whose property will be benefited or injured by the project, including:

(1) a description of the property affected; and

(2) the amount of the benefits or damages to the property, listed opposite each description;

and shall file it with the circuit court.

(f) The board of assessors may correct a mistake or supply an omission in the roll at any time. Proceedings under this chapter are not defective or void because of an omission or defect in the roll, and a property owner may not object to the proceedings on the ground of any mistake in or omission of:

(1) the name of any person; or

(2) the description of any property.

The circuit court may call the board together to make any necessary additions or corrections to the roll.

(g) An action to contest the assessments and the acts of the board of assessors must be commenced within:

(1) thirty (30) days after the affidavit of service by the clerk of the circuit court; or

(2) if an appeal is taken, within thirty (30) days after the filing of the final report with the court.

(h) The circuit court shall make reasonable allowances to the board of assessors and for attorney's fees, and shall tax these allowances with the other costs of the proceedings. The allowances are payable out of money available from bond proceeds, assessments, or the municipal treasury.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-7

Application of other assessment statutes

Sec. 7. Except as otherwise provided by this chapter, the statutes concerning street and sewer improvement assessments apply to assessments made under this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-8

Acquisition of real or personal property required for project; condemnation; purchase

Sec. 8. If any real or personal property inside or outside the municipality is required for a project under this chapter:

(1) it may be condemned and paid for in the manner provided by law; or

(2) the municipal works board may purchase and take a conveyance for it for the use and benefit of the municipality, in the manner prescribed for other purchases by the municipality.

All further proceedings concerning a project under this chapter must be performed in accordance with the statutes governing public improvements in municipalities.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-9

Bonds; issuance; payments; financing agreement; public sale

Sec. 9. (a) If the financing for a project under this chapter is to be provided by the federal government, one (1) or more bonds may be issued at any time after the filing of the assessment roll with the circuit court under section 6 of this chapter.

(b) Bonds issued under this section are payable solely from:

(1) the assessments made or to be made against the property benefited; or

(2) the money appropriated for that purpose by the municipality; and are not a general obligation of the municipality.

(c) Notwithstanding any other law, a financing agreement with the federal government may provide that a municipal ordinance may determine:

(1) the interest rate or rates on the bonds and the assessments;

(2) the time or times of maturities or of principal and assessment payments;

(3) the terms, if any, for redemption of the bonds;

(4) the medium and the place or places for payment of the bonds, including payment by mail to an owner of any fully registered bond; and

(5) any other necessary terms and conditions.

(d) Bonds issued under this section need not be advertised for public sale.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-10

Completion and acceptance of project; certification; benefits

assessed

Sec. 10. (a) When the municipal works board finally accepts a project under this chapter, it shall certify the completion and acceptance of the project to the circuit court. The court shall then direct the clerk of the court to make out two (2) copies of a list showing:

- (1) the owners of the property affected by the project;
- (2) a description of each parcel of property affected by the project; and
- (3) the benefits and damages assessed upon or in favor of each parcel.

The clerk shall certify the copies under the seal of the court, and shall deliver one (1) copy to the municipal fiscal officer and one (1) copy to the county treasurer.

(b) If the works board finds that the project is necessary for the public welfare of the municipality and that the benefits assessed will fall below the amount required to pay the damages awarded and to pay for the project, the board shall order that any balance required for this purpose shall be paid by the municipality out of the general fund or out of any other available money. If the works board finds that the benefits assessed exceed the amount of financing needed, each assessment shall be reduced on a pro rata basis.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-11

Board of directors; duties; petition for appointment; notice of hearing; appearance; judgment

Sec. 11. (a) After a project is completed and approved under this chapter, the care, management, control, repair, and maintenance of the project may be placed under the jurisdiction of a board of directors appointed under this section.

(b) A petition requesting the appointment of a board of directors for the project may be filed with the clerk of the circuit court. The petition may be signed by:

- (1) the municipal works board, if all or part of the municipality is located in the area affected by the project;
- (2) the executive and legislative body of a township, if all or part of the township is located in the area affected by the project;
- (3) any twenty-five (25) landowners who reside in a municipality and whose lands are located in the area affected by the improvement; or
- (4) any twenty-five (25) landowners who do not reside in a municipality and whose lands are located in the area affected by the project.

The petition shall be docketed as a pending action, and the court shall fix a time when the petition shall be heard.

(c) After the petition is filed and docketed, the clerk of the circuit court shall give notice of the hearing by publication in accordance with IC 5-3-1. The notice shall be addressed to all persons who were

originally assessed for the construction of the project.

(d) Any person owning land located in the area affected by the project may appear at the hearing and be heard, either in person or by his attorney.

(e) If the circuit court determines that a board of directors should be appointed and assessments should be imposed for the care, management, control, repair, and maintenance of the project, the court shall enter a judgment accordingly. If the court enters such a judgment, two (2) members of the board of directors shall be appointed by the county executive and one (1) member of the board of directors shall be appointed by the municipal executive. The three (3) appointed persons must be qualified under section 12 of this chapter.

(f) If the court determines that a board of directors should not be appointed, it shall dismiss the petition.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.45, SEC.86; P.L.7-1983, SEC.40.

IC 36-9-28-12

Board of directors; qualifications; terms; vacancy

Sec. 12. (a) A board of directors appointed under this chapter consists of three (3) directors, who must own land assessed for the construction of the project. One (1) of the directors must be a resident of the municipality affected by the improvement, and two (2) of the directors must be residents of an unincorporated area.

(b) One (1) of the original directors shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years. After the expiration of the original terms, all directors shall be appointed for terms of three (3) years.

(c) The appointing authority shall fill any vacancy on the board of directors by appointment for the remainder of the unexpired term.

As added by Acts 1981, P.L.309, SEC.104. Amended by P.L.7-1983, SEC.41.

IC 36-9-28-13

Board of directors; compensation

Sec. 13. Each member of a board of directors appointed under this chapter is entitled to compensation, at a rate fixed by the circuit court but not to exceed thirty-five dollars (\$35) per day, for his services under this chapter. The compensation of the board shall be paid from the assessments made under section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104. Amended by Acts 1981, P.L.317, SEC.33.

IC 36-9-28-14

Board of directors; employment of assistants; compensation

Sec. 14. A board of directors appointed under this chapter may employ the assistants necessary to perform its duties under this chapter. The compensation of the assistants shall be paid from the assessments made under section 16 of this chapter.

As added by Acts, 1981, P.L.309, SEC.104.

IC 36-9-28-15

Board of directors; necessary repairs; record of proceedings and of costs and expenses of repairs

Sec. 15. (a) A board of directors appointed under this chapter shall make all repairs necessary to keep the project in its original condition. If, in making the repairs, it is necessary to change the line and location of a ditch at any point, the board may do so, but the board may not change its general line or location.

(b) The board of directors shall keep a record of its proceedings and shall note in that record all expenses incurred in making repairs. The board shall file with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due to each person. The auditor shall then draw his warrant in favor of each person for the amount due them. The amounts due shall be paid out of county revenues and shall be reimbursed to the county from the assessments made under section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-16

Assessments; considerations; quotient; negligence of owner or occupant of land; assessment date; certification of assessment; lien

Sec. 16. (a) The money necessary to pay costs incurred by a board of directors in the management and maintenance of a project, including money to be reimbursed to a county under section 15 of this chapter, shall be derived from assessments made under this section.

(b) The board of directors shall determine:

- (1) the total number of acres of land benefited by the project and located outside the municipality;
- (2) the total number of lots benefited by the project and located outside the municipality; and
- (3) the total number of lots benefited by the project and located inside the municipality.

Each lot, whether it is located inside or outside the municipality, shall be counted as one-half (1/2) acre of land, and each major fraction of an acre shall be counted as one (1) full acre.

(c) When the board of directors has determined the total number of acres subject to assessment and the total amount of money required for the next year, the board shall divide the total amount required by the total number of acres assessed. The quotient obtained is the amount per acre to be assessed for the next calendar year.

(d) If repairs have been rendered necessary by the act or negligence of the owner or occupant of any lands, or of his employee or agent, the cost of the repairs shall be assessed against only his lands.

(e) All assessments shall be made before August 2 of each year.

(f) The board of directors shall certify the total amount assessed against lots located inside the municipality to the municipal fiscal

officer. This amount shall be included in the municipal budget, appropriated by the municipal legislative body, and paid out of the municipal general fund.

(g) The board of directors shall make out a certified copy of the assessments made on land outside the municipality, and shall file the copy with the auditor of the county in which the lands and lots are located. The auditor shall place the assessments against the land upon the next tax duplicate. The assessment is a lien from the time the certified copy of the assessments is filed, and shall be collected as other state and county taxes are collected. All the laws regulating the payment and collection of state and county taxes, the assessment of penalties and interest, and the sale of property for delinquent taxes apply to the payment and collection of assessments placed upon tax duplicates under this subsection.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-17

Bonds; issuance when cost of maintaining project exceeds amount that can be raised

Sec. 17. If a board of directors finds that the cost of maintaining a project exceeds the amount that can be raised in any year, the board may issue bonds in the manner in which bonds are issued for construction of levees. However, the bonds and the interest on the bonds shall be paid by assessments made in the manner prescribed by section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.

IC 36-9-28-18

Standing water; removal; costs

Sec. 18. The board of directors in charge of a project may pump out or remove from lands drained by a ditch any standing water that has no means of outlet. The board may purchase pumps or adopt other suitable means for the removal of the water, and the costs necessarily incurred on account of any work done under this section shall be assessed against the lands benefited by the removal of the water. The costs shall be paid, assessed against the lands benefited, and collected in the manner prescribed by section 16 of this chapter.

As added by Acts 1981, P.L.309, SEC.104.