

IC 36-9-29

Chapter 29. Flood Control Districts in Certain Cities

IC 36-9-29-1

Application of chapter

Sec. 1. This chapter applies to second and third class cities.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.44, SEC.60.

IC 36-9-29-2

Construction or installation of flood control works; construction or elevation of highways and bridges

Sec. 2. A city acting under this chapter may:

- (1) construct or install the flood control works necessary to exclude, divert, remove, reduce, or prevent flood waters caused by the overflowing of watercourses or by storm or surface waters in or about a flood control district established under this chapter; and
- (2) construct or elevate highways and bridges necessary to provide reasonable traffic facilities through or over any structures constructed as part of the flood control works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-3

Declaratory resolution; adoption; contents

Sec. 3. (a) Whenever a city works board determines that:

- (1) it is necessary for the general welfare, safety, and security of the city and its inhabitants to carry out any project for the protection of the city and its inhabitants from floods;
- (2) the project cannot be carried out in the best or most economical manner without beneficially or injuriously affecting land or other property located outside the corporate boundaries of the city; and
- (3) the required flood control works can best be provided for and maintained by the establishment of a special taxing district for that purpose;

it may adopt the declaratory resolution described in subsection (b).

(b) The declaratory resolution must include the following items:

- (1) The necessity for providing flood protection for all or part of the city and for all or part of the contiguous territory within four (4) miles outside the corporate boundaries of the city, including all or part of any town within the four (4) mile limit. The necessity must be based upon floods that have occurred in the city and the contiguous territory in the preceding ten (10) years.
- (2) The general character of the flood control works that the works board considers necessary to afford proper protection, and the general location and route of the levees, dikes, retaining walls, and other structures that the board considers necessary as part of those works.

(3) A general description of the boundaries of the territory that will be beneficially affected by the construction of the proposed works.

(4) A general estimate of the cost of the property that must be acquired for the construction of the proposed works, including the estimated amounts of damages to property injuriously affected but not acquired.

(5) A general estimate of the cost of construction and installation of the proposed works, based on the available information.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-4

Petition to establish district; procedure

Sec. 4. (a) Upon the adoption of a declaratory resolution under section 3 of this chapter, the city works board shall file with the circuit court for the county in which the city is located a petition requesting the establishment of a flood control district to include the territory described in the resolution. A copy of the resolution shall be attached to the petition. The petition shall be docketed in the court as a pending cause, and shall be entitled "In the matter of the city of _____, petition for the establishment of flood control district".

(b) Upon the filing of the petition, the circuit court shall fix a time when the petition shall be heard, which may not be less than fifteen (15) nor more than thirty (30) days after the filing. The clerk of the court shall publish a notice of the hearing in accordance with IC 5-3-1. The notice must:

- (1) contain a brief summary of the petition;
 - (2) set out the description of the boundaries of the proposed district, as set out in the resolution attached to the petition;
 - (3) state the time and place fixed for the hearing on the petition;
- and
- (4) advise all interested parties that they may appear and be heard.

(c) The clerk of the circuit court shall certify and send to the attorney general, by registered mail, a copy of the petition, together with a copy of the resolution attached to the petition and a copy of the notice of hearing.

(d) After the publication and mailing of the notice, all persons having any interest in property or highways located in the petitioning city, or within four (4) miles outside the corporate boundaries of the city, are conclusively presumed to have notice of the pendency of the petition and all subsequent proceedings had under the petition.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.87.

IC 36-9-29-5

Court hearing; objections; judgment; dismissal; interlocutory order on boundaries; continued hearing

Sec. 5. (a) The circuit court shall hear a petition filed under section 4 of this chapter without a jury. The hearing may be continued and adjourned from time to time as the court may direct. There may be a change of judge as in civil cases, but no change of venue from the county.

(b) All persons affected by the establishment of the proposed flood control district or the construction of the proposed flood control district or the construction of the proposed flood control works may file objections showing any reason why:

- (1) the district should not be established;
- (2) the works should not be constructed; or
- (3) their property should or should not be included in the proposed district.

The court shall hear evidence and determine the facts upon these issues. All objections shall be filed at least two (2) days before the date fixed for the hearing.

(c) If the court finds that a necessity exists for the establishment of a flood control district and the construction and installation of flood control works as requested by the petition, the court shall render judgment accordingly and shall enter a decree establishing the district, describing it in such a manner that the property included in it may be sufficiently identified and segregated to permit the levy and collection of the special taxes provided for by this chapter. There is no appeal from such a judgment, and, after the entry of such a decree, the establishment of the district may not be questioned in any action or proceeding, except as otherwise provided by this chapter.

(d) If the court finds that no necessity exists for the establishment of the flood control district, the proceedings shall be dismissed at the cost of the petitioning city.

(e) If it appears to the court that the boundaries of the flood control district as described in the declaratory resolution should be changed, or that changes in the flood control works as described in the declaratory resolution should be made, and that such changes will beneficially or injuriously affect property that would not have been so affected by the district and works proposed in the declaratory resolution, then the court may enter an interlocutory order to that effect and fix a time for further hearing on the petition.

(f) The date for a hearing under subsection (e) may not be less than ten (10) nor more than fifteen (15) days after the order. The court shall direct the clerk of the court to publish a notice of the hearing that sets out a brief summary of the order, including a brief description of the changes the court proposes to make in respect to the boundaries or works. The notice shall be published in accordance with IC 5-3-1. The notice must state the time and place for the continuation of the hearing on the petition, and advise all parties affected by the proposed changes that they may appear and be heard. Objections may be filed in the manner prescribed by subsection (a), but must be filed at least two (2) days before the time fixed for the continuation of the hearing and must be based solely on the changes proposed to be made. If, at the conclusion of the continued hearing,

the court finds that all or part of the proposed changes should be made, or that the district should be established and the works constructed as provided for in the declaratory resolution, the court shall render judgment accordingly and enter a decree as provided under subsection (c).

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.88.

IC 36-9-29-6

Special benefit district; territory included

Sec. 6. (a) If twenty-five percent (25%) or more of the territory included within the corporate boundaries of the city petitioning for the establishment of a flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the corporate boundaries of the city is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation from floods and will not be included within or protected by the proposed flood control works.

(b) If twenty-five percent (25%) or more of the territory within the corporate boundaries of any town included in whole or in part in the flood control district has been inundated by flood waters during the preceding ten (10) years, then all of the property within the town is conclusively presumed to be specially benefited and shall be included in the district, except for property that is subject to inundation and will not be included within or protected by the proposed flood control works.

(c) Territory that:

(1) is outside the corporate boundaries of a municipality; and

(2) lies at an elevation higher than three (3) feet above the highest flood stage during the preceding ten (10) years;

may be included in a flood control district only if it will be included within or protected by the proposed flood control works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-7

Special taxing district for flood control purposes; special benefit tax

Sec. 7. Upon the entry of a decree under section 5 of this chapter, a flood control district constitutes a special taxing district for flood control purposes. All property in the district is subject to a special benefit tax for the purpose of providing money to pay the cost of constructing and maintaining the flood control works. The special benefit tax, which shall be levied in the manner prescribed by this chapter, constitutes the amount of special benefits accruing to property in the district on account of the construction and maintenance of the works.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-8

Board of commissioners; membership; oath; removal and

appointment; compensation; meeting; quorum; powers and duties; conflict of interest

Sec. 8. (a) If a flood control district is established under this chapter, the construction of the flood control works shall be carried out under the control of a flood control board, to be known as "Board of Commissioners, _____ Flood Control District" (designating the name of the city instituting the proceedings for the establishment of the district).

(b) The flood control board consists of:

- (1) the members of the works board of the city petitioning for the establishment of the flood control district; and
- (2) the executive of each town or township included in whole or in part in the district.

(c) Before entering upon his duties, each commissioner of the flood control board shall take and subscribe the usual oath of office, and shall file it with the clerk of the circuit court.

(d) If any commissioner of the flood control board fails or refuses to qualify, or after qualifying fails or refuses to take part in the proceedings of the board, then the board, by a majority vote, may petition the circuit court for the appointment of a new commissioner. After a hearing and a showing of cause, the court may remove the offending commissioner. If the court removes a commissioner, the executive of the city shall appoint a new commissioner. The new commissioner must be a freeholder residing in the part of the district previously represented by the commissioner removed.

(e) Each commissioner of a flood control board is entitled to a salary fixed by the board, subject to the approval of the legislative body of the city petitioning for the establishment of the flood control district.

(f) Within ten (10) days after the entry of the decree establishing the flood control district, the commissioners of the flood control board shall meet at the office of the works board of the city petitioning for the establishment of the district, and shall organize by electing one (1) of their number president and one (1) vice president. These officers shall perform the duties usually pertaining to their offices, and shall serve for a period of one (1) year or until their successors are elected and qualified. The board shall also appoint a secretary pro tempore to keep the records of the proceedings until the board appoints a permanent secretary. The minutes of the board shall be kept in a permanent minute book, and the first entry in the book must be a copy of the decree establishing the district and fixing its boundaries.

(g) A majority of the commissioners of the flood control board constitutes a quorum for the transaction of any business. If the board consists of an even number of commissioners and there is a tie vote on any question, the vote of the president on the question is controlling.

(h) The flood control board may:

- (1) sue and be sued;
- (2) exercise the power of eminent domain;

(3) adopt rules governing the holding of regular meetings, the calling of special meetings, methods of procedure, and similar matters; and

(4) perform all acts necessary and proper for carrying out the purposes of the flood control district.

(i) The office of the flood control board shall be maintained at the office of the works board of the city petitioning for the establishment of the district, or at another place furnished by the city. All records of the board shall be kept at the office and are public records, open to inspection by the public during business hours.

(j) A commissioner, appointee, or employee of the flood control board may not have any direct or indirect interest in any contract let by the board, or in the furnishing of supplies or materials to the board.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.34; P.L.7-1983, SEC.42.

IC 36-9-29-9

Executive secretary; compensation; bond; duties

Sec. 9. (a) The flood control board shall appoint an executive secretary. The executive secretary may not be a commissioner of the board before the completion of the flood control works, but may be after their completion.

(b) The salary of the executive secretary shall be fixed by the flood control board.

(c) The executive secretary may be required to furnish bond in the amount the flood control board finds necessary. The cost of the bond may be borne by the district.

(d) The executive secretary:

(1) is the custodian of the records of the district;

(2) shall assist the board in the performance of its duties, as directed by the board; and

(3) shall certify copies of the official records and files of the district that may be required of him by this chapter, or by any person ordering copies and paying the reasonable cost of transcription.

Certification of a record by the executive secretary is prima facie evidence of the record's accuracy.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.35.

IC 36-9-29-10

District engineer; duties; compensation

Sec. 10. (a) The flood control board shall appoint a district engineer, who shall perform the duties assigned by the board.

(b) The engineer's compensation shall be fixed by the flood control board. However, when the engineering services are performed by the engineer of the city, the city engineer may receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981,

P.L.317, SEC.36.

IC 36-9-29-11

Attorney; duties; compensation

Sec. 11. (a) The flood control board shall appoint one (1) or more attorneys, who shall perform the duties assigned by the board.

(b) The compensation of the attorney or attorneys shall be fixed by the board. However, when the legal services are performed by an attorney of the city legal department, that attorney is entitled to receive this compensation.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.37.

IC 36-9-29-12

Employees; compensation; duties

Sec. 12. The flood control board may employ and fix the compensation of all the employees necessary to enable it to perform its duties under this chapter without undue delay.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-13

Employees; term of employment

Sec. 13. All the employees of a flood control district, including the executive secretary, engineer, and attorneys, serve at the pleasure of the flood control board.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-14

County treasurer; duties

Sec. 14. (a) The county treasurer shall act as treasurer of the flood control board and the flood control district. The county treasurer shall make all collections of the special benefit taxes levied by the board, without any additional compensation other than that allowable in the case of the collection of general taxes by the treasurer.

(b) The county treasurer shall give bond in the amount and with the surety prescribed by the flood control board. The cost of the bond shall be paid out of the revenues of the district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-15

County auditor; duties

Sec. 15. The county auditor shall include on the tax duplicates for the county the special benefit taxes levied for the flood control district and shall perform the same duties in connection with the levy and collection of these taxes as are performed for general taxes levied by any political subdivision in the county.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.317, SEC.38.

IC 36-9-29-16

Federal aid; acceptance; conditions

Sec. 16. (a) The flood control board may, on behalf of the flood control district, accept any legal, engineering, financial, construction, or other aid from the federal government or any other source.

(b) If the federal government agrees to construct or furnish and install all or part of the flood control works required by the flood control district, and to furnish the necessary plans and specifications, the flood control board shall accept the offer and adopt the plans and specifications as its own, unless they do not conform to the decree establishing the district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-17**Use of territory in connection with construction of flood control works; authorization**

Sec. 17. (a) If the state or a political subdivision has territory that will be affected in whole or in part by flood control works, it may grant to the flood control district the use of any property in which it has an interest, including its rights in public ways, for use in connection with the construction of the flood control works, upon the terms agreed upon. Such a grant must be authorized by:

- (1) the governor and the state agency having jurisdiction of the property, for the state; or
- (2) the fiscal body, for a political subdivision.

(b) Grants under this section shall be made in the form of a deed or other written instrument that may be recorded. The grant may provide that when property is no longer needed for the purposes of the flood control district, the property reverts to the state, or the political subdivision, making the grant.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-18**Plans and specifications; preparation, adoption, and filing; objections; hearing; judgment or decree**

Sec. 18. (a) After its organization, the flood control board shall prepare and adopt:

- (1) plans and specifications for the flood control works to be constructed or installed by or for the flood control district;
- (2) estimates of the cost of that part of the works to be contracted for or constructed at the expense of the district;
- (3) maps and plats showing the general scope of the works and the boundaries of all lands considered necessary to be acquired for the works or that will be injuriously affected in connection with the construction of the works; and
- (4) an acquisition and damage roll showing the separate descriptions of all land and other property to be acquired or injuriously affected by the construction and installation of the works, and an estimate of the total cost of the acquisition or damages.

It is not necessary to prepare, adopt, and file the plans, specifications,

and other items required by this section at one (1) time.

(b) In adopting plans under this section, the flood control board, with the approval of the circuit court, may deviate from the general plans approved at the time of the establishment of the district if the board finds that:

- (1) it is not practicable to construct or install the works in accordance with that plan; or
- (2) the deviation will provide greater protection.

(c) Upon adoption of the plans, specifications, and other items, one (1) copy shall be placed on file at the flood control board's office, and one (1) copy shall be filed in the office of the clerk of the circuit court. These copies are open to inspection by the public. The board shall have notice of the filing published in accordance with IC 5-3-1. The board shall file proofs of publication of the notice with the clerk of the court. The notice must refer to the title and number of the cause in which the district was established and state that the plans, specifications, estimates, maps, plats, and roll required by this section are on file at the offices of the board and clerk of the court, and may be inspected by all interested parties.

(d) Any person owning property injuriously affected by the construction or installation of the proposed flood control works may file separate objections with the circuit court within fifteen (15) days after the first publication of notice under subsection (c). The sole ground of objection is that, due to an unnecessary deviation from the general plan approved at the time of the establishment of the district, the property of the objectors will be injuriously affected or should not be included in the district. The court shall set the objections for hearing without delay, hear evidence, and determine the facts. However, the filing of objections does not delay or interfere with the letting of contracts or the construction of the flood control works, except to the extent that the court may direct by temporary order before the hearing or by judgment after the hearing.

(e) If, after a hearing under subsection (d), the court finds that there has been an unnecessary deviation from the general plan approved at the time of the establishment of the district, or that any of the property included in the district as originally established should be eliminated from the district, the court shall:

- (1) render judgment accordingly; and
- (2) enter a decree:
 - (A) setting out the deviation to be corrected; and
 - (B) describing, by metes and bounds, the property eliminated.

A copy of the decree shall be entered in the records of the board, and the plans shall be changed to meet the requirements of the decree.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.89.

IC 36-9-29-19

Acquisition of property; purchase, contract, or eminent domain

Sec. 19. After the flood control board has published notice of the filing of the acquisition and damage roll under section 18(c) of this

chapter, it may acquire the property described in the roll by purchase, by contract, or by the exercise of the power of eminent domain under IC 32-24.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.2-2002, SEC.125.

IC 36-9-29-20

Contracts; letting procedure

Sec. 20. (a) All contracts of the flood control district for the construction of flood control works shall be let by the flood control board under the statutes concerning the letting of contracts for public improvements by the works board of the city. The flood control board may let one (1) contract for the entire works or separate contracts for parts of the works.

(b) All contracts shall be awarded to the lowest and best bidder. However, a contract may not be let at a bid higher than the cost of the work, as shown by the estimates previously adopted and filed, unless approved by the circuit court on petition of the flood control board.

(c) All contracts must be in writing and signed by the flood control board's president or vice president and by its executive secretary.

(d) The validity of a contract may be questioned only in an action to enjoin the execution of the contract, filed within ten (10) days after the date of its execution.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-21

Federal labor, material, machinery, and equipment; acceptance of offer; additional labor, material, machinery, and equipment

Sec. 21. If the federal government or another source agrees to furnish all or part of the labor, material, machinery, and equipment required for any construction or installation, the flood control board may accept the offer. The board may supply the necessary additional labor, material, machinery, and equipment to carry out the agreement.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-22

Loans for preliminary expenses; sale of warrants; advancement of funds

Sec. 22. (a) To facilitate the carrying out of preliminary proceedings and provide money for the payment of expenses before the issuance of bonds under this chapter, the flood control board may, by resolution, authorize the making of loans in amounts approved by the circuit court. The loans shall be evidenced by callable warrants payable out of the proceeds of bonds, when available, and the warrants may bear interest at any rate. If the amount of warrants to be issued at any one (1) time exceeds five thousand dollars (\$5,000), they shall be sold at public sale after notice given in accordance with IC 5-3-1. The warrants shall be sold to the bidder offering to purchase them at the lowest actual interest cost to the district, and shall be executed in the name of the district by the board's president

or vice president and by its executive secretary.

(b) Any unit having territory included within the flood control district may advance money to the district. The advances must be authorized by the fiscal body of the unit. The advances may be made without appropriation, and warrants evidencing the advances shall be issued by the district, bearing the rate of interest provided for in the resolution or other action authorizing the advances.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.90.

IC 36-9-29-23

Bonds; issuance; amount; sale procedure

Sec. 23. (a) The flood control board shall, by resolution, direct that bonds be issued in the name of the flood control district:

(1) for the purpose of procuring money to pay the cost of acquisition of property, the cost of construction or installation of flood control works, or both; and

(2) in anticipation of the collection of the special benefit taxes to be levied under this chapter.

(b) The amount of the bonds may not exceed:

(1) the total cost of property to be acquired and the total amount of damages to be awarded on account of property injuriously affected but not acquired, as shown by the acquisition and damage roll previously adopted and filed by the flood control board or as determined by court action;

(2) the contract price of the works contracted for, or the estimated cost of additional labor, materials, machinery, and equipment when the federal government or others have agreed to supply a part of those items for use on the construction of any part of the works and no construction contract is to be let;

(3) an amount sufficient to pay the cost of supervision and inspection during the period of construction;

(4) all other general, administrative, legal, engineering, and incidental expenses previously incurred on account of or in connection with the establishment of the district, the administration of its affairs, the acquisition of property, and the construction of the works, together with the expenses to be incurred in connection with the issuance and sale of bonds; and

(5) an amount sufficient to pay any outstanding warrants issued for the purpose of obtaining money for expenses before the issuance of bonds.

(c) If different parcels of land are to be acquired or more than one (1) contract for work is let by the flood control board at approximately the same time, the board may provide for the total cost of the land or work in one (1) issue of bonds. If the cost of acquiring property or the amount required for the payment of damages to property not acquired exceeds the board's estimate of the amount required for that purpose, additional bonds may be issued to supply the deficiency.

(d) The bonds shall be issued in any denomination not exceeding

one thousand dollars (\$1,000), and in not less than twenty (20) nor more than sixty (60) series, which must be as nearly equal as possible considering the amount of the issue, the number of serial maturities, and the denominations to be used.

(e) The bonds are payable one (1) series each six (6) months. The first payment shall be made on January 1 in the second year following the date of their issue, if a tax levy to meet the requirements of the bonds is made in the year in which the bonds are issued. Otherwise, the first series of bonds is payable on January 1 of the third year following the date of their issue.

(f) The bonds are negotiable instruments.

(g) The bonds may bear interest at any rate, with the exact rate to be determined by bidding. The interest is payable semiannually on January 1 and July 1 of each year, with the first interest payable on July 1 preceding the maturity date of the first series of bonds.

(h) The bonds shall be signed by the president or vice president of the flood control board, and attested by the executive secretary of the board. The interest coupons shall be executed by placing on them the facsimile signature of the president or vice president whose signature appears on the bonds.

(i) The flood control board may not issue any bonds of the flood control district payable out of special benefit taxes when the total amount outstanding for that purpose, including the bonds issued and to be issued, is in excess of five percent (5%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All bonds or obligations issued in violation of this subsection are void.

(j) The bonds are not a corporate obligation or indebtedness of any unit having territory included in the district, but are an indebtedness of the flood control district as a special taxing district. The bonds are payable solely out of the special benefit taxes levied under this chapter. The bonds must state these facts upon their face, together with the purpose for which they are issued.

(k) The bonds of any issue may be sold in parcels or as a whole. Notice of the sale must be given by publication in accordance with IC 5-3-1.

(l) The bonds shall be sold to the highest qualified bidder, but may not be sold for less than their par value. The highest bidder is the person who offers the lowest net interest cost to the district, as determined by computing the total interest on all of the bonds to their maturities and then deducting the premium bid, if any.

(m) When the flood control board sells the bonds, the executive secretary of the board shall have the bonds prepared and executed, and shall deliver them to the county treasurer, together with a certificate showing the amount to be paid by the purchaser. Upon the payment of the purchase price the treasurer shall deliver the bonds to the purchaser. The executive secretary shall furnish the successful bidder a transcript of the proceedings relating to the authorization and issuance of the bonds, together with the other documents necessary to establish the validity of the bonds. The transcript and other

documents are presumptive evidence of the validity of the bonds, and shall be accepted in evidence in any litigation relating to or affecting the bonds.

As added by Acts 1981, P.L.309, SEC.105. Amended by Acts 1981, P.L.45, SEC.91; P.L.6-1997, SEC.226.

IC 36-9-29-24

Bonds for replacement, enlargement, extension, or construction of additional works; costs exceeding amount available

Sec. 24. If the flood control board finds that:

- (1) it is necessary to replace, enlarge, or extend any part of the flood control works or construct additional works in order to protect the district properly; and
- (2) the cost of the replacement, enlargement, extension, or construction will exceed the amount then available out of current maintenance and repair funds;

the board may issue bonds under section 23 of this chapter for that purpose. However, the board must first comply with sections 18, 19, and 20 of this chapter.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-25

Refunding bonds; issuance; payment

Sec. 25. If the flood control district is unable to pay any bonds or the interest on them at the times fixed for payment, refunding bonds may be issued and sold under section 23 of this chapter to obtain money for that purpose. The refunding bonds are payable within the period fixed by the flood control board, which may not exceed ten (10) years.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-26

Bonds issued and their interest exempt from taxation

Sec. 26. All bonds issued under this chapter, together with the interest on them, are exempt from taxation.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-27

Validity of bonds issued

Sec. 27. An action to question the validity of any of the bonds issued under this chapter, or to prevent their issuance, must be brought by the time fixed in the bond sale notice for the receiving of bids. After that time, the bonds may not be contested for any cause.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-28

Flood control district construction fund

Sec. 28. (a) The county treasurer shall keep all proceeds from the sale of bonds under this chapter in a separate fund designated as the " _____ flood control district construction fund". The fund shall

be used only to pay the costs listed in section 23(b) of this chapter. Any money remaining out of the proceeds of the bonds after all of the costs are paid shall be paid into the district bond fund established under section 30 of this chapter.

(b) The flood control board shall approve and order all payments made from the flood control district construction fund, and shall determine the amounts and times of the payments. However, a payment to a contractor may not exceed eighty percent (80%) of the district engineer's estimate of work done by the contractor, and the whole amount of a contract may not be paid until all work to be done under the contract has been accepted by the board as fully completed in accordance with the plans and specifications.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-29

Acquisition of property; payment of costs according to terms of purchase or contract; payment of damages in condemnation; title

Sec. 29. (a) If property is acquired by purchase or contract, payment of costs shall be made according to the terms of the purchase or contract.

(b) If property is condemned, the amount of damages assessed shall be paid as soon as the proceeds from the sale of bonds are available. Upon the payment of the damages, the title of the property paid for is fixed and vested in the flood control district in the manner, to the extent, for the purpose, and subject to the limitations provided by this chapter.

(c) Title to all property acquired shall be taken in the name of the flood control district. Within sixty (60) days after any conveyance or grant of any interest in real property is received by the flood control board, the board shall have recorded the deed or other instrument of conveyance or grant, signed by the grantor, in the recorder's office in the county in which the property is located. In case of condemnation, a copy of the decree, certified by the clerk of the circuit court and showing the amount paid to the clerk on account of the damages awarded, shall be recorded.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-30

Special benefit tax levy to pay for bonds; flood control district bond fund

Sec. 30. (a) For the purpose of obtaining money to pay the bonds and the interest on them, the flood control board shall levy a special benefit tax each year upon all of the property in the flood control district. The tax shall be levied in the amount necessary to pay the principal of the bonds as they mature, together with the interest accruing on them.

(b) The flood control board shall cause the tax levied to be certified to the auditor of the county in which the property subject to the tax is located, before October 2 of each year. The tax levied and certified shall be estimated and entered upon the tax duplicates by the

county auditor, and shall be collected and enforced by the county treasurer in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(c) As the tax is collected by the county treasurer, it shall be accumulated in a separate fund to be known as the " _____ flood control district bond fund", and shall be applied only to the payment of the bonds and the interest on them.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-31

Special benefit tax levy to pay for cost of operation, maintenance, and repair of flood control works; presumption; flood control district maintenance fund; temporary loans

Sec. 31. (a) The flood control board may levy a special benefit tax each year for the purpose of providing for the cost of operation, maintenance, and repair of the flood control works after the completion of the works, including the general expenses of the board, such as salary and wages, that the board finds are not properly chargeable to the proceeds of bonds issued under this chapter. The tax may not exceed eleven and sixty-seven hundredths cents (\$0.1167) on each hundred dollars (\$100) of taxable property in the district, as it appears on the tax duplicates.

(b) The property within the flood control district is conclusively presumed to be benefited to the extent of the annual tax by the maintenance of the district and the maintenance, operation, and repair of the flood control works.

(c) The county auditor shall estimate the tax and enter it upon the tax duplicates, and the county treasurer shall collect and enforce the tax in the same manner as state and county taxes are estimated, entered, collected, and enforced.

(d) The county treasurer charged with the duty of collecting the taxes shall, between the first and tenth days of each month, notify the flood control board of the amount of the tax collected during the preceding month. Upon the date of notification, the treasurer shall credit the amount collected to a fund designated as " _____ flood control district maintenance fund", which may be used only for the purposes stated in this section.

(e) The flood control board has complete and exclusive authority to expend, on behalf of the flood control district, all revenues realized under this section.

(f) The flood control board may, by resolution, authorize and make temporary loans in anticipation of the collection of the special benefit taxes actually levied and in course of collection under this section. The loans mature and shall be paid within the year in which they are made, and may bear interest at any rate payable at the maturity of the loan. The temporary loans shall be evidenced by warrants, and, if the amount of warrants to be issued exceeds five thousand dollars (\$5,000), they shall be sold at public sale in the same manner as the bonds of the district.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.6-1997,

SEC.227.

IC 36-9-29-32

Emergency flood control district fund

Sec. 32. (a) The flood control board may establish an "emergency flood control district fund", which may not exceed at any time one hundred thousand dollars (\$100,000). The emergency fund shall be established out of money transferred from the flood control district maintenance fund.

(b) Whenever the emergency fund is reduced below one hundred thousand dollars (\$100,000), the flood control board may transfer from the maintenance fund the sum it considers necessary for the purpose of replenishing the emergency fund.

(c) The county treasurer shall keep the emergency fund separate from the other funds of the flood control district. Any unexpended sum in the fund shall be retained from year to year to meet flood emergencies as they arise.

(d) The sum in the emergency fund may not be considered in making up the budget of the flood control district, except for the purpose of determining the amount to be levied in order to replenish the fund.

(e) All withdrawals from the emergency fund shall be used solely for emergency purposes, and shall be made upon order of the flood control board in the same manner as withdrawals from other funds of the flood control district.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.356-1987, SEC.1.

IC 36-9-29-33

Deposit of funds of flood control district

Sec. 33. The money in the funds of the flood control district shall be deposited and held in the same manner as other public funds under IC 5-13.

As added by Acts 1981, P.L.309, SEC.105. Amended by P.L.3-1990, SEC.138.

IC 36-9-29-34

Warrants drawn for items approved by board; payments on bonds and interest coupons

Sec. 34. (a) Except as provided in subsection (b), revenues raised under this chapter may be expended only upon a warrant drawn by the executive secretary of the flood control board for items approved by the board, with the date of approval indicated on the warrant over the signature of the president or vice president of the board.

(b) The county treasurer may pay bonds and interest coupons:

(1) issued by the flood control board; and

(2) presented at or after their maturity;

out of the bond fund established under section 30 of this chapter, without the issuance of warrants or other orders of the board.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-35**Pending actions for filing further petitions and for making further orders**

Sec. 35. After the docketing of the petition for the establishment of the flood control district, and until the flood control works have been completed and accepted, the cause remains on the docket of the circuit court as a pending action for the filing of the further petitions and the making of the further orders that are authorized by this chapter or found necessary to facilitate the completion of the works.
As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-36**Jurisdiction of court**

Sec. 36. All court proceedings relating to the establishment or maintenance of the flood control district, or the performance of any act under this chapter, must be brought and determined only in and by the circuit court establishing the district. The jurisdiction of the court in all such matters is conclusive and its judgment is final, except as otherwise provided in this chapter. All proceedings had under this chapter shall be heard by the court without the intervention of a jury, except as otherwise provided in this chapter. Laws with respect to change of venue from the county do not apply to proceedings under this chapter, but changes of venue from the judge may be had as in other civil cases.
As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-37**Supplementary proceedings to cure defects or irregularities; objections**

Sec. 37. (a) If any defects or irregularities occur in any of the proceedings had under this chapter, the defects or irregularities may be cured by supplementary proceedings of the same general nature as those provided for by this chapter. Only those parties whose interests or property are directly and adversely affected by the defects or irregularities may object to them.

(b) It is not necessary to delay the general course of the proceedings while defects or irregularities are being corrected or supplied.

(c) If an objection is filed with the circuit court and the objection is overruled or decided adversely to the objecting party, the court costs incurred in the filing, hearing, and determination of the objection shall be taxed to the objecting party. If the objection is sustained or determined in favor of the objecting party, then the costs shall be taxed to the flood control district.

As added by Acts 1981, P.L.309, SEC.105.

IC 36-9-29-38**Required proceedings and notices under this chapter**

Sec. 38. Only the proceedings and notices prescribed by this chapter are required for acts performed under this chapter,

notwithstanding any other statute to the contrary.
As added by Acts 1981, P.L.309, SEC.105.