

IC 36-9-31

Chapter 31. Collection and Disposal of Waste in Indianapolis

IC 36-9-31-1

Application of chapter

Sec. 1. This chapter applies to each consolidated city.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-2

Definitions

Sec. 2. As used in this chapter:

"Board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.

"Byproduct" means energy and materials from wastes in a form that will allow their reuse.

"Byproduct recovery facility" means a facility for the systematic separation and recovery of energy and recyclable material from waste.

"Cost" as applied to a facility, or any part of a facility, includes the cost of construction, modification, or acquisition of the facility, or any part of it, financing charges, interest before and during construction and for one (1) year after commencement of operation of the facility, cost of funding any reserves to secure the payment of principal and interest on the bonds, cost of funding any operation and maintenance reserve fund, cost of funding any major repair or replacement fund, legal and underwriting expenses, plans, specifications, surveys, estimates of costs and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the facility, administrative expense, and such other expenses as may be necessary or incident to the construction, modification, or acquisition of the facility, the financing of the construction, modification, or acquisition, and the placing of the facility in operation.

"Developer" means any person that proposes to enter into or has entered into a financing agreement with the consolidated city for financing a facility and that proposes to enter into or has entered into a separate agreement with some other person for the use and operation of the facility so financed.

"Disposal" includes the treatment of as well as the placing, processing, confining, compacting, storing, or covering of waste.

"Facility" means any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture, or other real or personal property that is to be used, occupied, or employed for the storage, processing, or disposal of waste or the recovery and marketing by any means of any byproduct, such as recycling centers, transfer stations, trucks, bailing facilities, rail haul or barge haul facilities, processing systems, byproduct recovery facilities or other facilities for reducing waste volume, sanitary landfills, plants and facilities for compacting, composting, or pyrolyzation of wastes, incinerators, and other waste disposal, reduction, or conversion

facilities or any combination thereof. The term excludes any energy generating facility that does not rely on waste as its primary fuel source and any facility regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Financing agreement" includes an agreement between the consolidated city and a developer or between a developer or user, or both, concerning the financing of, the title to, or possession of facilities, or both, and payments to the city in respect thereof.

"Grant" means money to be received from the federal government or any of its agencies, or the state or any of its agencies, intended to be used for the construction, modification, or acquisition of waste disposal facilities. The term also includes federal revenue-sharing money to which the consolidated city is entitled.

"Net revenues" means the amount of revenues received by the consolidated city from the operation and ownership of facilities less the reasonable expenses of the operation, repair, and maintenance of these facilities.

"Processing" means an operation for the purpose of modifying the characteristics or properties of waste to facilitate transportation of, disposal of, or the recovery of byproducts from waste.

"Proposal" means a written response to a request for proposals.

"Proposer" means any person that has submitted a proposal in response to a request for proposals issued to the person by the board.

"Public notice" means a notice published in accordance with IC 5-3-1.

"Put or pay contract" means a contract entered into by the consolidated city with any person whereby the city guarantees the provision of a specified amount of waste to the person and the city is obligated to pay the person a specified amount for waste that is not so provided.

"Request for proposals" means an invitation to submit a proposal to the consolidated city for the construction, modification, acquisition, operation, or combination of any of these, of the facility under section 4 of this chapter.

"Request for qualifications" means an invitation by the consolidated city to any person to submit qualifications in order to qualify to submit a proposal.

"Revenue bonds" means bonds issued under section 10 of this chapter.

"Revenues" means the amounts received by the consolidated city from the operation or ownership of facilities, including amounts received from the collection of fees under section 8 of this chapter, amounts received under financing agreements under section 11 of this chapter, tipping fees, lease rentals, and amounts received from the sale or other disposition of byproducts, but not including any amounts derived from the levy of taxes.

"Service district" means the solid waste collection special service district created by IC 36-3-1-6.

"Solid waste" has the meaning set forth in IC 36-9-30-2, except that the term excludes sewage and other highly diluted water-carried

materials or substances and those in gaseous forms, excludes waste when the waste is to be reused or reclaimed as salvage, and excludes waste regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Tipping fees" means the charge by any person for the disposal of waste at a facility.

"User", for purposes of section 11 of this chapter only, means a person that has entered into a financing agreement with the consolidated city, or with a developer, in contemplation of the user's use and operation of the facilities referred to in the agreement.

"Waste" includes solid waste and water disposed of in conjunction with the disposal of solid waste, as well as liquid waste (consisting of sludge from air or water pollution control facilities or water supply treatment facilities), when disposed of in conjunction with the disposal of solid waste.

"Waste disposal development bonds" means bonds issued under section 11 of this chapter.

"Waste disposal district" means the waste disposal special taxing district referred to in IC 36-3-1-6.

"Waste disposal district bonds" means bonds issued under section 9 of this chapter.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.1-1996, SEC.95.

IC 36-9-31-3

Powers and duties of board

Sec. 3. In order to provide for the collection and disposal of waste in the consolidated city and for the management, operation, acquisition, and financing of facilities for waste disposal, the board may exercise the following powers on behalf of the city, in addition to the powers specifically set forth elsewhere in this chapter:

- (1) To sue and be sued.
- (2) To exercise the power of eminent domain as provided in IC 32-24 within the corporate boundaries of the city; however, the power of eminent domain may not be exercised to acquire the property of any public utility used for the production or distribution of energy.
- (3) To provide for the collection of waste accumulated within the service district and to provide for disposal of waste accumulated within the waste disposal district, including contracting with persons for collection, disposal, or waste storage, and the recovery of byproducts from waste, and granting these persons the right to collect and dispose of any such wastes and store and recover byproducts from them.
- (4) To plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for waste disposal.
- (5) To enter into all contracts or agreements necessary or incidental to the collection, disposal, or recovery of byproducts from waste, such as put or pay contracts, contracts and agreements for the design, construction, operation, financing,

ownership, or maintenance of facilities or the processing or disposal of waste or the sale or other disposition of any products generated by a facility. Notwithstanding any other statute, any such contract or agreement may be for a period not to exceed forty (40) years.

(6) To enter into agreements for the leasing of facilities in accordance with IC 36-1-10; however, any such agreement having an original term of five (5) or more years is subject to approval by the department of local government finance under IC 6-3.5. Such an agreement may be executed before approval, but if the department of local government finance does not approve the agreement, it is void.

(7) To purchase, lease, or otherwise acquire real or personal property.

(8) To contract for architectural, engineering, legal, or other professional services.

(9) To exclusively control, within the city, the collection, transportation, storage, and disposal of waste and, subject to the provisions of sections 6 and 8 of this chapter, to fix fees in connection with these matters.

(10) To determine exclusively the location and character of any facility, subject to local zoning ordinances and environmental management laws (as defined in IC 13-11-2-71).

(11) To sell or lease to any person any facility or part of it.

(12) To make and contract for plans, surveys, studies, and investigations.

(13) To enter upon property to make surveys, soundings, borings, and examinations.

(14) To accept gifts, grants, or loans of money, other property, or services from any source, public or private, and to comply with their terms.

(15) To issue from time to time waste disposal district bonds to finance the cost of facilities as provided in section 9 of this chapter.

(16) To issue from time to time revenue bonds to finance the cost of facilities as provided in section 10 of this chapter.

(17) To issue from time to time waste disposal development bonds to finance the cost of facilities as provided in section 11 of this chapter.

(18) To issue from time to time notes in anticipation of grants or in anticipation of the issuance of bonds to finance the cost of facilities as provided in section 13 of this chapter.

(19) To establish fees for the collection and disposal of waste, subject to the provisions of sections 6 and 8 of this chapter.

(20) To levy a tax within the service district to pay costs of operation in connection with waste collection, waste disposal, mowing services, and animal control, subject to regular budget and tax levy procedures. For purposes of this subdivision, "mowing services" refers only to mowing services for rights-of-way or on vacant property.

(21) To levy a tax within the waste disposal district to pay costs of operation in connection with waste disposal, subject to regular budget and tax levy procedures.

(22) To borrow in anticipation of taxes.

(23) To employ staff engineers, clerks, secretaries, and other employees in accordance with an approved budget.

(24) To issue requests for proposals and requests for qualifications as provided in section 4 of this chapter.

(25) To require all persons located within the service district or waste disposal district to deposit waste at sites designated by the board.

(26) To otherwise do all things necessary for the collection and disposal of waste and the recovery of byproducts from it.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.38-1984, SEC.5; P.L.85-1995, SEC.42; P.L.1-1996, SEC.96; P.L.67-1999, SEC.1; P.L.2-2002, SEC.127.

IC 36-9-31-4

Contracts or agreements with board; competitive bidding; proposal procedure; action to contest validity of award; negotiated contracts; insurance

Sec. 4. (a) Notwithstanding any statute relating to the length, duration, and terms of contracts and agreements, the board on behalf of the consolidated city may enter into any contract or agreement with any person upon such terms and conditions as may be agreed upon, for the design, construction, operation, financing, ownership, or maintenance of a facility for waste disposal in accordance with the requirements and conditions of this section. Before or after the expiration or termination of the term or duration of any contract or agreement entered into or granted under this section, the board, in accordance with the requirements and conditions of this section, may from time to time enter into amended, extended, supplemental, new, or further contracts or agreements with the same or any other person for any purpose referred to in this section.

(b) Overall cost, including construction costs, tipping fees, and reductions in costs resulting from the sale of byproducts, should in all cases be a major criterion in the selection of contractors for award of contracts under this section. The board shall consider the highly complex and innovative nature of byproduct recovery technology, the variety of waste disposal technology available, the desirability of flexibility for the development of these complex facilities, and the economic and technical utility of contracts for byproduct recovery projects that include in their scope various combinations of design, construction, operations, management, or maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the consolidated city to award a contract on the basis of factors other than cost alone, for example, facility design, system reliability, energy efficiency, compatibility with source separation and other recycling systems and environmental protection. Accordingly, and notwithstanding any

other statute, a contract entered into between the board on behalf of the city and any person under this section may be awarded by the board by following either of the following procedures:

(1) Public bidding in compliance with IC 36-1-12.

(2) Compliance with subsection (c).

(c) The board may issue a request for qualifications and request for proposals prepared by or for the consolidated city in accordance with the following provisions:

(1) All persons may be required to prequalify as a proposer by submitting information relating to the experience of the proposer, the basis on which the proposer purports to be qualified to carry out all work required by a proposed contract, and the financial condition of the proposer. Minimum requirements may be set by the board as to these minimum qualifications in a request for qualifications issued before that.

(2) Before the issuance of a request for proposals under this section, the board shall adopt a proposed request for proposals and shall publish a public notice that may contain a request for qualifications, if a prequalification process has been adopted under subdivision (1), including the criteria on which proposers may be selected. The public notice must include the intent to issue a request for proposals, and must further designate times and places where the proposed request for proposals may be viewed by the general public. Comments may be addressed to the scope or contents of the proposed request for proposals. The board shall allow not less than a thirty (30) day period for the submission of qualifications and comments on the proposed request for proposals, following which the board shall select a proposer and adopt a request for proposals. After that, the board shall notify each proposer that is selected of the selection, inform each proposer of the date and place proposals are to be submitted, and deliver to each proposer a copy of the request for proposal.

(3) Requests for proposals must include a clear identification and specification of all elements of cost that would become charges to the city, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for proposals for the full lifetime of a proposed contract, including such appropriate matters as proposals for project staffing, implementation of all work tasks, carrying out of all responsibility required by the proposed contract, the cost of planning, design, construction, operation, management, or maintenance of any facility, or the cost of processing or disposal of solid waste, and a clear identification and specification of any revenues that would accrue to the city from the sale of any byproducts or from any other source, and such other information as the board may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section. However, the board may prescribe the form and content of proposals and, in any event, the

proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the board of the proposal. In addition, the board in the request for proposals may set such maximum allowable cost limits as it determines to be appropriate.

(4) Proposals may not be received by the board before thirty (30) days following notification to the proposers of their selection.

(5) Proposals received under this section shall be evaluated by the board as to net cost or revenues and, in the manner consistent with provisions set forth in the requests for proposals, may be evaluated on the basis of additional factors such as the technical evaluation of facility design, net energy efficiency, environmental protection, overall system reliability, and financial condition of the proposer.

(6) The board, on behalf of the city, may negotiate with the proposer and may make a contract award to any responsible proposer. The board shall give public notice of a public hearing, which notice must designate the time and place of a public hearing at which hearing the board shall hear comments upon the contract to be awarded. Following the public hearing, the board shall make a contract award to any responsible proposer selected under this section based on a determination by the board that the selected proposal is the most responsive to the needs of the city. The award must be in the form of a resolution and must include particularized findings relative to factors evaluated under this section, indicating that the city's needs are met by the award and that the action is in the public interest.

(d) An action to contest the validity of the contract awarded or the procedure by which it was awarded must be brought within thirty (30) days following the award of the contract. After that date, the contract is incontestable for any cause.

(e) Notwithstanding any other statute, any contract entered into by the board with any person on behalf of the consolidated city for the collection of solid waste may be awarded by negotiation or by competitive bids. The board shall consider the following factors in awarding a negotiated contract:

- (1) Price quoted by the proposed contractor.
- (2) Prior experience of the proposed contractor.
- (3) Financial status of the proposed contractor.
- (4) Number of vehicles and other equipment to be used by the proposed contractor.
- (5) Any other factors related to the proposed contractor's ability to perform under the contract.

If a contract is awarded by negotiation, the reason for using negotiation as the method to award the contract must be stated in writing by the board at the time that the contract is awarded. A copy of this statement must be kept available for public inspection.

(f) The board shall award competitive bid contracts to the lowest responsible and responsive bidder after advertising for bids.

However, if a contract is not awarded to the lowest bidder, the factors used to justify that award must be stated in the minutes or memoranda at the time the award is made, and a copy of the minutes or memoranda must be kept available for public inspection. The procedures for granting a collection contract by competitive bidding shall be prescribed in an ordinance adopted by the city-county legislative body or, in the absence of such an ordinance, by IC 36-1-12-4.

(g) The board may contract with multiple parties for solid waste collection and may award separate contracts for separate geographical areas within the consolidated city.

(h) This subsection applies to contracts of less than three hundred thousand dollars (\$300,000) a year for the collection of solid waste. The board may require a waste collector under a contract to carry insurance coverage in a form which protects against losses in excess of the amount covered by other liability insurance policies. The board may not require a waste collector to carry such umbrella insurance coverage in excess of one million dollars (\$1,000,000). A waste collector under a contract must provide one (1) of the following as determined by the board:

(1) A performance bond or an irrevocable letter of credit equal to ten percent (10%) of the annual contract price.

(2) An agreement that ten percent (10%) of the annual contract price may be withheld by the board as security for performance of the contract.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.357-1987, SEC.1; P.L.175-1990, SEC.1.

IC 36-9-31-5

Put or pay contract procedure; action to contest validity; tax levy

Sec. 5. (a) Any put or pay contract may provide for payments to be made by the consolidated city under the contract from:

(1) the levy of taxes;

(2) revenues;

(3) any other available funds of the consolidated city; or

(4) any combination of the foregoing.

(b) A put or pay contract may further provide that payments by the consolidated city to the other person to the contract are required only to the extent and only for the period or periods that person is able to accept and dispose of waste in accordance with the contract had such waste been delivered to the person.

(c) A put or pay contract may be entered into by the consolidated city extending for a period of five (5) years or more only after a public hearing by the board, at which all interested persons shall be heard. After the public hearing, the board may adopt a resolution authorizing the execution of the contract on behalf of the city if it finds that the estimated amount of waste to be provided throughout the term of the contract will not be less than the specified amount of waste required to be provided by the contract.

(d) A put or pay contract providing for payments by the

consolidated city in whole or in part from the levy of taxes is not valid unless approved by ordinance of the city-county legislative body. Upon execution of such a contract and approval by the legislative body, the board shall cause notice of the execution of the contract and its approval to be given by public notice. Fifty (50) or more taxpayers residing in the city who will be affected by the contract and who may be of the opinion that no necessity exists for the execution of the contract or that the payments provided for in the contract are not fair and reasonable may file a petition in the office of the county auditor within thirty (30) days after the publication of the notice of execution and approval, setting forth their names, addresses, and objections to the contract and the facts showing that the execution of the contract is unnecessary or unwise or that the payments provided for in the contract are not fair and reasonable, as the case may be. Upon the filing of the petition, the county auditor shall immediately certify a copy of it, together with such other data as may be necessary in order to present the questions involved, to the department of local government finance. Upon receipt of the certified petition and information, the department of local government finance shall fix a time and place for the hearing of the matter, which must be not less than five (5) nor more than thirty (30) days thereafter in the city. Notice of the hearing shall be given by the department of local government finance to the members of the board and to the first fifty (50) taxpayer-petitioners upon the petition by a letter signed by the commissioner or deputy commissioner of the department of local government finance and enclosed with fully prepaid postage sent to those persons at their usual place of residence, at least five (5) days before the date of the hearing. The decision of the department of local government finance on the appeal, upon the necessity for the execution of the contract, and as to whether the payments under it are fair and reasonable, is final.

(e) An action to contest the validity of the contract or to enjoin the performance of any of its terms and conditions must be brought within thirty (30) days after the publication of notice of the execution and approval of the contract, or if an appeal has been taken to the department of local government finance, then within thirty (30) days after the decision of the department.

(f) After the consolidated city has entered into a put or pay contract under this section, the city-county legislative body shall annually levy a tax sufficient to produce each year the necessary amount, with other amounts available, if any, that is sufficient to pay the amounts that the contract provides are to be paid from the levy of taxes. The tax levies provided for in this chapter are reviewable by other bodies vested by law with authority to ascertain that the levies are sufficient to raise the amount that, with other amounts available, is sufficient to meet the payments under the contract payable from the levy of taxes.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.90-2002, SEC.516.

IC 36-9-31-6**Taxing units; ad valorem tax levies; user fee**

Sec. 6. For purposes of IC 6-3.5-1.1, the service district and the waste disposal district constitute civil taxing units, and they may impose ad valorem property tax levies for the purpose of paying for waste collection, or waste disposal. However, notwithstanding any other provision of this chapter, if a property tax is levied for waste collection, a user fee may not also be charged for waste collection or animal control.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.73-1983, SEC.22; P.L.38-1984, SEC.6; P.L.85-1995, SEC.43.

IC 36-9-31-7**Creation and purpose of service district**

Sec. 7. The service district is created for the purpose of providing persons within its territory with solid waste collection service.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-8**Fees for waste collection and disposal**

Sec. 8. (a) The board may establish fees for waste collection and disposal. The board shall establish fees for waste disposal when necessary to pay principal or interest on any bonds issued under section 10 of this chapter. Fees established under this subsection shall apply to all persons owning real property benefited by waste collection, a facility for waste disposal, or both. The board may change and readjust fees from time to time.

(b) The board may fix the fees for waste collection on the basis of a schedule of charges for each classification of residence or building in use in the solid waste collection service district, and may fix the fees for waste disposal on the basis of a schedule of charges for each classification of residence or building in use in the waste disposal district. These classifications of residences and buildings shall be based on:

- (1) weight or volume of the refuse received;
- (2) the average number of containers or bags of refuse received;
- (3) the relative difficulty associated with the disposal of the waste received; or
- (4) any combination of these criteria or any other criteria the board determines to be logically related to the service.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) If the fees are not paid when due (by the affected property owner), a lien is created upon the property benefited by the collection and disposal of waste. When the property is sold at a tax sale under the procedures provided by statute, the amount of the purchase price attributable to the waste charge lien reverts to the consolidated city.

(e) The board may exercise reasonable discretion in adopting

differing schedules of fees, based upon variations in the cost of furnishing the services included within this chapter to various classes of owners of property, the distance of the property benefited from the facility, or any other variations the board determines to be logically related to the cost of the service.

(f) Fees shall be established only after a public hearing before the board at which all persons using facilities or owning property benefited by waste collection and disposal, and others interested, have had opportunity to be heard by the board concerning the proposed fees. After adoption of the resolution fixing fees and before the resolution takes effect, public notice of the hearing, setting forth the schedule of fees, shall be given. The hearing may be adjourned from time to time. After the hearing, the resolution establishing fees, either as originally passed or as amended, shall be passed and put into effect. A copy of the schedule of fees so established shall be kept on file in the office of the board and shall be kept open to inspection by all persons interested. The fees established shall be extended to cover any additional territory later served that falls within the same class, without the necessity of any hearing or notice. Any change or readjustment of fees may be made in the same manner as they were originally established.

(g) An action to contest the validity of the fees adopted or the procedure by which they were adopted must be brought within thirty (30) days following the adoption of the fees.

(h) Fees imposed under this chapter may be used, together with any other revenues, to pay the cost of facilities for waste disposal, waste collection, the operation and maintenance of facilities, cost incurred under put or pay contracts, charges that may be pledged to the payment of principal of and interest on waste disposal district or revenue bonds, or amounts required by put or pay contracts.

(i) Before any fee established by the board for waste collection or disposal may take effect, the city-county legislative body must by ordinance approve, reject, or modify the fee.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.38-1984, SEC.7.

IC 36-9-31-9

Special benefit tax; waste disposal district bonds; bids or proposals; resolution; waste disposal district bond fund

Sec. 9. (a) The waste disposal district constitutes a special taxing district for the purpose of levying a special benefit tax for the purpose of providing the disposal of waste and the recovery of byproducts from waste.

(b) Whenever, upon investigation, the board determines that a facility or facilities for waste disposal is necessary for the public health and welfare, and that the construction, modification, or acquisition of the facility or facilities will be of public utility and benefit, the board may, upon approval of the city-county legislative body, issue waste disposal district bonds under this section for the payment of the cost of the facility.

(c) Before authorizing the waste disposal district bonds the board may either accept public bids for the facility or adopt a resolution approving a request for proposals all as provided in section 4 of this chapter.

(d) When plans and specifications have been prepared according to the public bidding requirements of IC 36-1-12, or a resolution adopted by the board approving a request for proposals, the board shall adopt a resolution declaring that, upon investigation, it has been found that it is necessary for the public health and welfare and will be of public utility and benefit to construct, modify, or acquire (and maintain where constructed) the facility or facilities and to acquire the property described for that purpose. The resolution shall be kept open to inspection by all persons interested in or affected by the acquisition of the property or the construction of the facility. Upon adoption of the resolution, the board shall give public notice of the adoption and its purpose, which notice must name a date not less than ten (10) days after the date of the last publication on which the board will receive or hear remonstrances from persons interested in or affected by the facility or facilities and will determine their public utility and benefit.

(e) At the time fixed for the hearing, or at any time before that, any person owning real or personal property within the waste disposal district may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances filed. After considering the remonstrances, the board shall take final action determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution, which final action shall be duly recorded. This action is final and conclusive upon all persons, except that any person who has remonstrated in writing and who is aggrieved by the decision of the board may take an appeal as provided in subsection (f).

(f) Any person who has filed a written remonstrance with the board as provided in subsection (e), in case the board takes final action confirming the resolution in its original or any modified form, is entitled to appeal to the superior court of the county. Within ten (10) days after the final action of the board, the remonstrator must file in the office of the clerk of the court a copy of the resolution of the board and his remonstrance, together with a surety bond conditioned to pay the costs of the appeal should the appeal be determined against him. The only ground of remonstrance of which the court has jurisdiction on appeal is the question of whether it will be of public utility and benefit to construct, modify, or acquire the proposed facility, and the burden of proof is upon the remonstrator. The cause shall be summarily tried by the court without a jury. All remonstrances upon which an appeal are taken shall be consolidated and heard as one (1) cause of action by the court, and the cause shall be heard and determined by the court within thirty (30) days after the time of filing the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall confirm the

final action of the board on the resolution or sustain the remonstrance.

(g) Upon final action of the board, or court, confirming the resolution in its original or any modified form, all real or personal property located within the waste disposal district is subject to a special tax for the purpose of providing money to pay all or a part of the total cost of the acquisition, modification, or construction of the facility, which special tax is declared to constitute the amount of benefits resulting to all of the property in the district.

(h) For the purpose of raising money to pay the cost of the facility, and in anticipation of the special tax to be levied, the board shall, upon the approval of the legislative body, cause to be issued waste disposal district bonds in the name of the consolidated city in accordance with IC 36-3-5-8.

(i) On adopting a resolution ordering the issuance of waste disposal district bonds, the board, with legislative body approval, shall then certify a copy of the resolution and a copy of the approval to the fiscal officer of the consolidated city, who shall then prepare the bonds.

(j) The waste disposal district bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the waste disposal district. The waste disposal district bonds, and interest on them, issued under this section are payable out of a special tax levied upon all of the property of the waste disposal district and any other revenues made available for that purpose under this chapter. The waste disposal district bonds must so recite these terms upon their face, together with the purpose for which they are issued.

(k) All proceeds from the sale of waste disposal district bonds shall be kept as a separate and specific fund, to pay the cost of the facility, and no part of the proceeds may be used for any other purpose. Any surplus remaining out of the proceeds of the waste disposal district bonds, after all of the cost is fully paid, shall be paid into and becomes a part of the waste disposal district bond fund; however, money derived from sources other than the waste disposal district bond proceeds, such as state or federal grants or other contributions, are not so restricted as to application regardless of whether the contribution arises for a project financed from waste disposal district bond proceeds.

(l) For the purpose of raising money to pay the waste disposal district bonds issued under this section, the city-county legislative body shall levy each year a special tax upon all the property of the waste disposal district in such amount and manner as to meet and pay the principal of the waste disposal district bonds as they severally mature, together with all accruing interest on them. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county. The tax so levied and certified shall be estimated and entered upon the tax duplicate by the county auditor and shall be collected and enforced by the county treasurer in the same manner as county taxes are estimated, entered, collected and enforced. As the

tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the waste disposal district bond fund, and shall be applied to the payment of the principal of and interest on the waste disposal district bonds as they become due and to no other purpose. In fixing the amount of the necessary levy the legislative body shall consider the amount of net revenues, if any, to be derived from the collection of fees under section 8 of this chapter or any other net revenues collected under this chapter above the amount of revenues necessary to be applied upon or reserved by or for the city for the operation, maintenance, and administrative expenses of the facilities. The board shall annually, in lieu of making the levy or to reduce the amount of the levy, set aside by resolution the amount of the net revenues to be collected before maturity of the principal and interest of the waste disposal district bonds payable in the following calendar year. If the board adopts this resolution, then it is unlawful for the board to use any part of the amount so set aside out of the net revenues for any purpose other than the payment of waste disposal district bonds and the interest on them. A proportionate payment of this amount shall be made to the waste disposal district bond fund monthly.

(m) The board may not issue waste disposal district bonds under this section, payable by special taxation for that purpose in a total amount, including outstanding bonds already issued, in an amount exceeding six percent (6%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All waste disposal district bonds issued in violation of this subsection are void. *As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.6-1997, SEC.230.*

IC 36-9-31-10

Revenue bonds of consolidated city

Sec. 10. (a) The board may recommend to the city-county legislative body that it finance the cost of facilities for waste disposal by borrowing money and issuing revenue bonds from time to time under this section.

(b) The issuance of revenue bonds must be authorized by ordinance of the legislative body.

(c) The revenue bonds are special obligations of the consolidated city and are payable solely from and secured by a lien upon the revenues of all or part of the facilities whether or not the facilities are being financed with revenue bonds under this section, as shall be more fully described in the ordinance authorizing the issuance of the revenue bonds. The ordinance may pledge and assign for the security of the revenue bonds all or part of the revenues or net revenues of the facilities.

(d) The revenue bonds, and interest on them, are not a debt of the consolidated city or the board, nor a charge, lien, or encumbrance, legal or equitable, upon property of the board or the city, or upon the revenues of the board other than those revenues of the facilities that have been pledged to the payment of the revenue bonds. Every

revenue bond must recite in substance that the revenue bond, including interest, is payable solely from the revenues pledged to its payment, and that neither the board nor the city is under any obligation to pay it, except from those revenues.

(e) In order that the payment of the revenue bonds and the interest on them be adequately secured, the consolidated city and its officers, agents, and employees shall provide for such covenants and do such other acts and things that may be necessary, convenient, or desirable in order to secure the revenue bonds or that may tend to make the revenue bonds more marketable.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-11

Agreements and contracts requested by board; waste disposal development bonds; financing agreements; advancement of bond expenses; exemption from property taxes on facilities; approvals and permits

Sec. 11. (a) The consolidated city may, upon request of the board:

- (1) enter into agreements concerning, and acquire by any lawful means, real property or interests in real and personal property needed for the purposes of this section;
- (2) enter into financing agreements to purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve facilities for waste disposal;
- (3) lease facilities to users or developers with or without an option to purchase;
- (4) sell facilities to users or developers for consideration, which may be paid in installments or otherwise;
- (5) make direct loans to users or developers for the cost of acquisition, construction, or installation of facilities, including land, machinery, or equipment, in which event the bonds shall be secured by the pledge of one (1) or more bonds or other secured or unsecured debt obligations of the users or developers;
- (6) enter into agreements with users or developers to allow the users or developers to wholly or partially acquire, construct, or modify facilities to be acquired by the city; and
- (7) issue waste disposal development bonds under this section to accomplish the purposes of this section and to secure payment of the bonds as provided in this section.

(b) This section does not authorize the financing of facilities for a developer unless any agreement that may exist between a developer and a user is fully disclosed to, and approved by, the board.

(c) The board may, from time to time, enter into negotiations with any one (1) or more persons concerning the terms and conditions of financing facilities. Preliminary expenses in connection with negotiations may be paid from money furnished by the proposed user or developer, or from grant money, or from funds of the board.

(d) The board shall hold a public hearing on the proposed financing of the facilities after giving public notice. Upon findings by

the board that the proposed financing will be of benefit to the health or welfare of the consolidated city and that the proposed financing complies with the purposes and provisions of this chapter, the board shall, by resolution, approve the financing, including the form and terms of the financing agreement, the waste disposal development bonds, and the trust indenture, if any. The resolution of the board shall be transmitted by the secretary of the board to the legislative body.

(e) If the legislative body finds that the proposed financing will be of benefit to the health or welfare of the consolidated city and complies with the purposes and provisions of this section, it may adopt an ordinance approving the proposed financing. The ordinance may also authorize the issuance of waste disposal development bonds payable solely from revenues and receipts derived from a financing agreement or from payments made under a guaranty agreement by a developer, user, or any other person. The waste disposal development bonds are not in any respect a general obligation of the consolidated city.

(f) Any financing agreement must provide for payments in an amount not less than an amount sufficient to pay the principal of, premium, if any, and interest on the waste disposal development bonds authorized for the financing of the facilities. The term of any financing agreement may not exceed forty (40) years from the date of any waste disposal development bonds issued under the agreement. However, a financing agreement does not terminate after forty (40) years if a default under it remains uncured, unless the termination is authorized by and according to the terms of the financing agreement. If the consolidated city retains an interest in the facilities, the financing agreement must require the user or developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the facilities, so that the city will not incur any expenses on account of the facilities that are not covered by the payments provided for in the financing agreement.

(g) The consolidated city may advance all expenses, premiums, and commissions that it considers necessary or advantageous in connection with the issuance.

(h) The consolidated city is exempt from all property taxes on facilities. Developers and users are liable for property taxes on facilities as provided by law. This section does not deny any tax exemption a developer or user may have under other laws because of the nature of the facilities or the user.

(i) The user or developer is responsible for obtaining and maintaining all approvals and permits required for the construction of the facilities under this section.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-12

Refunding bonds

Sec. 12. If the legislative body finds that a refunding of

outstanding bonds would be of benefit to the health and welfare of the consolidated city and would comply with the purposes and provisions of this chapter, it may authorize the issuance of bonds under IC 5-1-5 to refund outstanding bonds issued in accordance with this chapter. A saving to the issuing body as provided in IC 5-1-5-2 is not required for the issuance of refunding bonds.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-13

Borrowing limitations pending receipt of grant to city

Sec. 13. (a) The consolidated city, pending receipt of any grant may, but within the limitation set forth in this section, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer of the consolidated city and containing such terms and provisions as may be prescribed by the board. The city may, in anticipation of the issuance of bonds issued under section 9, 10, or 11 of this chapter, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer and containing such terms and provisions as may be prescribed by the board.

(b) Any note or notes issued under this section or any renewal of them 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 bonds.

(c) The board shall apply the proceeds of any note or notes issued under this section to the cost of the facility 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.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-14

Bonds issued

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

- (1) be issued as serial bonds or as term bonds or a combination of both types;
- (2) be executed and delivered by the consolidated city at any time and from time to time;
- (3) bear such date or dates;
- (4) bear interest at such rate or rates;
- (5) be redeemable before their stated maturities on such terms and conditions and at premiums as necessary or advisable;
- (6) be issued in any denomination or denominations of not less than five thousand dollars (\$5,000);
- (7) be in a form, either coupon or registered or a combination of both types;
- (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 without 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 bonds issued under this chapter;

(13) establish reserves, from the proceeds of the sale of bonds or from other funds or both, for extensions, enlargements, additions, replacements, renovations, and improvements to or for the facilities; and

(14) contain other terms and covenants;

all as provided in the ordinance of the legislative body or the resolution of the board authorizing the bonds.

(b) The bonds issued under this chapter may mature at such time or times not to exceed forty (40) years.

(c) The bonds issued under this chapter may bear either the impressed or facsimile seal of the consolidated city and shall be executed by the manual or facsimile signature of the city executive and attested by the manual or facsimile signature of the city fiscal officer, so long as one (1) of these signatures is manual.

(d) The coupons appertaining to the bonds issued under this chapter shall be executed by the facsimile signature of the city fiscal officer.

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

(f) The bonds issued under this chapter may be sold at public or private sale for such price or prices as may be provided in the ordinance authorizing their issuance.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-15

Trust indenture, resolution, or ordinance; bonds issued

Sec. 15. The bonds issued under this chapter may be secured by a trust indenture by and between the consolidated city and a corporate trustee, which may be any national or state bank having its principal office in Indiana and having trust powers. The trust indenture or resolution or ordinance under which the bonds are issued may:

(1) mortgage the land, any interest in land, or the facilities on account of which the bonds are issued;

(2) pledge the revenues or any other funds, or any part of them, to be received by the consolidated city;

(3) contain such provisions for protecting and enforcing the rights and remedies of the bondholders or lenders as may be considered reasonable, including covenants setting forth the duties of the city and board in relation to the construction of the

facilities and the custody, safeguarding, application, and investment of all money received or to be received by the city on account of the facilities financed by the issuance of the bonds;

(4) provide for the establishment of reserve funds from the bond proceeds or from other sources to the extent authorized;

(5) set forth the rights and remedies of the bondholders and trustee, and provisions restricting the individual right or actions of bondholders;

(6) contain provisions regarding investment of funds, sales, exchange or disposal of property, and manner of authorizing and making of payments without regard to any general statute relating to these matters;

(7) provide for the payment of the proceeds of the sale of bonds to such trustee, officer, bank, or depository as it may determine for their custody, and for the method of their disbursement, with such safeguards and restrictions as it may determine;

(8) provide for the appointment of a receiver by the superior court of the county under terms and conditions as are considered reasonable; and

(9) contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-16

Securities registration exemption

Sec. 16. Any security issued in connection with a financing under this chapter the interest on which is excludable from adjusted gross income tax is exempt from the registration requirements of IC 23-19 or any other securities registration law.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.192-2002(ss), SEC.189; P.L.27-2007, SEC.36.

IC 36-9-31-17

Tax exemption; bonds and grant and bond anticipation notes

Sec. 17. All bonds, as well as grant and 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 Acts 1982, P.L.77, SEC.27.

IC 36-9-31-18

Tax exemption; city revenues

Sec. 18. All revenues received by the consolidated city under this chapter are exempt from all taxation.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-19

Facilities financing methods

Sec. 19. The facilities, or any part of them, to be financed under this chapter, may be financed by any one (1) or more or any

combination of one (1) or more of the methods provided for in this chapter.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-20

Limitation of actions; contesting bonds

Sec. 20. An action to contest the validity of the bonds or to prevent their issuance must be brought within thirty (30) days following the adoption of the ordinance or resolution authorizing the bonds.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-21

Effect of chapter; issuance of bonds; acts authorized; powers conferred

Sec. 21. This chapter constitutes full authority for the issuance of bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things, by a board, officer, commission, department, agency, or instrumentality of the state is required to issue bonds or to do any act or perform anything under this chapter except as prescribed by 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 Acts 1982, P.L.77, SEC.27.

IC 36-9-31-22

Exemption of facilities from public utilities regulations

Sec. 22. A facility owned, operated, or financed under this chapter and the sale of byproducts from it are exempt from regulation under IC 8-1-2. IC 8-1-11.1 does not apply to such a facility or its operation or financing.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-23

Nondiscriminatory acceptance of waste; fees

Sec. 23. (a) Subject to subsection (b), any facility:

- (1) owned;
- (2) operated; or
- (3) financed after December 2, 2008;

under this chapter shall accept waste accumulated within the waste disposal district without discrimination as to whether or not the waste is collected by the consolidated city. The fees made by any such facility for any services rendered or to be rendered, either directly or in connection with them, must be nondiscriminatory, but they may vary based upon the volume, weight, hazardousness, or difficulty of disposal of the waste disposed of or processed by the facility.

(b) If a person enters into a contract with the consolidated city to accept the consolidated city's waste at a facility, the person may not be considered to be operating the facility for purposes of this section.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.131-2006, SEC.13.

IC 36-9-31-24

Energy byproduct sales

Sec. 24. An energy byproduct of a facility may not be sold to a person already being served the same type of energy by a public utility subject to regulation by the utility regulatory commission; however, an energy byproduct of a facility may be sold to a person who:

- (1) after the in-service date of the facility is not receiving the same type energy from the public utility; or
- (2) constructs a new facility that is not served the same type energy by the public utility.

In the case of a new facility that is not served the same type energy by the public utility, the energy byproduct must first be offered to the public utility upon the same terms and conditions agreed to in good faith, by the person who constructs the new facility. If the public utility fails to accept, in writing, the purchase of the energy byproduct upon those terms and conditions within forty-five (45) days after the date the offer is made to the public utility, then the energy byproduct may be sold directly to the person by the facility.

As added by Acts 1982, P.L.77, SEC.27. Amended by P.L.23-1988, SEC.130.

IC 36-9-31-25

Effect of chapter; compliance with other laws

Sec. 25. This chapter is supplemental to all other statutes covering the acquisition, construction, modification, use, and maintenance of facilities for waste disposal by a consolidated city. As to facilities acquired, constructed, modified, operated, or leased under this chapter, and the collection of wastes under this chapter, it is not necessary to comply with other statutes concerning the acquisition, construction, modification, use, and maintenance of facilities or the collection of waste by cities, except as specifically required by this chapter.

As added by Acts 1982, P.L.77, SEC.27.

IC 36-9-31-26

Repealed

(Repealed by P.L.2-2005, SEC.131.)