

IC 13-19-5

Chapter 5. Environmental Remediation Revolving Loan Program

IC 13-19-5-1

Program establishment and purpose

Sec. 1. The environmental remediation revolving loan program is established to assist in the remediation of brownfields to encourage the rehabilitation, redevelopment, and reuse of real property by providing grants, loans, forgivable loans, or other financial assistance to political subdivisions to conduct any of the following activities:

- (1) Identification and acquisition of brownfields within a political subdivision as suitable candidates for redevelopment following the completion of remediation activities.
- (2) Environmental assessment of identified brownfields, including assessment of petroleum contamination, and other activities necessary or convenient to complete the environmental assessments.
- (3) Remediation activities conducted on brownfields, including:
 - (A) remediation of petroleum contamination; and
 - (B) other activities necessary or convenient to complete remediation activities conducted on brownfields, including clearance of real property.
- (4) Other activities in conjunction with assessment and remediation activities necessary or convenient to prepare a brownfield for redevelopment.

As added by P.L.59-1997, SEC.13. Amended by P.L.119-1999, SEC.11; P.L.235-2005, SEC.171; P.L.221-2007, SEC.7.

IC 13-19-5-2

Establishment of fund; sources of revenue; investments

Sec. 2. (a) The environmental remediation revolving loan fund is established for the purpose of providing money for loans and other financial assistance, including grants, to or for the benefit of political subdivisions under this chapter. The authority shall administer, hold, and manage the fund.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) The fund consists of the following:

- (1) Appropriations made by the general assembly.
- (2) Grants and gifts intended for deposit in the fund.
- (3) Repayments of loans and other financial assistance, including premiums, interest, and penalties.
- (4) Proceeds from the sale of loans and other financial assistance under section 9 of this chapter.
- (5) Interest, premiums, gains, or other earnings on the fund.
- (6) Money transferred from the hazardous substances response trust fund under IC 13-25-4-1(a)(9).

(7) Fees collected under section 7 of this chapter.

(8) Money transferred from the underground petroleum storage tank excess liability trust fund under IC 13-23-7 for the purpose of environmental assessment and remediation on a property containing at least one (1) underground storage tank.

(d) The authority shall invest the money in the fund not currently needed to meet the obligations of the fund in accordance with an investment policy adopted by the authority. Interest, premiums, gains, or other earnings from these investments shall be credited to the fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the fund in a fiduciary account with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may allow disbursements by the trustee to:

(1) the authority;

(2) a political subdivision;

(3) the Indiana bond bank; or

(4) any person to which the authority, the Indiana bond bank, or a political subdivision is obligated, including a trustee that is a financial institution for a grantor trust;

as provided in the trust agreement or indenture. The budget agency must approve any trust agreement or indenture before its execution.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.172; P.L.221-2007, SEC.8; P.L.178-2015, SEC.3.

IC 13-19-5-3

Duties of authority; immunity of authority

Sec. 3. (a) The authority shall do the following under this chapter:

(1) Be responsible for the management of all aspects of the program.

(2) Prepare and provide program information.

(3) Negotiate the negotiable aspects of each financial assistance agreement and submit the agreement to the budget agency for approval.

(4) Sign each financial assistance agreement.

(5) Review each proposed project and financial assistance agreement to determine if the project meets the credit, economic, or fiscal criteria established by guidelines of the authority.

(6) Periodically inspect or cause to be inspected projects to determine compliance with this chapter.

(7) Conduct or cause to be conducted an evaluation concerning the financial ability of a political subdivision to:

(A) pay a loan or other financial assistance and other obligations evidencing loans or other financial assistance, if required to be paid; and

- (B) otherwise comply with terms of the financial assistance agreement.
 - (8) Evaluate or cause to be evaluated the technical aspects of the political subdivision's:
 - (A) environmental assessment of potential brownfield properties;
 - (B) proposed remediation; and
 - (C) remediation activities conducted on brownfield properties.
 - (9) Inspect or cause to be inspected remediation activities conducted under this chapter.
 - (10) Act as a liaison to the United States Environmental Protection Agency regarding the program.
 - (11) Be a point of contact for political subdivisions concerning questions about the program.
 - (12) Enter into memoranda of understanding, as necessary, with the department and the budget agency concerning the administration and management of the fund and the program.
 - (b) The authority may do the following under this chapter:
 - (1) Undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of brownfield properties.
 - (2) Enter into agreements with political subdivisions to manage any of the following conducted on brownfield properties:
 - (A) Environmental assessment activities.
 - (B) Environmental remediation activities.
 - (c) The authority may:
 - (1) negotiate with;
 - (2) select; and
 - (3) contract with;one (1) or more insurers to provide insurance products as described in subsection (b)(1).
 - (d) Notwithstanding IC 13-23, IC 13-24-1, and IC 13-25-4, the authority is not liable for any contamination addressed by the authority under an agreement under subsection (b)(2) unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the authority.
 - (e) For purposes of subsection (d), reckless, willful, or wanton misconduct constitutes gross negligence.
 - (f) The authority is entitled to the same governmental immunity afforded a political subdivision under IC 34-13-3-3(22) for any act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield under an agreement under subsection (b)(2).
- As added by P.L.59-1997, SEC.13. Amended by P.L.28-2004, SEC.121; P.L.235-2005, SEC.173; P.L.221-2007, SEC.9; P.L.121-2009, SEC.3.*

IC 13-19-5-4

Repealed

(As added by P.L.59-1997, SEC.13. Repealed by P.L.235-2005, SEC.212.)

IC 13-19-5-5

Repealed

(As added by P.L.59-1997, SEC.13. Repealed by P.L.235-2005, SEC.212.)

IC 13-19-5-6

Employment; compensation; immunity

Sec. 6. (a) The authority may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) bond counsel;

(D) other special counsel;

(E) accountants; and

(F) any other consultants, employees, and agents;

that the authority considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the fund or otherwise made available for the program.

(3) Provide services to a political subdivision in connection with a loan or other financial assistance, including advisory and other services.

(b) Notwithstanding any other law, the authority, program, or fund, or any person or agent acting on behalf of the authority or program, is not liable in damages or otherwise to any political subdivision for any act or omission in connection with a loan or other financial assistance, or any application, service, or other undertaking, allowed by or taken under this chapter.

(c) No direction given by or service or other undertaking allowed or taken under this chapter by the authority is a defense for or otherwise excuses any act or omission of a political subdivision otherwise required or imposed by law upon a political subdivision.
As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.174.

IC 13-19-5-7

Services to persons; fees

Sec. 7. (a) The authority may provide services to a person (as defined in IC 13-11-2-158(a)) in connection with financial assistance, technical assistance, and liability clarification, and may assess and collect a fee for:

(1) services provided to offset the costs of providing the

services; and

(2) costs and services incurred in the review or consideration of an application for a proposed loan or other financial assistance to or for the benefit of a political subdivision under this chapter, regardless of whether the application is approved or rejected.

(b) A political subdivision may pay fees charged under this section.

(c) The authority shall adopt guidelines for the assessment and collection of fees under this section.

(d) Fees collected under this section shall be deposited in the fund.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.175; P.L.221-2007, SEC.10.

IC 13-19-5-8

Priority ranking system for loans and financial assistance

Sec. 8. The authority may use a priority ranking system in making loans and providing other financial assistance under this chapter based on the following:

(1) Socioeconomic distress in an area, as determined by the poverty level and unemployment rate in the area.

(2) The technical evaluation under section 3(8)(A) and 3(8)(B) of this chapter.

(3) An award of a grant or loan to a project under IC 5-28-37-7(a) that:

(A) involves a property at which a release of petroleum from an underground storage tank has occurred or is suspected to have occurred; and

(B) is ineligible for assistance from the underground petroleum storage tank excess liability trust fund under IC 13-23-7.

(4) Other factors determined by the authority, including the following:

(A) The number and quality of jobs that would be generated by a project.

(B) Housing, recreational, and educational needs of communities.

(C) Any other factors the authority determines will assist in the implementation of this chapter.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.176; P.L.221-2007, SEC.11; P.L.178-2015, SEC.4.

IC 13-19-5-9

Loans and financial assistance; interest; sale of loans; pledges of loans

Sec. 9. (a) A loan or other financial assistance must be used for at least one (1) of the purposes under section 1 of this chapter and may be used for any of the following purposes:

(1) To:

(A) establish guaranties, reserves, or sinking funds, including guaranties, reserves, or sinking funds to secure and pay, in whole or in part, loans or other financial assistance made from sources other than the fund (including financial institutions) for a purpose permitted by this chapter; or

(B) provide interest subsidies.

(2) To pay financing charges, including interest on the loan or other financial assistance during remediation and for a reasonable period after the completion of remediation.

(3) To pay consultant, advisory, and legal fees, and any other costs or expenses resulting from:

(A) the assessment, planning, or remediation of a brownfield; or

(B) the loan or other financial assistance.

(b) The authority shall establish the interest rate or parameters for establishing the interest rate on each loan made under this chapter, including parameters for establishing the amount of interest subsidies.

(c) The authority, in setting the interest rate or parameters for establishing the interest rate on each loan, may take into account the following:

(1) Credit risk.

(2) Environmental enforcement and protection.

(3) Affordability.

(4) Other fiscal factors the authority considers relevant, including the program's cost of funds and whether the financial assistance provided to a particular political subdivision is taxable or tax exempt under federal law.

Based on the factors set forth in subdivisions (1) through (4), more than one (1) interest rate may be established and used for loans or other financial assistance to different political subdivisions or for different loans or other financial assistance to the same political subdivision.

(d) Not more than fifty percent (50%) of the money available in the fund during a state fiscal year may be loaned or otherwise provided to any one (1) political subdivision during that fiscal year.

(e) Before a political subdivision may receive a loan or other financial assistance, including grants, from the fund, a political subdivision must submit the following:

(1) Documentation of community and neighborhood comment concerning the use of a brownfield on which remediation activities will be undertaken after remediation activities are completed.

(2) A plan for repayment of the loan or other financial assistance, if applicable.

(3) An approving opinion of a nationally recognized bond counsel if required by the authority.

(4) A summary of the environmental objectives of the proposed project.

(f) A political subdivision that receives a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the political subdivision.

(g) The authority may sell or assign:

(1) loans or evidence of other financial assistance; and

(2) other obligations of political subdivisions evidencing the loans or other financial assistance from the fund;

at any price and on terms acceptable to the authority. Proceeds of sales or assignments under this subsection shall be deposited in the fund. A sale or an assignment under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the sale or assignment terms.

(h) The authority may pledge loans or evidences of other financial assistance and other obligations of political subdivisions evidencing the loans or other financial assistance from the fund to secure other loans or financial assistance from the fund to or for the benefit of political subdivisions. The terms of a pledge under this subsection must be approved by the budget agency. Notwithstanding any other law, a pledge of property made by the authority and approved by the budget agency under this subsection is binding from the time the pledge is made. Revenues, other money, or other property pledged and then received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, a trustee, or the fund, regardless of whether the parties have notice of a lien. A resolution, an indenture, or other instrument by which a pledge is created is not required to be filed or recorded, except in the records of the authority. An action taken to enforce a pledge under this subsection and to realize the benefits of the pledge is limited to the property pledged. A pledge under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the pledge terms.

As added by P.L.59-1997, SEC.13. Amended by P.L.119-1999, SEC.12; P.L.235-2005, SEC.177; P.L.221-2007, SEC.12.

IC 13-19-5-10

Political subdivision in default on loan or financial assistance

Sec. 10. Notwithstanding any other law and if provided in a financial assistance agreement, any state department or state agency, including the treasurer of state, that is the custodian of money payable to a political subdivision, other than money in payment for goods or services provided by the political subdivision, after written notice from the budget director that the political subdivision is in

default on the payment of principal or interest on a loan or evidence of other financial assistance, may:

- (1) withhold payment of money from that political subdivision; and
- (2) pay over the money to the authority, a trustee that is a financial institution for a grantor trust, or the Indiana bond bank, as directed by the chairman of the authority, for the purpose of curing the default.

However, the withholding of payment from the political subdivision and payment to the authority, a trustee, or the Indiana bond bank may not adversely affect the validity of the defaulted loan or other financial assistance.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.178.

IC 13-19-5-11

Adoption of guidelines

Sec. 11. The authority may adopt guidelines without complying with IC 4-22-2 to govern the administration of this chapter.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.179.

IC 13-19-5-12

Negotiation of loans and financial assistance; issuance and sale of notes

Sec. 12. (a) Notwithstanding any other law, a political subdivision may borrow money from the authority by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision must observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell its notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of its bonds or other available money at the time the notes are due. The:

- (1) notes must be issued in accordance with a resolution or an ordinance; and
- (2) proceeds must be used to carry out this chapter.

(c) A political subdivision that issues notes under subsection (b) may renew or extend the notes on terms agreed to with the authority. The authority may purchase and sell the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including renewals or extensions, mature in the amounts and at the times, not exceeding four (4) years from the date of original issuance, that are agreed to by the political subdivision and the

authority.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue notes and sell the notes to the authority. The political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of its notes. The notes are valid and binding obligations of the political subdivision and are enforceable in accordance with the terms of the notes and payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes. If the political subdivision issues bonds, all or part of the proceeds of which will be used to pay the notes issued under subsection (b), neither this section nor the actual issuance by a political subdivision of its notes under subsection (b) relieves the political subdivision of its obligation to comply with the statutory requirements for the issuance of its bonds.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.180.

IC 13-19-5-13

Leveraged loan program and financial assistance programs; agreements

Sec. 13. (a) As an alternative to making loans or providing other financial assistance to political subdivisions, the authority may use the money in the fund to provide a leveraged loan program and other financial assistance programs to or for the benefit of political subdivisions, including using money in the fund to enhance a political subdivision's obligations under this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 4-4-11 or another law, including this chapter; or

(ii) any account established within the fund; or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or costs for obligations of a political subdivision or for bonds or other obligations issued by a trustee that is a financial institution for a grantor trust, the authority, or the Indiana bond bank if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or a part of obligations issued by political subdivisions or of bonds or other obligations issued by a trustee that is a financial institution for a grantor trust, the authority, or the Indiana bond bank.

(b) The authority may enter into any agreements with:

(1) a trustee that is a financial institution for a grantor trust;

(2) the Indiana bond bank; or

(3) political subdivisions;

to carry out this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund. A guarantee under subsection (a)(3) does not create a liability or an indebtedness of the state or of the authority except, in the case of the authority, strictly in accordance with the guarantee terms.

(d) Notwithstanding any other law, the authority is considered a qualified entity for purposes of IC 5-1.5.

As added by P.L.59-1997, SEC.13. Amended by P.L.235-2005, SEC.181.

IC 13-19-5-14

Issuance and sale of revenue bonds, notes, and obligations

Sec. 14. (a) Notwithstanding any other law and in addition to any other law, including IC 4-4, the authority may issue, guarantee, and sell its revenue bonds, notes, and other obligations and guarantee loans and other financial assistance in connection with the program and the fund. The revenue bonds, notes, and other obligations must be issued in accordance with a resolution of the authority on terms or within parameters established by the authority, and proceeds must be used to carry out one (1) or more of the purposes of this chapter.

(b) Compliance with this section constitutes full authority for the authority to issue and guarantee its revenue bonds, notes, and other obligations, to guarantee loans and other financial assistance, and to sell the revenue bonds, notes, and other obligations at public or private negotiated sale on terms or within parameters established by the authority. The authority is not required to comply with any other law applicable to the authorization, approval, issuance, guarantee, and sale of its revenue bonds, notes, and other obligations and guarantee loans and other financial assistance. The revenue bonds, notes, and other obligations, including guarantees, issued by the authority in connection with the program and the fund are valid and binding obligations of the authority and are enforceable in accordance with their terms and payable solely from the sources specified in the resolution authorizing their issuance, guarantee, and sale. The authority's revenue bonds, notes, and other obligations, including guarantees, do not create a liability or debt of the state.

As added by P.L.59-1997, SEC.13.

IC 13-19-5-15

Forgivable loans to political subdivisions

Sec. 15. (a) The authority may deposit appropriations or other money received under this chapter after June 30, 1999, into an account of the fund. The authority may use money deposited in the account to award forgivable loans to political subdivisions for remediation or other brownfield redevelopment activities. The authority shall, in the manner provided by section 11 of this chapter, adopt guidelines to establish a political subdivision's eligibility for

a forgivable loan. The guidelines may provide priority for projects that:

(1) involve abandoned gas stations or underground storage tank issues; or

(2) are located within one-half (0.5) mile of any of the following:

(A) A child care center (as defined by IC 12-7-2-28.4).

(B) A child care home (as defined by IC 12-7-2-28.6).

(C) A child caring institution (as defined by IC 12-7-2-29).

(D) A school age child care program (as defined by IC 12-17-12-5).

(E) An elementary or a secondary school attended by students in kindergarten or grades 1 through 12.

(b) Not more than twenty percent (20%) of the total amount of loans provided for a project under this chapter may be in the form of a forgivable loan.

(c) The financial assistance agreement for a project to be financed with a forgivable loan must specify economic development or redevelopment goals for the project that must be achieved before the political subdivision will be released from its obligation to repay the forgivable loan.

As added by P.L.119-1999, SEC.13. Amended by P.L.109-2001, SEC.2; P.L.235-2005, SEC.182.

IC 13-19-5-16

Repealed

(As added by P.L.291-2001, SEC.118. Repealed by P.L.235-2005, SEC.212.)

IC 13-19-5-17

Criminal penalty for application misstatement

Sec. 17. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance from the fund commits a Level 6 felony.

As added by P.L.137-2007, SEC.16. Amended by P.L.158-2013, SEC.187.