

IC 36-7-12

Chapter 12. Economic Development and Pollution Control

IC 36-7-12-1

Application of chapter

Sec. 1. This chapter applies to all units except townships.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-2

Repealed

(Repealed by P.L.20-1985, SEC.18(a).)

IC 36-7-12-3

Declaration of public purpose

Sec. 3. The financing of single, identified economic development or pollution control facilities and the provision of a program to finance multiple, unidentified economic development or pollution control facilities that promote a substantial likelihood of:

- (1) creating or retaining opportunities for gainful employment;
- (2) creating business opportunities;
- (3) providing reliable water services;
- (4) the abatement, reduction, or prevention of pollution; or
- (5) the removal or treatment of substances in materials being processed that otherwise would cause pollution when used;

serve a public purpose and will be of benefit to the health or general welfare of the unit proposing to issue bonds for the financing or program or of the unit where the facilities that are to be financed are located.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.25-1987, SEC.46; P.L.35-1990, SEC.46.

IC 36-7-12-4

Economic development departments and commissions; creation

Sec. 4. If the fiscal body of a unit finds it necessary to finance economic development or pollution control facilities under this chapter, the fiscal body may establish a department of economic development, to be controlled by a commission known as "_____ Economic Development Commission", designating the name of the municipality or county.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-5

Second and third class cities; commission members; appointment; terms of office

Sec. 5. (a) This section applies to second and third class cities that establish a department of economic development.

(b) The members of the economic development commission shall be appointed by the city executive. One (1) of the members shall be selected by the city executive, one (1) shall be nominated by the fiscal body of the county in which the city is located, and one (1)

shall be nominated by the city fiscal body.

(c) The economic development commissioners shall take office upon their appointment, and their terms run from February 1 after their original appointment, for a period of:

- (1) three (3) years, if selected by the city executive;
- (2) two (2) years, if nominated by the city fiscal body; and
- (3) one (1) year, if nominated by the county fiscal body.

(d) If the ordinance of the city fiscal body establishing the department of economic development provides for a five (5) member commission, or if the fiscal body later adopts an ordinance increasing the membership from three (3) to five (5), two (2) additional members shall be selected and appointed by the city executive, one (1) for a term of three (3) years and one (1) for a term of one (1) year from February 1 after their appointment.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1981, P.L.44, SEC.54.

IC 36-7-12-6

Towns; commission members; appointment; terms of office

Sec. 6. (a) This section applies to towns that establish a department of economic development.

(b) The members of the economic development commission shall be appointed by the town executive. One (1) of the members shall be selected by the town executive, one (1) shall be nominated by the fiscal body of the county in which the town is located, and one (1) shall be nominated by the town fiscal body.

(c) The economic development commissioners shall take office upon their appointment, and their terms run from February 1 after their original appointment, for a period of:

- (1) three (3) years, if selected by the town executive;
- (2) two (2) years, if nominated by the town fiscal body; and
- (3) one (1) year, if nominated by the county fiscal body.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-7

Counties; commission members; appointment; terms of office

Sec. 7. (a) This section applies to counties that establish a department of economic development.

(b) The members of the economic development commission shall be appointed by the county executives. One (1) of the members shall be selected by the county executive, one (1) shall be nominated by the county fiscal body, and one (1) shall be nominated by the fiscal body of the most populous municipality located in the county.

(c) The economic development commissioners shall take office upon their appointment, and their terms run from February 1 after their original appointment, for a period of:

- (1) three (3) years, if selected by the county executive;
- (2) two (2) years, if nominated by the county fiscal body; and
- (3) one (1) year, if nominated by the fiscal body of the most populous municipality.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-8

Consolidated cities; commission members; appointment; terms of office

Sec. 8. (a) This section applies to consolidated cities that establish a department of economic development.

(b) The members of the economic development commission shall be appointed by the city executive. One (1) of the members shall be selected by the city executive, and two (2) shall be nominated by the city fiscal body.

(c) The economic development commissioners shall take office upon their appointment, and their terms run from February 1 after their original appointment, for a period of:

- (1) three (3) years, if selected by the city executive;
- (2) two (2) years, for one (1) of the two (2) commissioners nominated by the city fiscal body; and
- (3) one (1) year, for the remaining commissioner nominated by the city fiscal body.

(d) If the ordinance of the city fiscal body establishing the department of economic development provides for a five (5) member commission, or if the fiscal body later adopts an ordinance increasing the membership from three (3) to five (5), two (2) additional members shall be selected and appointed by the city executive, one (1) for a term of three (3) years and one (1) for a term of one (1) year from February 1 after their appointment.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-9

Commissioners; selection and nomination; successors in office

Sec. 9. (a) After the adoption of an ordinance establishing a department of economic development, the clerk of the fiscal body establishing the department shall promptly notify the executives and fiscal bodies required to make selections and nominations by this chapter. The officers required to make selections and nominations shall do so within fifteen (15) days after receiving that notice. Each selectee and nominee shall be appointed by the appropriate executive officer within ten (10) days after he receives the nominations.

(b) At the expiration of the respective terms of each of the original economic development commissioners, their respective successors shall be selected and nominated, before the expiration of the term, in the same manner as the original commissioner, and each succeeding commissioner shall serve for a term of four (4) years. A commissioner shall hold over after the expiration of his term until his successor is appointed and has qualified.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-10

Commissioners; failure to nominate; vacancies

Sec. 10. (a) If a fiscal body fails to make a nomination within the

time specified by section 9 of this chapter, the executive may select and appoint a person without a nomination.

(b) If a person appointed as an economic development commissioner fails to take the oath of office required by section 11 of this chapter within ten (10) days after the notice of his appointment is mailed to him, or if any commissioner, after qualifying, dies, resigns, vacates his office, or is removed from office, a new commissioner shall be appointed to fill the vacancy in the same manner as the commissioner in respect to whom the vacancy occurs was appointed. A commissioner appointed under this subsection shall serve for the remainder of the vacated term.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-11

Commissioners; oaths; certificates of appointment

Sec. 11. Before beginning his duties, each economic development commissioner shall take and subscribe an oath of office in the usual form, to be indorsed upon the certificate of his appointment. The certificate shall be promptly filed with the clerk of the fiscal body that established the department.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-12

Commissions; organizational meetings; officers

Sec. 12. (a) An economic development commission shall meet within thirty (30) days after its original appointment, at a time and place designated by the executive of the unit, for the purpose of organization, and shall meet to reorganize in February of each succeeding year.

(b) At the meeting required by subsection (a), an economic development commission shall elect one (1) of its members as president, one (1) as vice president, and one (1) as secretary. Each officer shall serve from the date of his election until January 31 after his election, and until his successor is elected and qualified.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-13

Commissions; rules; meetings; quorum; approval of actions; records

Sec. 13. (a) An economic development commission may adopt the bylaws, rules, and regulations that it considers necessary. Regular or special meetings shall be held at times and upon notice fixed by the commission, either by resolution or in accordance with the bylaws, rules, and regulations adopted.

(b) A majority of the members of an economic development commission constitutes a quorum.

(c) Actions of an economic development commission must be approved by a majority of the members of the commission.

(d) The records of an economic development commission are public records.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1981, P.L.310, SEC.72.

IC 36-7-12-14

Removal of commissioners from office

Sec. 14. An economic development commissioner may be removed from office for neglect of duty, incompetency, inability to perform his duties, or any other good cause, by the executive or fiscal body that selected or nominated him. The commissioner removed may obtain judicial review of the removal by filing a complaint in a circuit or superior court in the county, and the burden of proof is upon the executive or fiscal body that removed the commissioner. The cause shall be placed on the advanced calendar and be tried as other civil causes are tried by the court, without a jury. The court's judgment may be appealed in the same manner as any civil action.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-15

Commissioners; expenses and per diem

Sec. 15. An economic development commissioner is not entitled to any salary, but is entitled to:

- (1) reimbursement for expenses necessarily incurred in the performance of his duties; and
- (2) a per diem allowance for each day he attends a commission meeting, if that allowance:
 - (A) does not exceed the per diem allowance for members of the general assembly; and
 - (B) is authorized by the fiscal body that established the commission.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-16

Commissioners; pecuniary interests in matters considered by commissions

Sec. 16. (a) An economic development commissioner shall disclose any pecuniary interest in any employment, financing agreement, or other contract made under this chapter before any action by the commission on it, and shall not vote on any such matter.

(b) Notwithstanding any other law, a member of the fiscal body of a unit may have a pecuniary interest in any employment, financing agreement, or other contract made under this chapter if he discloses his pecuniary interest before any action by the fiscal body on it and does not vote on any such matter.

(c) If any property in which an economic development commissioner or member of a fiscal body of a unit has a pecuniary interest is property required for the purposes of this chapter, that property may be acquired, but only by gift or condemnation.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-17

Commissions; investigatory duties

Sec. 17. (a) An economic development commission shall investigate, study, and survey the need for additional job opportunities, industrial diversification, water services, and pollution control facilities in the unit, and shall recommend action to improve or promote job opportunities, industrial diversification, water services, and availability of pollution control facilities in the unit.

(b) As part of an investigation under subsection (a), an economic development commission may participate in the financing of business appraisals and financial feasibility studies of the possible purchase of a business with operations in the commission's jurisdiction by the employees of that operation through an employee stock ownership plan (ESOP). The employees must agree to repay the commission's contribution to the cost of the appraisals and studies if such a purchase is successful.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.169-1990, SEC.1; P.L.35-1990, SEC.47.

IC 36-7-12-18

Powers of units

Sec. 18. (a) A unit may:

- (1) enter into agreements concerning, and acquire by any lawful means, land or interests in land and personal property needed for the purposes of this chapter;
- (2) exercise its power of eminent domain to acquire unimproved land, unoccupied economic development facilities, or pollution control facilities and the land relating to those facilities, for the purposes of this chapter;
- (3) purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve economic development or pollution control facilities, including land, machinery, or equipment;
- (4) lease economic development or pollution control facilities to users or developers, with or without an option to purchase;
- (5) sell economic development or pollution control facilities to users or developers, for consideration to be paid in installments or otherwise;
- (6) make direct loans to users or developers for the cost of acquisition, construction, or installation of economic development or pollution control facilities, including land, machinery, or equipment, with the loans to be secured by the pledge of one (1) or more taxable or tax-exempt bonds or other secured or unsecured debt obligations of the users or developers;
- (7) enter into agreements with users or developers to allow the users or developers to wholly or partially construct economic development or pollution control facilities to be acquired by the unit;
- (8) issue taxable or tax-exempt bonds under this chapter for

single or multiple, identified or unidentified, economic development or pollution control facilities to accomplish the purposes of this chapter, and secure their payment as provided in this chapter;

(9) establish reserves from the proceeds of the sale of taxable or tax-exempt bonds, other funds, or both, to secure the payment of the principal and interest on the bonds;

(10) lend or deposit the proceeds of bonds to or with a lender for the purpose of furnishing funds to the lender for the purpose of making a loan to a specifically identified developer or user for the financing of specifically identified economic development or pollution control facilities under this chapter; and

(11) reimburse from bond proceeds expenditures for pollution control facilities or economic development facilities.

(b) This chapter does not authorize the financing of economic development facilities for a developer unless any written agreement that may exist between the developer and the user is fully disclosed to, and approved by, the economic development commission or the fiscal body of the unit.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.40-1983, SEC.3; P.L.25-1987, SEC.47; P.L.24-1995, SEC.28.

IC 36-7-12-18.5

Bonding powers

Sec. 18.5. A unit may initiate a program for financing economic development or pollution control facilities for developers and users in Indiana through the issuance of taxable or tax-exempt bonds. In furtherance of this objective, the unit may do any of the following:

(1) Establish eligibility standards for developers and users, without complying with IC 4-22-2. However, these standards have the force of law if the standards are adopted after a public hearing for which notice has been given by publication under IC 5-3-1.

(2) Contract with any entity securing the payment of bonds issued under this chapter and authorizing the entity to approve the developers and users that can finance or refinance economic development or pollution control facilities with proceeds from the bond issue secured by that entity.

(3) Lease to a developer or user economic development or pollution control facilities upon terms and conditions that the unit considers proper and, with respect to the lease:

(A) charge and collect rents;

(B) terminate the lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides;

(C) include in the lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the unit or to purchase any or all of the economic development or pollution control

facilities to which the lease applies.

(4) Lend money, upon such terms and conditions as the unit considers proper, to a developer or user under an installment purchase contract or loan agreement to:

(A) finance, reimburse, or refinance the cost of economic development or pollution control facilities; and

(B) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the economic development or pollution control facilities financed or refinanced with the loan.

(5) Sell or otherwise dispose of any unneeded or obsolete economic development or pollution control facilities under terms and conditions determined by the unit.

(6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved any economic development or pollution control facilities owned by the unit.

(7) Require any type of security that the unit considers reasonable and necessary.

(8) Obtain or aid in obtaining property insurance on all economic development or pollution control facilities owned or financed, or accept payment if any economic development or pollution control facilities are damaged or destroyed.

(9) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided in the instrument if a developer or user defaults, and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the unit.

(10) Finance for eligible developers and users the cost of economic development or pollution control facilities as set forth in section 29 of this chapter.

As added by P.L.25-1987, SEC.48.

IC 36-7-12-19

Special tax levy; transfer of money to department of economic development; adoption and submission of proposed budget

Sec. 19. (a) The fiscal body of a unit may levy a special tax to pay the costs of operation of its economic development commission, but this tax may not be used to pay any of the costs attributable to the acquisition and leasing or sale of economic development or pollution control facilities, except for advancements to be reimbursed from bond proceeds.

(b) Any unit having money raised by taxation for any type of industrial aid or development as authorized by any other statute may transfer that money to its department of economic development to carry out the purposes of this chapter.

(c) Before a tax is levied under subsection (a) or money is transferred under subsection (b), the economic development

commission must:

- (1) adopt a proposed budget for the use of the money it will receive from the levy or transfer; and
- (2) submit the budget to the fiscal body of the unit that established the commission.

The fiscal body may review and modify the proposed budget.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1981, P.L.310, SEC.73.

IC 36-7-12-20

Use of funds; procedures for letting contracts; employees' bonds

Sec. 20. (a) All tax revenues coming into possession of the economic development commission shall be deposited, held, and secured in accordance with the statutes relating to the handling and investing of public funds. The handling and expenditure of this money is subject to audit and supervision by the state board of accounts.

(b) Contracts for construction and equipment of economic development or pollution control facilities need not be let in accordance with IC 5-16, IC 5-17, or any other statute relating to public contracts. However, the construction of waterworks facilities financed for the public purpose of providing reliable water service subject to IC 5-16-7.

(c) Any employee of the economic development commission authorized to receive, disburse, or in any other way handle money or negotiable securities of the commission shall execute a bond payable to the state, with surety to consist of a surety or guaranty corporation qualified to do business in the state. The bond must be in an amount determined by the commission, and must be conditioned upon the employee's faithful performance of his duties and the accounting for all monies and property that may come into his hands or under his control. The cost of these bonds shall be paid by the commission.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.35-1990, SEC.48.

IC 36-7-12-21

Negotiation of financing terms; adverse competitive effect studies; preliminary expenses

Sec. 21. (a) An economic development commission may enter into negotiations with one (1) or more persons concerning the terms and conditions for financing of economic development or pollution control facilities.

(b) The commission shall consider whether a proposed economic development facility may have an adverse competitive effect on similar facilities already constructed or operating in the unit. In the case of economic development facilities that are identified at the time of issuance of the bonds, the adverse competitive effect question must be considered before issuance of the bonds. In the case of a program financing under section 18.5 of this chapter, the adverse competitive effect question need not be considered before the

issuance of the bonds except for those economic development facilities that are identified at the time of issuance of the bonds, but it must be considered before financing any proposed economic development facilities from program funds.

(c) Preliminary expenses in connection with negotiations under this section may be paid from:

- (1) money furnished by the proposed user or developer;
- (2) money made available by the state or federal government, or by any of their departments or agencies; or
- (3) money of the commission.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.25-1987, SEC.49.

IC 36-7-12-22

Applicability of zoning laws; consent necessary for financing of facilities

Sec. 22. (a) Economic development or pollution control facilities are subject to applicable zoning laws. If a fiscal body of a unit establishes a department of development, the unit and its economic development commission have jurisdiction under this chapter throughout the county, both inside and outside the corporate boundaries of any municipality.

(b) Notwithstanding subsection (a), economic development facilities that are to be located within the corporate boundaries of a municipality may not be financed by a county without the consent of the fiscal body of the municipality, and economic development facilities that are to be located outside the corporate boundaries of a municipality may not be financed by the municipality without the consent of the fiscal body of the unit in which facilities are to be located.

(c) Notwithstanding subsection (a), pollution control facilities that are to be located within the corporate boundaries of a municipality may not be financed by another unit unless:

- (1) the user has applied to the economic development commission and fiscal body of the municipality for the financing of the facilities, and the municipality has failed to adopt a bond, note, or warrant ordinance for the facilities within sixty (60) days after the date of the application; or
- (2) the fiscal body of the municipality has consented to the financing of the facilities by another unit.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-23

Evaluative report; exception

Sec. 23. (a) The economic development commission shall prepare a report that:

- (1) briefly describes the proposed economic development or pollution control facilities;
- (2) estimates the number and expense of public works or services that would be made necessary or desirable by the

proposed facilities, including public ways, schools, water, sewers, street lights, and fire protection;

(3) estimates the total project costs of the proposed facilities;

(4) for economic development facilities, estimates the number of jobs and the payroll to be created or saved, or describes the public benefits provided by a waterworks facility; and

(5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution.

(b) The report shall be submitted to the executive director or chairman of the plan commission, if any, and if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation where the facilities will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the report and transmit their comments, if any, to the commission within five (5) days from the receipt of the report.

(c) In the case of a program financing under section 18.5 of this chapter, the requirements of this section need be complied with only when and as a condition precedent to financing proposed economic development or pollution control facilities from the program funds. *As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.25-1987, SEC.50; P.L.35-1990, SEC.49.*

IC 36-7-12-24

Hearing on proposed financing of facilities; approval by commission

Sec. 24. (a) The economic development commission shall hold a public hearing, for itself and on behalf of the fiscal body of the unit proposing to issue the bonds, on the proposed financing of the economic development or pollution control facilities, after giving notice by publication in accordance with IC 5-3-1 in the unit proposing to issue the bonds and in the municipality, if any, where the facilities are to be located. However, in the case of a program financing under section 18.5 of this chapter that is funded with taxable bonds, the public hearing requirement of this section need not be complied with until the economic development or pollution control facilities to be financed with program funds have been identified.

(b) Upon findings by the commission that:

(1) the proposed financing will be of benefit to the health or general welfare of the unit proposing to issue the bonds, or the unit where the facilities are to be located, or both; and

(2) the proposed financing complies with this chapter;

the commission shall, by resolution, approve the financing, including the form and terms of the financing agreement, the bonds and the trust indenture (if any). The secretary of the commission shall transmit the resolution to the fiscal body of the unit proposing to issue the bonds.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1981, P.L.45, SEC.28; P.L.25-1987, SEC.51.

IC 36-7-12-25

Approval of proposed financing by unit; authorization bond issuance; approval of changes

Sec. 25. (a) If the fiscal body of the unit proposing to issue the bonds finds that the financing approved under section 24 of this chapter will be of benefit to the health or general welfare of the unit proposing to issue the bonds the unit where the facilities are to be located, or both, and complies with this chapter, it may adopt an ordinance approving the proposed financing in the form that the financing was approved by the economic development commission or as modified by the fiscal body in its discretion.

(b) The ordinance may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under a guaranty agreement by developers, users, or related persons. The bonds are not in any respect a general obligation of the unit, nor are they payable in any manner from revenues raised by taxation.

(c) The financing agreements, trust indentures (if any), and bonds must be executed by the:

- (1) executive; and
- (2) clerk of the fiscal body;

of the unit approving the financing. These officials may by their execution approve changes therein without further approval of the fiscal body or the economic development commission of the unit if such changes do not affect terms contained in the ordinance pursuant to section 27(a)(1) through (a)(10) of this chapter and if the ordinance authorizes these officials to approve such changes.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.5; P.L.25-1987, SEC.52.

IC 36-7-12-26

Financing agreements; terms

Sec. 26. (a) A financing agreement approved under this chapter must provide for payments in an amount sufficient to pay the principal of, premium (if any), and interest on the bonds authorized for and allocable to the financing of the facilities. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the issue.

(b) The term of a financing agreement may not exceed forty (40) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after forty (40) years if a default under that agreement remains uncured, unless the termination is authorized by the terms of the financing agreement.

(c) If the unit retains an interest in the facilities, the financing agreement must require the user or the 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 unit will not incur any expenses on account of the facilities other than those that are covered by the payments provided for in the

financing agreement.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.6; P.L.25-1987, SEC.53.

IC 36-7-12-27

Bonds, notes, or warrants; issuance; terms and procedure; findings of fact concerning coal gasification powerplant

Sec. 27. (a) Bonds issued by a unit under section 25 of this chapter may be issued as serial bonds, term bonds, or a combination of both types. The ordinance of the fiscal body authorizing bonds, notes, or warrants, or the financing agreement or the trust indenture approved by the ordinance, must provide:

- (1) the manner of their execution, either by the manual or facsimile signatures of the executive of the unit and the clerk of the fiscal body;
- (2) their date;
- (3) their term or terms, which may not exceed forty (40) years, except as otherwise provided by subsection (e);
- (4) their maximum interest rate if fixed rates are used or the manner in which the interest rate will be determined if variable or adjustable rates are used;
- (5) their denominations;
- (6) their form, either coupon or registered;
- (7) their registration privileges;
- (8) the medium of their payment;
- (9) the place or places of their payment;
- (10) the terms of their redemption; and
- (11) any other provisions not inconsistent with this chapter.

(b) Bonds, notes, or warrants issued under section 25 of this chapter may be sold at public or private sale for the price or prices, in the manner, and at the time or times determined by the unit. The unit may advance all expenses, premiums, and commissions that it considers necessary or advantageous in connection with their issuance.

(c) The bonds, notes, or warrants and their authorization, issuance, sale, and delivery are not subject to any general statute concerning bonds, notes, or warrants of units.

(d) An action to contest the validity of bonds, notes, or warrants issued under section 25 of this chapter may not be commenced more than thirty (30) days after the adoption of the ordinance approving them under section 25 of this chapter.

(e) This subsection applies only to bonds, notes, or warrants issued under this chapter after June 30, 2008, that are wholly or partially payable from tax increment revenues derived from property taxes. The maximum term or repayment period for the bonds, notes, or warrants may not exceed:

- (1) twenty-five (25) years, unless the bonds, notes, or warrants were:
 - (A) issued or entered into before July 1, 2008;
 - (B) issued or entered into after June 30, 2008, but authorized

by a resolution adopted before July 1, 2008; or
 (C) issued or entered into after June 30, 2008, in order to fulfill the terms of agreements or pledges entered into before July 1, 2008, with the holders of the bonds, notes, warrants, or other contractual obligations by or with developers, lenders, or units, or otherwise prevent an impairment of the rights or remedies of the holders of the bonds, notes, warrants, or other contractual obligations; or
 (2) thirty (30) years, if the bonds, notes, or warrants were issued after June 30, 2008, to finance:
 (A) an integrated coal gasification powerplant (as defined by IC 6-3.1-29-6);
 (B) a part of an integrated coal gasification powerplant (as defined by IC 6-3.1-29-6); or
 (C) property used in the operation or maintenance of an integrated coal gasification powerplant (as defined by IC 6-3.1-29-6);
 that received a certificate of public convenience and necessity from the Indiana utility regulatory commission under IC 8-1-8.5 et seq. before July 1, 2008.

(f) The general assembly makes the following findings of fact with respect to an integrated coal gasification powerplant (as defined in IC 6-3.1-29-6) that received a certificate of public convenience and necessity from the Indiana utility regulatory commission under IC 8-1-8.5 et seq. before July 1, 2008:

- (1) The health, safety, general welfare, and economic and energy security of the people of the state of Indiana require as a public purpose of the state the promotion of clean energy, including clean coal, technologies in Indiana.
- (2) These technologies include the integrated coal gasification powerplant contemplated by this chapter, IC 6-1.1-20-1.1, and IC 36-7-14.
- (3) Investment in the integrated coal gasification powerplant contemplated by this chapter, IC 6-1.1-20-1.1, and IC 36-7-14 will result in substantial financial and other benefits to the state and its political subdivisions and the people of Indiana, including increased employment, tax revenue, and use of Indiana coal.
- (4) It is in the best interest of the state and its citizens to promote and preserve financial and other incentives for the integrated coal gasification powerplant.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.7; P.L.40-1983, SEC.4; P.L.20-1985, SEC.15; P.L.1-1991, SEC.209; P.L.146-2008, SEC.722.

IC 36-7-12-27.5

Legal representation of commission; conflict of interest; offense

Sec. 27.5. (a) If an attorney represents an economic development commission, neither he nor a member of his firm or professional corporation may also represent an applicant for a bond issue from the

commission.

(b) A person who violates this section commits a Class A misdemeanor.

As added by Acts 1981, P.L.310, SEC.74.

IC 36-7-12-28

Trust indentures securing bonds

Sec. 28. (a) The fiscal body of a unit issuing bonds under this chapter may secure them by a trust indenture between the unit and a corporate trustee. The corporate trustee may be any trust company, national bank, or state bank that is in Indiana and has trust powers.

(b) A trust indenture under this section may:

- (1) mortgage the land, any interest in land, or the facilities on account of which the bonds are issued;
- (2) pledge all or part of the payments to be received by the unit;
- (3) set forth the rights and remedies of the trustee and the holders of the bonds, including provisions restricting the individual right of action of the holders;
- (4) contain provisions considered reasonable for protecting and enforcing the rights and remedies of the holders or lenders, including covenants setting forth duties of the unit and the economic development commission regarding:

(A) the construction of the facilities; and

(B) the custody, safeguarding, application, and investment of revenues received or to be received by the unit on account of the facilities financed by the issuance of the bonds;

(5) contain provisions regarding the investment of money, the sale, exchange, or disposal of property, and the manner of authorizing and making payments, notwithstanding any general statute relating to these matters; and

(6) provide for the establishment of reserve funds from the proceeds of the bonds or from other sources to secure the prompt payment of the principal and interest on them.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.8; P.L.25-1987, SEC.54.

IC 36-7-12-29

Application of bond proceeds

Sec. 29. (a) Preliminary expenses advanced by a person may be reimbursed from the proceeds of bonds issued under this chapter. An economic development commission may provide for a maximum fee of one percent (1%) of the total amount of the issue to be paid to the commission from the proceeds of the issue to help in covering its costs of operation. However, the fee charged by a commission to cover the costs of operation may not exceed ten thousand dollars (\$10,000) per issue for a single project issue or ten thousand dollars (\$10,000) per project in the case of program financing under section 18.5 of this chapter.

(b) Any money received from bonds issued under this chapter, after reimbursement and payment under subsection (a), may be used

for the following purposes:

- (1) The payment of the costs of economic development and pollution control facilities on account of which the bonds are issued, including both direct financing of such facilities and program financing under section 18.5 of this chapter.
- (2) Issuance expenses for bonds authorized by this chapter.
- (3) Interest on bonds authorized by this chapter for the anticipated construction period of the facilities being financed, plus interest on bonds authorized by this chapter for a period of one (1) year after that.
- (4) Funding a reserve fund for payment of the principal of, premium (if any), and interest on bonds issued under this chapter.
- (5) Working capital when financed in conjunction with economic development or pollution control facilities financed pursuant to program financing authorized under section 18.5 of this chapter if the program is funded with proceeds of taxable bonds.

Until the money is applied under subdivision (1), it is subject to a lien in favor of the holders of the bonds or the trustee under the trust indenture, if any.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.9; P.L.25-1987, SEC.55; P.L.35-1990, SEC.50.

IC 36-7-12-30

Refunding bonds

Sec. 30. (a) If the fiscal body of the unit finds that a refunding of outstanding bonds issued under this chapter would be of benefit to the health and general welfare of the unit and would comply with this chapter, it may authorize the issuance of bonds in accordance with IC 5-1-5 to refund those outstanding bonds. A savings to the issuing body as provided in IC 5-1-5-2 is not required for the issuance of the refunding bonds, or the issuance of bonds to refund refunding bonds.

(b) Refunding bonds issued under this section are payable solely from revenues and receipts derived from:

- (1) financing agreements with the users or developers of the facilities originally financed by the outstanding bonds, or related persons; or
- (2) from payments made under guaranty agreements by developers, users, or related persons.

The financing agreements or guaranties may be new financing agreements or guaranties or amendments of the original financing agreements or guaranties.

(c) Refunding bonds issued under this section are not in any respect a general obligation of the unit, nor are they payable in any manner from revenues raised by taxation.

(d) Sections 18(b), 23, and 24 of this chapter do not apply to the issuance of refunding bonds under this section.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.10; P.L.25-1987, SEC.56.

IC 36-7-12-31**Bonds, notes, warrants, proceeds, and interest; exemption from state taxes**

Sec. 31. Bonds, notes, or warrants issued under this chapter and:

- (1) proceeds received from their sale by a holder, to the extent of the holder's cost of acquisition;
- (2) proceeds received on their redemption before maturity;
- (3) proceeds received at their maturity; and
- (4) interest received on them;

are exempt from state taxes as provided by IC 6-8-5.

As added by Acts 1981, P.L.309, SEC.31. Amended by Acts 1982, P.L.28, SEC.11.

IC 36-7-12-32**Repealed**

(Repealed by P.L.2-1987, SEC.53.)

IC 36-7-12-32.1**Exemption from securities registration**

Sec. 32.1. Any security, including bonds issued in connection with a financing under this chapter, is exempt from the registration requirements of IC 23-19 and other securities registration statutes.

As added by P.L.25-1987, SEC.57. Amended by P.L.27-2007, SEC.33.

IC 36-7-12-33**Property taxes; liability and exemptions**

Sec. 33. (a) A unit is exempt from all property taxes on economic development or pollution control facilities.

(b) A developer or user is liable for property taxes on economic development or pollution control facilities as provided by statute. However, this section does not deny any tax exemption a developer or user may have under other statutes because of the nature of the facilities or the developer or user.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.25-1987, SEC.58.

IC 36-7-12-34**Payments received by units; exemption from tax**

Sec. 34. Payments received by units under financing agreements authorized by this chapter are exempt from all taxation.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-35**Responsibility for construction approval**

Sec. 35. The user or developer is responsible for obtaining and maintaining all approvals and permits required for the construction of economic development or pollution control facilities under this chapter.

As added by Acts 1981, P.L.309, SEC.31.

IC 36-7-12-36**Commissions; annual reports**

Sec. 36. In order to:

- (1) disseminate information describing the benefits of all economic development commissions;
- (2) provide for efficient operations of all commissions; and
- (3) allow the Indiana economic development corporation, on a recommendation basis, to assist all commissions in their endeavors;

each commission shall file a report, within thirty (30) days after its initial meeting and on each subsequent January 31, with the fiscal body that it serves and with the director of the Indiana economic development corporation. These reports must be in writing on a form prescribed by the Indiana economic development corporation and must contain all information required in that form.

As added by Acts 1981, P.L.309, SEC.31. Amended by P.L.1-2006, SEC.563.

IC 36-7-12-37**Repealed**

(Repealed by P.L.40-1983, SEC.6.)

IC 36-7-12-38**Repealed**

(Repealed by P.L.25-1987, SEC.60.)

IC 36-7-12-39**Validation of prior authorized bonds**

Sec. 39. Any bonds authorized to be issued under the authority of this chapter by a resolution adopted under section 24 of this chapter before June 1, 1985, remain valid regardless of any amendments made to this chapter by P.L.20-1985.

As added by P.L.25-1987, SEC.59.