

Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 386

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-7-15.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2018]:

Chapter 15.6. Flood Control Improvement Districts

Sec. 1. This chapter applies only to a consolidated city.

Sec. 2. As used in this chapter, "base assessed value" means the net assessed value of all the taxable property located in a flood control improvement district as finally determined for the assessment date immediately preceding the effective date of the resolution adopted under this chapter establishing the particular district.

Sec. 3. As used in this chapter, "board of public works" refers to the board of public works of the consolidated city.

Sec. 4. As used in this chapter, "commission" refers to the metropolitan development commission acting as the redevelopment commission of the consolidated city under IC 36-7-15.1.

Sec. 5. As used in this chapter, "district" refers to a flood control improvement district established under this chapter.

Sec. 6. As used in this chapter, "flood control works" includes the following:

- (1) The removal of obstructions and accumulated debris from channels of streams.**

SEA 386



- (2) The clearing and straightening of channels of streams.
- (3) The creating of new and enlarged channels of streams, wherever required.
- (4) The building, repairing, or maintenance of dikes, levees, retaining walls, or other flood protective works.
- (5) The construction of bank protection works for streams.
- (6) The establishment of floodways.
- (7) Conducting all other activities that are permitted by the federal Flood Control Act and federal Clean Water Act.

The term includes reimbursement to the unit of expenditures made from the unit's storm water fund as set forth in section 17(g)(11) of this chapter. The term also includes reimbursement for debt service payments made from the unit's storm water fund as authorized in an ordinance adopted by the fiscal body of the unit under section 19 of this chapter.

Sec. 7. As used in this chapter, "fund" refers to the flood control improvement fund established under section 16 of this chapter.

Sec. 8. As used in this chapter, "special flood hazard property" means property that on January 1, 2018, is situated in a special flood hazard area as designated by the Federal Emergency Management Agency in which the mandatory purchase of flood insurance may apply.

Sec. 9. (a) A unit's board of public works may propose to establish a flood control improvement district under this chapter.

(b) A board of public works that proposes to establish a flood control improvement district shall do the following:

- (1) Establish the boundaries for the district subject to section 10 of this chapter.
- (2) Identify the owner or owners of each parcel of special flood hazard property in the district.
- (3) Create a proposed plan for flood control works within the district subject to the requirements of this chapter, including the location, designs, and all necessary specifications for the flood control works.

(c) The board of public works shall hold a public hearing on a proposal to establish a district under this section. The hearing shall be conducted in accordance with IC 5-14-1.5, and notice of the hearing shall be published in accordance with IC 5-3-1. In addition, the board of public works shall mail a copy of the notice to each owner of special flood hazard property within the proposed district. The notice must include the boundaries of the district, a description and location of the proposed flood control works within



the district, and the date of the hearing.

(d) At the public hearing under subsection (c), the board of public works shall hear all owners of real property in the proposed district (who appear and request to be heard) upon the questions of:

- (1) the identification of the owner's property as special flood hazard property as defined under section 8 of this chapter;
- (2) the boundaries of the district; and
- (3) the utility and benefit of the proposed plan for the flood control works within the district.

The board of public works shall consider all evidence and objections presented at the hearing and may modify the boundaries of the district, or the proposed plan for flood control works within the district, subject to the requirements of this chapter.

(e) After conducting a public hearing under this section, the board of public works may submit a written recommendation to the commission to establish a district within the boundaries of the unit. A recommendation submitted to the commission under this subsection must include:

- (1) the geographic boundaries of the district; and
- (2) the proposed plan for the flood control works within the district.

(f) If the board of public works submits a written recommendation to the commission under subsection (e) to establish a district within the boundaries of the unit, then the board of public works shall notify each owner of special flood hazard property within the proposed district of its recommendation and include with the notification a statement of the manner in which each owner of special flood hazard property may participate in public hearings held by the commission as set forth under section 11 of this chapter regarding the designation of a district.

Sec. 10. (a) Only special flood hazard property may be included within the boundaries of a flood control improvement district established under this chapter.

(b) A flood control improvement district may only include those special flood hazard properties that benefit directly from flood control works within the district.

(c) A flood control improvement district may not include any parcel or area of land that is already included in an allocation area under IC 8-22-3.5, IC 36-7-14, IC 36-7-15.1, IC 36-7-30, IC 36-7-30.5, or IC 36-7-32-15.

Sec. 11. (a) A commission shall review a recommendation



submitted by the board of public works under section 9(e) of this chapter to establish a district within the boundaries of the unit.

(b) If the commission finds that the construction, replacement, repair, maintenance, or improvement of flood control works located within its jurisdiction is necessary for the general welfare, safety, and security of an area and its inhabitants, the commission may adopt a resolution described in subsection (c).

(c) Subject to the approval of the legislative body of the unit that established the commission, the commission may adopt a resolution designating one (1) or more flood control improvement districts as an allocation area for purposes of the allocation and distribution of property taxes.

(d) After adoption of the resolution under subsection (c), the commission shall:

(1) publish notice of the adoption and substance of the resolution in accordance with IC 5-3-1; and

(2) file the following information with each taxing unit that has authority to levy property taxes in the geographic area where the flood control improvement district is located:

(A) A copy of the notice required by subdivision (1).

(B) A statement disclosing the following:

(i) The necessity for providing flood protection for the district, based on the history of floods that have affected the district or can reasonably be anticipated to affect the district.

(ii) The general character of the flood control works that the commission considers necessary to afford proper protection, and the general location and route of the dikes, levees, retaining walls, and other structures that the commission considers necessary as part of those works.

(iii) The estimated economic benefits and costs incurred by the flood control improvement district, as measured by anticipated growth of real property assessed values.

(iv) The anticipated impact on tax revenues of each taxing unit.

The notice must state the general boundaries of the flood control improvement district and must state that written remonstrances may be filed with the commission until the time designated for the hearing. The notice must also name the place, date, and time when the commission will receive and hear remonstrances and objections from persons interested in or affected by the proceedings



pertaining to the proposed allocation area and will determine the public utility and benefit of the proposed allocation area. The commission shall file the information required by subdivision (2) with the officers of the taxing unit who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days before the date of the public hearing. All persons affected in any manner by the hearing, including all taxpayers within the taxing district of the commission, shall be considered notified of the pendency of the hearing and of subsequent acts, hearings, adjournments, and orders of the commission affecting the allocation area if the commission gives the notice required by this section.

(e) At the hearing, which may be recessed and reconvened periodically, the commission shall hear all persons interested in the proceedings and shall consider all written remonstrances and objections that have been filed. After considering the evidence presented, the commission shall take final action determining the public utility and benefit of the proposed allocation area confirming, modifying and confirming, or rescinding the resolution. The final action taken by the commission shall be recorded and is final and conclusive, except that an appeal may be taken in the manner prescribed by section 12 of this chapter.

Sec. 12. (a) A person who files a written remonstrance with the commission under section 11 of this chapter and who is aggrieved by the final action taken may, within ten (10) days after that final action, file with the office of the clerk of the circuit or superior court of the county a copy of the commission's resolution and the person's remonstrance against the resolution, together with the person's bond as provided by IC 34-13-5-7.

(b) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of filing of the appeal. The court shall decide the appeal based on the record and evidence before the commission, not by trial de novo, and may confirm the final action of the commission or sustain the remonstrances. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

Sec. 13. (a) An allocation provision adopted under this chapter must:

- (1) apply to the entire flood control improvement district; and
- (2) require that any property tax on taxable property



subsequently levied by or for the benefit of any public body entitled to a distribution of property taxes in the flood control improvement district be allocated and distributed as provided in subsections (b) and (c).

(b) Except as otherwise provided in this section:

(1) the proceeds of the taxes attributable to the lesser of:

(A) the assessed value of the taxable property for the assessment date with respect to which the allocation and distribution is made; or

(B) the base assessed value;

shall be allocated and, when collected, paid into the funds of the respective taxing units; and

(2) the proceeds of the property taxes imposed for the assessment date with respect to which the allocation and distribution is made that are attributable to taxes imposed after being approved by the voters in a referendum or local public question and not otherwise included in subdivision (1), shall be allocated to and, when collected, paid into the funds of the taxing unit for which a referendum or local public question was conducted.

(c) Except as provided in section 20 of this chapter and as provided in subsection (d), all the property tax proceeds that exceed those described in subsection (b) shall be allocated to the commission, when collected, and paid into the flood control improvement fund established for the district under section 16 of this chapter.

(d) Before July 15 of each year, the commission shall do the following:

(1) Determine the amount, if any, by which the property tax proceeds to be deposited in the flood control improvement fund will exceed the amount of assessed value needed to provide the property taxes necessary to make, when due, principal and interest payments on bonds described in section 17 of this chapter, or on bonds described in section 19(a) of this chapter, whichever is applicable, plus the amount necessary for other purposes described in section 17 of this chapter.

(2) Provide a written notice to the county auditor, the legislative body of the unit that established the commission, and the officers who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 for each of the other taxing units that are wholly or partly located within the allocation



area. The notice must:

- (A) state the amount, if any, of excess tax proceeds that the commission has determined may be allocated to the respective taxing units in the manner prescribed in subsection (c); or
- (B) state that the commission has determined that there is no excess assessed value that may be allocated to the respective taxing units in the manner prescribed in subdivision (1).

The county auditor shall allocate to the respective taxing units the amount, if any, of excess assessed value determined by the commission. The commission may not authorize an allocation of property tax proceeds under this subdivision if to do so would endanger the interests of the holders of bonds described in section 17 of this chapter.

(e) If the amount of excess assessed value determined by the commission is expected to generate more than two hundred percent (200%) of the amount of allocated tax proceeds:

- (1) necessary to make, when due, principal and interest payments on bonds described in section 17 of this chapter, or on bonds described in section 19(a) of this chapter, whichever is applicable; or
- (2) necessary to maintain and repair the flood control works in the district, if the fiscal body of the unit has adopted an ordinance providing for the maintenance and repair of the flood control works following the maturity of the bonds under section 20(a) or 20(b) of this chapter;

the commission shall submit to the legislative body of the unit its determination of the excess assessed value that the commission proposes to allocate to the respective taxing units in the manner prescribed in subsection (b). The legislative body of the unit may approve the commission's determination or modify the amount of the excess assessed value that will be allocated to the respective taxing units in the manner prescribed in subsection (b).

(f) Notwithstanding any other law, the assessed value of all taxable property in the flood control improvement district, for purposes of tax limitation, property tax replacement, and formulation of the budget, tax rate, and tax levy for each political subdivision in which the property is located is the lesser of:

- (1) the assessed value of the taxable property as valued without regard to this section; or
- (2) the base assessed value.



Sec. 14. The commission may enter into a written agreement with a taxpayer who owns, or is otherwise obligated to pay property taxes on, tangible property that is or will be located in an allocation area established under this chapter in which the taxpayer waives review of any assessment of the taxpayer's tangible property that is located in the allocation area for an assessment date that occurs during the term of any specified bond obligations that are payable from property taxes in accordance with an allocation provision for the allocation area and any applicable statute, ordinance, or resolution. An agreement described in this section may precede the establishment of the allocation area or the determination to issue bonds payable from the allocated property taxes.

Sec. 15. The commission may enter into a written agreement with a taxpayer that owns real property located in an allocation area of the district that is exempt from property tax assessment in which the taxpayer agrees to, in lieu of property taxes, pay to the unit authorized to levy property taxes the amount that would be assessed as taxes on real property of the taxpayer if the property were otherwise subject to valuation and assessment. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made under this section shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

Sec. 16. (a) The fiscal officer of the unit shall establish a flood control improvement fund for each flood control improvement district that is established within the jurisdiction of the unit.

(b) The fiscal officer of the unit shall deposit in the fund of a district:

(1) property tax proceeds allocated from the district to the fund under section 13 of this chapter; and

(2) proceeds from the sale of bonds under section 17 of this chapter for flood control works within the boundaries of the district for which the fund is established.

(c) The commission shall administer the fund.

(d) Money in a fund must be used only for flood control works projects within boundaries of the district for which the fund was established as set forth under this chapter.

(e) Money in a fund may be transferred or expended for the purposes set forth in this chapter without further appropriation by the fiscal body of the unit.



(f) Any money remaining in a fund after the expiration of the flood control improvement district under section 20(a) of this chapter shall be transferred to the storm water fund of the unit to be used exclusively to provide for the maintenance and repair of flood control works within the flood control improvement district after its expiration.

Sec. 17. (a) The commission may issue bonds for the purpose of construction, replacement, repair, maintenance, or improvement of flood control works within a district established under this chapter, including to reimburse a unit for expenditures made from the unit's storm water fund prior to the bond issuance as set forth in section 17(g)(11) of this chapter.

(b) The bonds are payable solely from:

- (1) property tax proceeds allocated to the district's flood control improvement fund under section 13 of this chapter;
- (2) other funds available to the commission;
- (3) a combination of the methods in subdivisions (1) through (2); or
- (4) to the extent that the revenues under subdivisions (1) through (3) are insufficient to pay the debt service on the bonds, from any other revenues available to the unit that established the commission.

(c) The bonds shall be authorized by a resolution of the commission.

(d) The terms and form of the bonds shall be set out either in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds must mature within twenty-five (25) years.

(f) The commission shall sell the bonds at public or private sale upon such terms as determined by the commission.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment or reimbursement of the cost of providing flood control works within the flood control improvement district for which the bonds were issued, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

- (1) planning and development of flood control works and all related buildings, facilities, structures, and improvements;
- (2) acquisition of a site and clearing and preparing the site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the flood control works



- suitable for use and operation;
- (4) architectural, engineering, consultant, and attorney's fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest;
- (7) interest during construction and for a period thereafter determined by the commission;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement;
- (11) reimbursement to the unit that established the commission for expenditures made from the unit's storm water fund for any or all of the purposes in subdivisions (1) through (10) prior to the bond issuance; and
- (12) in the case of refunding or refinancing, payment of the principal of, redemption premiums, if any, for, and interest on, the bonds being refunded or refinanced.

Sec. 18. All bonds issued under this chapter, together with the interest on them, are exempt from taxation.

Sec. 19. (a) In lieu of issuing bonds under section 17 of this chapter, the fiscal body of the unit that established the commission may adopt an ordinance to authorize money in a flood control improvement fund of a district to be applied to reimburse debt service payments on bonds made from the unit's storm water fund if the following apply:

- (1) The unit has issued bonds for which revenue from the unit's storm water fund is pledged or assigned.
- (2) The bonds described in subdivision (1) were issued solely for the purpose of construction, replacement, repair, maintenance, or improvement of flood control works that are located within the district for which the flood control improvement fund was established.
- (3) All money received from the bonds described in subdivision (1) is applied solely to the payment of costs of providing flood control works located within the district for which the flood control improvement fund was established.
- (4) The bonds described in subdivision (1) must mature within twenty-five (25) years.
- (5) Money from the flood control improvement fund must be applied only to reimburse debt service payments made on the bonds described in subdivisions (1) through (4).



(b) Before adopting an ordinance under this section, the fiscal body of the unit must hold at least one (1) public hearing at which testimony about the adoption of the ordinance is allowed.

(c) No reimbursement payments may be made from the flood control improvement fund under this section after the maturity date of the bonds described in subsection (a).

(d) The fiscal body of the unit may not adopt an ordinance to authorize money in the flood control improvement fund of a district to be used for any other purposes not specified in this section.

Sec. 20. (a) Beginning the day after the maturity date of the bonds issued under section 17 of this chapter, or the bonds described in section 19(a) of this chapter, whichever is applicable, the allocation and distribution provisions under section 13 of this chapter do not apply, and property taxes shall not be allocated and paid into the flood control improvements fund, unless the following requirements are met:

(1) Not later than thirty (30) days before the maturity date of the bonds issued under section 17 of this chapter, or the bonds described in section 19(a) of this chapter, the fiscal body of the unit that established the commission adopts an ordinance to continue the allocation and distribution of property taxes in the district as provided in section 13 of this chapter.

(2) The ordinance adopted under subdivision (1) must specify that property tax proceeds allocated to the fund after the maturity date of the bonds issued under section 17 of this chapter, or the bonds described in section 19(a) of this chapter, must be used solely for the maintenance and repair of flood control works within the district.

(3) The ordinance adopted under subdivision (1) must expire on the date that is one (1) year after the maturity date of the bonds issued under section 17 of this chapter, or the bonds described in section 19(a) of this chapter, whichever is applicable.

(b) Subject to subsection (c), if the fiscal body of a unit adopts an ordinance under subsection (a) to continue the allocation and distribution of property taxes in the district for one (1) year, the fiscal body of the unit may adopt a substantially similar ordinance in the following year or any subsequent year thereafter to continue the allocation and distribution of property taxes in the district according to the same requirements set forth in subsection (a).

(c) The fiscal body of a unit may not adopt an ordinance to



continue the allocation and distribution of property taxes in a district after the date that is fifty (50) years after the maturity date of the bonds issued under section 17 of this chapter, or the bonds described in section 19(a) of this chapter, whichever is applicable.

(d) A commission shall not issue or reissue debt obligations for a district that extend beyond twenty-five (25) years after the date of the initial bond issue for the district.

Sec. 21. (a) Not later than April 15 of each year, a commission that administers a flood control improvement fund established under section 16 of this chapter shall file with the mayor and the fiscal body of the unit that established the commission a report setting out the commission's activities with regard to the flood control improvement fund during the preceding calendar year.

(b) The report required by subsection (a) must include the following:

(1) The amount of revenue received from the assessed value allocated and paid into the fund under section 16 of this chapter.

(2) A detailed statement of payments made from the fund for purposes of providing flood control works within boundaries of the district for which the fund was established, including debt service on bonds or other obligations.

(3) Any other expenses paid from the fund not included under subdivision (2).

(4) The amount and maturity date of all bonds or other obligations outstanding and payable from the fund at the end of the calendar year.

(5) The fund balance at the end of the calendar year.

(6) A list of all the parcels included in the allocation area and the base assessed value and incremental assessed value for each parcel.

(c) The report filed under subsection (a) is a public record and must be made available for inspection to an owner of special flood hazard property that is located within the district for which the report is made.

(d) A copy of the report filed under subsection (a) must be submitted to the department of local government finance in an electronic format.

(e) The commission shall also provide a copy of the report filed under subsection (a) to the following:

(1) The board of public works that recommended the establishment of the district.



(2) A certified neighborhood association located within the boundaries of the district.

(f) The fiscal body of a unit, the department of local government finance, or the board of public works may post a copy of the commission's report on an Internet web site maintained by the fiscal body of the unit, the department of local government finance, or the board of public works.

Sec. 22. This chapter may not be construed to prevent, hinder, disrupt, or delay the completion of any public flood control project for which there is a memorandum of agreement or that is ongoing as of May 1, 2018, including the project located in Marion County commonly referred to as the Indianapolis North Flood Damage Reduction Project.

SECTION 2. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 386

