

IC 34-13

ARTICLE 13. CAUSES OF ACTION: CLAIMS AGAINST THE GOVERNMENT

IC 34-13-1

Chapter 1. Contract Claims Against the State

IC 34-13-1-1

Commencement of actions; limitations; trial by court

Sec. 1. (a) Any person having a claim against the state arising out of an express or implied contract may bring suit within ten (10) years after accrual of the claim.

(b) The claim brought under this section shall be tried to the court, not a jury.

As added by P.L.1-1998, SEC.8.

IC 34-13-1-2

Repealed

(Repealed by P.L.2-2005, SEC.131.)

IC 34-13-1-3

Exemption from chapter

Sec. 3. This chapter does not authorize any person to bring suit against the state of Indiana upon any obligation described in Article 10, Section 7 of the Constitution of the state of Indiana.

As added by P.L.1-1998, SEC.8.

IC 34-13-1-4

Attorney general; duties

Sec. 4. The attorney general, in person or by deputy, shall defend and represent the interests of the state in any action brought under this chapter (or IC 34-4-16 before its repeal).

As added by P.L.1-1998, SEC.8.

IC 34-13-1-5

Appeal to supreme court

Sec. 5. In all actions against the state, either party may appeal directly to the supreme court, under the same rules, regulations, and restrictions that govern in cases of appeals from the circuit courts of this state to the supreme court of the state in civil causes, except that the state may appeal without bond.

As added by P.L.1-1998, SEC.8.

IC 34-13-1-6

Judgments against state; interest rate; appropriation to pay judgment

Sec. 6. Whenever, by final decree or judgment, a sum of money is adjudged to be due any person from the state, an execution shall not issue but the judgment shall draw interest at an annual rate of six percent (6%) from the date of the adjournment of the next ensuing

session of the general assembly until an appropriation is made by law for the payment and the judgment is paid.

As added by P.L.1-1998, SEC.8.

IC 34-13-1-7

Counsel to assist attorney general

Sec. 7. Whenever, in the opinion of the governor, the interests of the state require it, the governor may employ counsel to assist the attorney general in the defense of any suit brought against the state and may pay that counsel out of any funds at the governor's disposal appropriated for that purpose.

As added by P.L.1-1998, SEC.8.

IC 34-13-2

Chapter 2. Contract Claims Against Public Employees

IC 34-13-2-1

Personal liability on contracts entered into within scope of employment

Sec. 1. A present or former public employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is not personally liable on contracts entered into within the scope of the employee's employment for a governmental entity unless it is clearly otherwise indicated in writing.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.1.

IC 34-13-2-2

Defense of state employee for claims or suits arising out of contracts

Sec. 2. If requested to do so, the attorney general shall defend a present or former state employee against any claim or suit brought against the state employee with regard to a contract entered into for the employee's governmental entity. The attorney general may employ other counsel to aid in defending or settling the claim or suit.

As added by P.L.1-1998, SEC.8.

IC 34-13-2-3

Judgment or settlement as bar to action against employee; judgments for claims against employee acting within scope of employment; costs and fees

Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment; and

(2) the:

(A) governor, in the case of a claim or suit against a state employee; or

(B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana.

As added by P.L.1-1998, SEC.8.

IC 34-13-3

Chapter 3. Tort Claims Against Governmental Entities and Public Employees

IC 34-13-3-1

Applicability of chapter

Sec. 1. (a) This chapter applies only to a claim or suit in tort.

(b) The provisions of this chapter also apply to IC 34-30-14.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-2

Applicability of chapter to bureau of motor vehicles

Sec. 2. This chapter applies to a claim or suit in tort against any of the following:

(1) A member of the bureau of motor vehicles commission established under IC 9-15-1-1.

(2) An employee of the bureau of motor vehicles commission who is employed at a license branch under IC 9-16, except for an employee employed at a license branch operated under a contract with the commission under IC 9-16.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-3

Immunity of governmental entity or employee

Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the

provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-12.

(21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

(A) gross negligence;

(B) willful or wanton misconduct; or

(C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

As added by P.L.1-1998, SEC.8. Amended by P.L.142-1999, SEC.2; P.L.250-2001, SEC.6; P.L.280-2001, SEC.42; P.L.1-2002, SEC.144; P.L.161-2003, SEC.5; P.L.1-2005, SEC.218; P.L.208-2005, SEC.14; P.L.47-2006, SEC.48; P.L.121-2009, SEC.15; P.L.86-2010, SEC.10.

IC 34-13-3-4

Limitation on aggregate liability; punitive damages prohibited

Sec. 4. (a) The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed:

(1) for injury to or death of one (1) person in any one (1) occurrence:

(A) three hundred thousand dollars (\$300,000) for a cause of action that accrues before January 1, 2006;

(B) five hundred thousand dollars (\$500,000) for a cause of action that accrues on or after January 1, 2006, and before January 1, 2008; or

(C) seven hundred thousand dollars (\$700,000) for a cause of action that accrues on or after January 1, 2008; and

(2) for injury to or death of all persons in that occurrence, five million dollars (\$5,000,000).

(b) A governmental entity or an employee of a governmental entity acting within the scope of employment is not liable for punitive damages.

As added by P.L.1-1998, SEC.8. Amended by P.L.108-2003, SEC.2; P.L.161-2003, SEC.6; P.L.97-2004, SEC.114.

IC 34-13-3-5

Actions against individual members not authorized; judgment against or settlement by governmental entity

Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) This subsection applies when the governmental entity defends or has received proper legal notice and has the opportunity to defend an employee for losses resulting from the employee's acts or omissions. Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.2; P.L.161-2003, SEC.7.

IC 34-13-3-6

Notice to attorney general and state agency involved

Sec. 6. (a) Except as provided in sections 7 and 9 of this chapter, a claim against the state is barred unless notice is filed with the attorney general or the state agency involved within two hundred seventy (270) days after the loss occurs. However, if notice to the state agency involved is filed with the wrong state agency, that error does not bar a claim if the claimant reasonably attempts to determine and serve notice on the right state agency.

(b) The attorney general, by rule adopted under IC 4-22-2, shall prescribe a claim form to be used to file a notice under this section. The claim form must specify:

- (1) the information required; and
- (2) the period of time that a potential claimant has to file a claim.

(c) Copies of the claim form prescribed under subsection (b) shall be available from each:

- (1) state agency; and
- (2) operator of a state vehicle.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-7

Administrative claim for inmate's recovery of property

Sec. 7. (a) An offender must file an administrative claim with the department of correction to recover compensation for the loss of the

offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars (\$5,000), the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c). The department shall submit all claims in which the amount due exceeds five thousand dollars (\$5,000), with any recommendation the department considers appropriate, to the office of the attorney general. The attorney general, in acting upon the claim, shall consider recommendations of the department to determine whether to deny the claim or recommend the claim to the governor for approval of payment.

(c) Payment of claims under this section shall be made in the same manner as payment of claims under IC 34-4-16.5-22.

(d) The department of correction shall adopt rules under IC 4-22-2 necessary to carry out this section.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-8

Claims against political subdivisions; notice requirement

Sec. 8. (a) Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:

- (1) the governing body of that political subdivision; and
- (2) the Indiana political subdivision risk management commission created under IC 27-1-29;

within one hundred eighty (180) days after the loss occurs.

(b) A claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 at the time the act or omission took place.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-9

Incapacitated plaintiffs; notice requirement

Sec. 9. If a person is incapacitated and cannot give notice as required in section 6 or 8 of this chapter, the person's claim is barred unless notice is filed within one hundred eighty (180) days after the incapacity is removed.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-10

Notice requirement; form of statement

Sec. 10. The notice required by sections 6, 8, and 9 of this chapter

must describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-11

Approval or denial of claim by government entity

Sec. 11. Within ninety (90) days of the filing of a claim, the governmental entity shall notify the claimant in writing of its approval or denial of the claim. A claim is denied if the governmental entity fails to approve the claim in its entirety within ninety (90) days, unless the parties have reached a settlement before the expiration of that period.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-12

Notice requirements; service

Sec. 12. The notices required by sections 6, 8, 9, and 11 of this chapter must be in writing and must be delivered in person or by registered or certified mail.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-13

Denial of claim as prerequisite to suit

Sec. 13. A person may not initiate a suit against a governmental entity unless the person's claim has been denied in whole or in part.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-14

Compromise or settlement of claim by governor

Sec. 14. Except as provided in section 20 of this chapter, the governor may compromise or settle a claim or suit brought against the state or its employees.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-15

Attorney general; powers and duties

Sec. 15. Except as provided in section 20 of this chapter, the attorney general:

- (1) shall advise the governor concerning the desirability of compromising or settling a claim or suit brought against the state or its employees;
- (2) shall perfect a compromise or settlement which is made by the governor;
- (3) shall submit to the governor on or before January 31 of each year a report concerning the status of each claim or suit pending

against the state as of January 1 of that year; and
(4) shall defend, as chief counsel, the state and state employees as required under IC 4-6-2. However, the attorney general may employ other counsel to aid in defending or settling those claims or suits.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-16

Compromise or settlement of claim by political subdivision

Sec. 16. Except as provided in section 20 of this chapter, the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-17

Enforcement of judgments against governmental entities

Sec. 17. A court that has rendered a judgment against a governmental entity may order that governmental entity to:

- (1) appropriate funds for the payment of the judgment if funds are available for that purpose; or
- (2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-18

Time for payment of claim or judgment; interest rate

Sec. 18. (a) A claim or suit settled by, or a judgment rendered against, a governmental entity shall be paid by the governmental entity not later than one hundred eighty (180) days after the date of settlement or judgment, unless there is an appeal, in which case not later than one hundred eighty (180) days after a final decision is rendered.

(b) If payment is not made within one hundred eighty (180) days after the date of settlement or judgment, the governmental entity is liable for interest from the date of settlement or judgment at an annual rate of six percent (6%). The governmental entity is liable for interest at that rate and from that date even if the case is appealed, provided the original judgment is upheld.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-19

Applicability of IC 34-13-3-18; settlement

Sec. 19. Section 18 of this chapter does not apply if there is a structured settlement under section 23 of this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-20

Liability insurance; prohibitions

Sec. 20. (a) A political subdivision may purchase insurance to

cover the liability of itself or its employees, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

- (1) The requiring of contractors to carry insurance.
- (2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.
- (3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.
- (4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.3.

IC 34-13-3-21

Attorney's fees; allowance to governmental entity; action for abuse of process

Sec. 21. In any action brought against a governmental entity in tort, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant, if the court finds that plaintiff:

- (1) brought the action on a claim that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or
- (3) litigated its action in bad faith.

This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover such attorney's fees twice.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-22

Persons or entities considered political subdivisions

Sec. 22. (a) For purposes of this chapter, the following shall be treated as political subdivisions:

- (1) A community action agency (as defined in IC 12-14-23-2).

(2) An individual or corporation rendering public transportation services under a contract with a commuter transportation district created under IC 8-5-15.

(3) A volunteer fire department (as defined in IC 36-8-12-2) that is acting under:

(A) a contract with a unit or a fire protection district; or

(B) IC 36-8-17.

(b) The treatment provided for under subsection (a)(2) shall be accorded only in relation to a loss that occurs in the course of rendering public transportation services under contract with a commuter transportation district.

As added by P.L.1-1998, SEC.8. Amended by P.L.1-1999, SEC.68.

IC 34-13-3-23

Structured settlement; discharge; limits

Sec. 23. (a) With the consent of the claimant, a political subdivision may compromise or settle a claim or suit by means of a structured settlement under this section.

(b) A political subdivision may discharge settlement of a claim or suit brought under this chapter by:

(1) an agreement requiring periodic payments by the political subdivision over a specified number of years;

(2) the purchase of an annuity;

(3) by making a "qualified assignment" of the liability of the political subdivision as defined by the provisions of 26 U.S.C. 130(c);

(4) payment in a lump sum; or

(5) any combination of subdivisions (1) through (4).

(c) The present value of a structured settlement shall not exceed the statutory limits set forth in section 4 of this chapter; however, the periodic or annuity payments may exceed these statutory limits. The present value of any periodic payments may be determined by discounting the periodic payments by the same percentage as that found in Moody's Corporate Bond Yield Average Monthly Average Corporates, as published by Moody's Investors Service, Incorporated.
As added by P.L.1-1998, SEC.8.

IC 34-13-3-24

Appropriations for payment of claims and expenses

Sec. 24. There is appropriated from the state general fund sufficient funds to:

(1) settle claims and satisfy tort judgments obtained against the state; and

(2) pay expenses authorized by this chapter, including:

(A) liability insurance premiums;

(B) interest on claims and judgments; and

(C) expenses incurred by the attorney general in employing other counsel to aid in defending or settling claims or civil actions against the state.

As added by P.L.1-1998, SEC.8.

IC 34-13-3-25**Presentation of vouchers and issuance of warrants for appropriations**

Sec. 25. The attorney general shall present vouchers for the items or expenses described in section 24 of this chapter to the auditor of state. The auditor shall issue warrants on the treasury for the amounts presented.

As added by P.L.1-1998, SEC.8.

IC 34-13-4

Chapter 4. Civil Rights Claims Against Public Employees

IC 34-13-4-1

Personal civil liability under civil rights laws of employee acting within scope of employment

Sec. 1. If a present or former public employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity (when the governmental entity defends or has the opportunity to defend the public employee) shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay:

- (1) any judgment (other than for punitive damages) of the claim or suit; or
- (2) any judgment for punitive damages, compromise, or settlement of the claim or suit if:
 - (A) the governor, in the case of a claim or suit against a state employee; or
 - (B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment for punitive damages, compromise, or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

As added by P.L.1-1998, SEC.8. Amended by P.L.192-2001, SEC.4; P.L.161-2003, SEC.8.

IC 34-13-4-2

Defending state employee for claims or suits arising under civil rights laws

Sec. 2. If requested to do so, the attorney general shall defend a present or former state employee against a claim or suit under section 1 of this chapter. The attorney general may employ other counsel to aid in defending or settling the claim or suit.

As added by P.L.1-1998, SEC.8.

IC 34-13-4-3

Chapter as not waiving eleventh amendment

Sec. 3. This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries

of Indiana.

As added by P.L.1-1998, SEC.8.

IC 34-13-4-4

Attorney's fees; allowance to governmental entity; action for abuse of process

Sec. 4. In any action brought against a governmental entity under civil rights laws of the United States, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant if it finds that plaintiff:

- (1) brought the action on a claim that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or
- (3) litigated its action in bad faith.

This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover attorney's fees twice.

As added by P.L.1-1998, SEC.8.

IC 34-13-5

Chapter 5. Public Lawsuits for Testing Public Improvements of Municipal Corporations

IC 34-13-5-1

Exclusive applicability of chapter

Sec. 1. All public lawsuits shall be brought solely in conformity with and governed by the provisions of this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-2

Plaintiff; class actions; right of intervention

Sec. 2. (a) Plaintiffs in a public lawsuit may sue in their capacity either as citizens or taxpayers of the municipal corporation.

(b) A public lawsuit described in subsection (a) is a class suit (whether captioned as such or not), subject to the rights of intervention, the addition of parties, and the addition of other representatives of the same class, as is provided by law in other civil actions. Special appearances may be made in situations permitted by applicable law.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-3

Trial procedure

Sec. 3. The procedure in the trial court governing trial of the public lawsuit is the same as in other civil cases. When possible, the hearing on any interlocutory order shall be consolidated with the hearing on all other justiciable issues.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-4

Change of venue

Sec. 4. A change of venue from the judge may be permitted, but no change from the county may be permitted. When a change from the judge has been requested in accordance with the time limits prescribed by law, the affidavit or motion for the change shall be immediately certified to the supreme court:

(1) by the clerk of the trial court; or

(2) upon the failure of the clerk to act promptly, by verified copy of the motion presented to the supreme court by the moving party.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-5

Appointment of special judge

Sec. 5. (a) The rules regarding the selection of a special judge in civil cases do not apply. The supreme court shall appoint the special judge in a public lawsuit.

(b) A special judge is not required to reside in the county in which the case is pending or in any adjoining county.

(c) A special judge may be a regular judge of any circuit, superior, criminal, probate, juvenile, or other lower court of Indiana, any member of the Indiana bar, or any member of the court of appeals or the supreme court where the appointment can be validly made.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-6

Special reporter

Sec. 6. To expedite the trial of the case, either party may apply to the court for the appointment of a special reporter or firm of reporters to be the court reporter for the public lawsuit which the court may in its discretion approve. The moving party shall pay the cost, which may not be taxed as costs of the action.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-7

Interlocutory hearing

Sec. 7. (a) At any time before the final hearing in a public lawsuit, the defendant may petition for an order of the court that the cause be dismissed unless the plaintiff posts a bond with surety to be approved by the court. The bond must be payable to the defendant for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the defendant prevails.

(b) A hearing shall be held on a petition described in subsection (a) in the same manner as the hearing on temporary injunctions under IC 34-26-1. If, at the hearing, the court determines that the plaintiff cannot establish facts that would entitle the plaintiff to a temporary injunction, the court shall set the amount of bond to be filed by the plaintiff in an amount found by the judge to cover all damage and costs that may accrue to the defendants by reason of the pendency of the public lawsuit in the event the defendant prevails.

(c) If the plaintiff does not file a bond with sureties approved by the court within ten (10) days after the order to do so is entered, the suit shall be dismissed.

(d) Either plaintiff or defendant may appeal an order to post or deny bond to the Indiana supreme court within ten (10) days by notice of appeal and a statement of error in the same manner as is provided in a petition for mandate or prohibition. The supreme court may:

- (1) stay the lower court order pending its own decision;
 - (2) set a bond to be filed by the plaintiff;
 - (3) modify the order of the lower court; or
 - (4) enter its order as a final order in a case.
- (e) If no bond is filed as provided in this section:
- (1) the public lawsuit shall be dismissed; and
 - (2) no court has further jurisdiction of the public lawsuit or any other public lawsuit involving any issue that was or could have been raised.

(f) This section does not create, nor shall it be construed as creating, any additional cause of action on the part of any municipal

corporation, person, partnership, limited liability company, or corporation, unless the defendant is required to and does post bond.
As added by P.L.1-1998, SEC.8.

IC 34-13-5-8

Appeals

Sec. 8. Appeals from any final judgment in a public lawsuit shall be governed by, and taken in the same manner and with the same time limits, as appeals from interlocutory orders of a circuit or superior court under applicable law.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-9

Extensions of time; advance of trial or appeal

Sec. 9. Extensions of time, both in the trial court and in the Indiana supreme court, shall be granted only in extreme cases. The trial of a public lawsuit and the hearing of any appeal shall be advanced by the trial court and by the Indiana supreme court respectively, without request of either party, as expeditiously as is reasonably possible.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-10

Jurisdiction of trial court

Sec. 10. (a) A public lawsuit may not be brought, and no trial court has jurisdiction of any public lawsuit that is brought:

- (1) more than ten (10) days after the first publication required by law for the sale of bonds of a municipal corporation; or
- (2) in the case of a lease under IC 20-47-2, more than ten (10) days after the first publication of notice by any school building corporation for the sale of its bonds;

but in no case later than the time limited for bringing suit under applicable law.

(b) After a public lawsuit is commenced, no other lawsuit relating to the same subject matter may be commenced, and no trial court has jurisdiction of any subsequent lawsuit. No action may be brought except as provided in this chapter if it could have been the subject of a public lawsuit. This chapter does not diminish any right of intervention of any person, or the right of any person to become a named party in the public lawsuit.

(c) This section shall not be construed to extend any existing statute of limitations on the bringing of any lawsuit.

As added by P.L.1-1998, SEC.8. Amended by P.L.2-2006, SEC.184.

IC 34-13-5-11

Exhaustion of administrative remedies required before bringing public lawsuit

Sec. 11. As a condition precedent to bringing any public lawsuit, a plaintiff must first exhaust all the administrative remedies available to the plaintiff under applicable law, including but not limited to the

filing of a remonstrance where the issues raised could have been raised by the filing under applicable law. No plaintiff may commence a public lawsuit or be named as a party in the lawsuit unless one (1) of the plaintiffs has complied with this section.

As added by P.L.1-1998, SEC.8.

IC 34-13-5-12

Matters to be heard in public hearing

Sec. 12. Where:

(1) as a condition precedent to the construction, financing, or leasing of a public improvement, the municipal corporation is required to hold a public hearing preceded by public notice; and

(2) the hearing is held and the notice is given in accordance with applicable law;

the plaintiff in a public lawsuit is not entitled to raise any issue in the public lawsuit that the plaintiff could have but did not raise at the hearing. Any matters or issues relating to any procedural matters that were not raised and could have been redone or corrected following the hearing are declared to be irregularities and not jurisdictional to the power of the municipal corporation or its governing body in connection with the construction, financing, or leasing.

As added by P.L.1-1998, SEC.8.

IC 34-13-6

Chapter 6. Appeals From Actions of Municipalities

IC 34-13-6-1

Complaint; filing; contents

Sec. 1. (a) An appeal allowed by statute from any action or decision of:

- (1) a board of a city;
- (2) the legislative body of a city if it performs the functions of a board; or
- (3) the legislative body of a town;

shall be filed as an original complaint against the city or town in the circuit or superior court of the county in which the municipality is located.

(b) The complaint on appeal must be filed not later than thirty (30) days after the date of the action or decision complained of, and one (1) or more parties appealing may join in the same complaint.

(c) The appeal may not be taken by transcript.

(d) The complaint on appeal must contain the following:

(1) The title of the cause, specifying the name of the court and the county in which the appeal is filed.

(2) Whether it is an appeal from a board or body.

(3) The name of every party plaintiff to the appeal. The municipality must be named as the only defendant. Neither the board, the body, nor the individual members of the board or body may be made parties defendant to the complaint.

(4) A statement:

(A) of the facts constituting the cause of appeal, showing the nature of the proceedings in which and the date on which the action or decision complained of was taken; and

(B) if a statute controlling the proceeding requires, that a remonstrance in writing was filed by the plaintiff with the board or body as prescribed by statute, setting out a copy of the remonstrance and showing the date on which the remonstrance was filed.

(5) A description of each lot or tract of land or other property owned or controlled by the party or parties appealing and the amount of the award of damages or the amount of the assessment of benefits complained of for each lot or tract of land or other property described in the complaint, including the action or decision of the board or body concerning the award or assessment.

(6) If an appeal authorized by statute from an action or decision of a board or body does not involve or is not limited to the question of the amount of the award of damages or the assessment of benefits, a specific allegation of the action or decision that causes the party to complain.

(7) A demand for the relief to which the plaintiff believes the plaintiff is entitled, stating when the plaintiff became involved and the amount of damages that should be awarded or the

amount of benefits that should be assessed to or against each particular lot or tract of land or other property described in the complaint.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-2

Pleading; motions to dismiss complaint or appeal

Sec. 2. A pleading is not required by the municipality to the complaint on appeal since the allegations of the complaint are considered to be denied. The municipality may file a motion to dismiss the complaint by presenting any question of law regarding the sufficiency of the complaint on its face. The municipality may also file a motion to dismiss the appeal:

- (1) on the ground that the complaint was not filed within the time prescribed by law; or
- (2) on any other jurisdictional ground affecting the subject matter or the parties.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-3

Consolidation of appeals; separate trial

Sec. 3. (a) If more than one (1) appeal is taken from a proceeding and the appeals are filed in the same or different courts, any party to an appeal may file in the court a motion stating that justice will be best served by consolidating the appeals. The party shall serve notice of the motion on the adverse party or the attorney of record.

(b) If the court in which the motion is filed decides that justice will be best served by the consolidation, the court shall order all of the appeals consolidated. The appeals shall be heard at the same time by the court, and different appeals pending in different courts may all be transferred to one (1) court for the purpose of consolidation or trial. The court may hear all appeals at the same time either with or without consolidation. However, if any party appealing or the municipality objects to consolidation, they have the right to a separate trial of each appeal.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-4

Trial of appeals; scope of review; disposition

Sec. 4. (a) The decisions of the board or council appealed from are conclusive on all parties except the party appealing. The decision appealed from is considered prima facie correct and the burden of proof in all appeals is on the party appealing.

(b) All appeals shall be tried by the court without the intervention of a jury. The court shall try and hear de novo the issues of the action or decision of the board or council presented by written remonstrance or as otherwise provided by statute and raised by the appeals.

(c) The:

- (1) method of arriving at the action or decision of the board or council in making an award of damages or assessment of

benefits; and

(2) any issues not authorized by the statute to be made before the board or council, and appealed from;

may not be reviewed, considered, or adjudged by the court on appeal.

(d) The amount of benefits assessed or the damages awarded affecting any property, other than the property and the separate assessments or awards on them involved in each instance in a proceeding by a board or council from which an appeal is taken, may not be considered by the court on appeal.

(e) The court:

(1) may, on its own motion; and

(2) shall, on the motion of either party;

view and inspect any district, land, and property affected, damaged, benefited, or appropriated, including the work or thing proposed or done.

(f) The court, according to the particular statute allowing the appeal as the statute permits or prescribes the matters that may be considered, may set aside, affirm, lower, or increase an award, damages, or assessment of benefits as the court considers just and then order that action. The court also may affirm, reverse, or modify, in whole or in part, the action or decision of the board or council appealed from. The order and judgment of the court is conclusive upon all parties, and no appeal lies except upon questions affecting the jurisdiction of the court.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-5

Findings of court; judgment; costs; damages; assessment of benefits

Sec. 5. (a) If the court finds that the action or decision of the board or council appealed from should in all things be affirmed, its judgment must state that, naming the board or council and the proceedings in which the appeal is taken. Judgment for costs shall then be rendered against the party appealing.

(b) If the court finds that the action or decision of the board or council appealed from should not be affirmed in all things, then the court shall make a general finding, setting out, however, sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall then render judgment on all matters properly involved in the appeal, adjudging specifically the amount of the award of damages or the amount of the assessment of benefits found by the court to be due to each lot, parcel, or description or property involved in the appeal and adjudging that the award or assessment is payable as provided by statute.

(c) The court shall render judgment on other matters involved where the particular appeal allowed by a statute does not relate to the award of damages or the assessment of benefits.

(d) The court shall also render judgment on the costs of the appeal as the facts and law require.

(e) If the appeal involves the amount of an award of damages or

the amount of an assessment of benefits, or both, the court shall include an order, if appropriate, for the issuance of a certificate of damages, bearing legal interest from the date of issuance, to the person entitled to it upon all the terms and conditions that are provided by the applicable statute. If the appeal involves benefits, the court shall permit the assessment of benefits to be paid in full, or a written waiver may be executed and filed for paying it in ten (10) annual installments, with legal interest payable, and upon all other terms and conditions that are provided by the applicable statute. All of this must be done within thirty (30) days after the date on which the clerk of the court certifies the order and judgment for transmission to the board or council. If an assessment of benefits is not paid or a waiver executed and filed as provided before the expiration of the thirty (30) day period, the assessment becomes delinquent and is subject to all penalties and to collection as is provided by the applicable statute.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-6

Change of venue or judge; rehearing; supreme court appeal; procedure

Sec. 6. A change of venue from the county is not allowed in the appeal, but a change of judge shall be allowed as provided for civil actions. A petition for rehearing may be filed by any party within fifteen (15) days after the decision, order, and judgment of the court. Pending that time and until a petition so filed is ruled upon, the order and judgment of the court may be certified to the board or council. At the time of ruling upon a petition, the court may grant time for filing an appeal bond and special bills of exceptions embracing as much of the record as is necessary to present fully any questions. The appeal must be fully perfected within sixty (60) days from the final ruling and action of the court upon the petition for a rehearing and shall be taken direct to the supreme court of Indiana, where it shall be placed upon the advance calendar of the court. The rules of trial procedure govern in all matters of procedure not otherwise provided for by this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-7

Increase in damages or reduction in assessment of benefits; liability of city; costs of appeal

Sec. 7. (a) If on appeal:

(1) the amount of an award of damages is increased; or
(2) the amount of an assessment of benefits is reduced;
the municipality is liable to the plaintiff for the increase in the award of damages and is liable to the party entitled to them for a reduction in the assessment of benefits.

(b) The amounts, costs, and expense, if the appeal is taken from the board of public works or the board of public works and safety, shall be paid by the board out of funds appropriated by the common

council or city-county council for that purpose, or as otherwise provided by statute.

(c) The council shall make all necessary appropriations as provided by statute to enable the board to make all payments required by this chapter, if not otherwise provided by statute and available for these purposes.

(d) If the appeal is taken from the board of park commissioners of a city, then the amounts, costs, and expenses shall be paid by the board out of its general fund, or as otherwise provided by statute.

(e) If the appeal is taken from the legislative body, other body, or an official of a municipality, the amounts required to comply with the court's order and judgment shall be appropriated and paid in any manner authorized by statute.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-8

Priority of appeal

Sec. 8. An appeal takes precedence over other pending litigation and shall be tried and determined by the court at as early a date as practical.

As added by P.L.1-1998, SEC.8.

IC 34-13-7

Chapter 7. Commencement of Action Against Public Employees and Government Entities by Offender

IC 34-13-7-1

Required submissions by an offender bringing an action against public employees and governmental entities

Sec. 1. (a) In addition to any other requirements under law, before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit to the trial court:

- (1) a copy of the complaint the offender wishes to file;
- (2) a list of all cases previously filed by the offender involving the same, similar, or related cause of actions; and
- (3) a copy of all relevant documents pertaining to the ultimate disposition of each previous case filed by the offender against any of the same defendants in a state or federal court. The relevant documents include:

- (A) the complaint;
- (B) any motions to dismiss or motions for summary judgment filed by the defendants in the actions;
- (C) the state or federal court order announcing disposition of the case; and
- (D) any opinions issued in the case by any appellate court.

(b) An offender must file with the court a brief that includes:

- (1) a legal argument;
- (2) a citation to authority; and
- (3) an explanation to the court why the new action is not subject to dismissal as a matter finally decided on its merits by a court and not subject to litigation again between the same parties.

(c) If the trial court determines that the complaint is frivolous, malicious, or otherwise utterly without merit, or fails to state a claim upon which relief may be granted, the court shall dismiss the complaint.

As added by P.L.80-2004, SEC.7.