

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1117

AN ACT to amend the Indiana Code concerning performance, payment, and other surety bonds.

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

SECTION 1. IC 5-16-5-2, AS AMENDED BY P.L.75-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A contract awarded for a public work must provide for the payment of subcontractors, labor, suppliers of materials, and those performing service in connection with the public work. The contract must provide for the payment of subcontractors by withholding by the public body funds sufficient from the contract price to pay the subcontractors, labor, suppliers of materials, and those furnishing service in relation to or in connection with the public work. The contractor shall execute a bond to the state, approved by the public body in an amount equal to the total contract price. **However, a contractor is not required to execute a bond under this section in the case of a contract entered into by a state educational institution, if the amount to be paid under the contract is less than five hundred thousand dollars (\$500,000) and the state educational institution agrees to waive the requirement.** The bond shall be conditioned for payment by the contractor, the contractor's successors and assigns, and by the subcontractors, their successors and assigns, of all indebtedness, which may accrue to any person for any labor or service performed, materials furnished, or service rendered in the public work. The bond by its terms shall be conditioned to directly

HEA 1117 — Concur



inure to the benefit of subcontractors, laborers, suppliers of materials, and those performing service who have furnished or supplied labor, material, or service for the public work.

(b) The bond required under subsection (a) shall be deposited with the public body for the benefit of a person interested in and entitled to the bond. The bond shall be conditioned that:

(1) a change, modification, omission, or addition in and to the terms or conditions of the contract, plans, specifications, drawings, or profile; or

(2) any irregularity or defect in the contract or in the proceedings preliminary to the letting and awarding of the contract; does not affect or operate to release or discharge the surety.

(c) The provisions of this chapter become a part of the terms of a contract awarded under this chapter. A bond for a public work is subject to this chapter.

(d) A person to whom money is due for having performed labor or having furnished material or service for a public work under this chapter must, not later than sixty (60) days after that person completed the labor or service or after that person furnished the last item of material:

(1) file with the public body duplicate verified statements of the amount due to the person; and

(2) deliver a copy of the statement to the contractor.

The public body shall deliver to the surety on the bond one (1) of the duplicate statements. The failure to deliver a duplicate statement by the public body does not affect or invalidate the rights of the person to whom money is due, nor does the failure to deliver a duplicate statement operate as a defense for the surety.

(e) A suit may not be brought against a surety on a bond under this section before thirty (30) days after both of the following have occurred:

(1) The filing of the verified duplicate statement.

(2) A copy of the notice has been delivered to the contractor.

If the indebtedness is not paid in full after thirty (30) days, the person, may bring an action in a court of competent jurisdiction upon the bond. The action must be brought not later than sixty (60) days after the date of the final completion and acceptance of the public work. An action on the bond against a surety is barred if not brought within this time.

(f) IC 8-23-9, and not this chapter, applies to bonds and claims on state highway road and bridge contracts.

SECTION 2. IC 5-16-5.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) **This section**

HEA 1117 — Concur



does not apply to a contract entered into by a state educational institution if:

- (1) the amount to be paid under the contract is less than five hundred thousand dollars (\$500,000); and
- (2) the state educational institution agrees to waive the requirement.

(b) At the time of entering into any contract covered by the provisions of this chapter, the contractor shall furnish a valid performance bond which is acceptable to the state agency involved in an amount equal to ~~his~~ **the contractor's** total contract price. If it is acceptable to the state agency involved, this performance bond may provide for incremental bonding in the form of multiple or chronological bonds which, when taken as a whole, equal the total contract price.

(c) The surety on the bond shall not be released for a period of one (1) year after final settlement with the contractor. No change, modification, omission or addition in and to the terms or conditions of said contract, plans, specifications, drawings or profile or any irregularity or defect in said contract or in the proceedings preliminary to the letting and awarding thereof shall in any way affect or operate to release or discharge the surety.

SECTION 3. IC 36-7-4-709, AS AMENDED BY P.L.105-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 709. (a) Secondary approval under section 710 of this chapter may be granted to a plat for a subdivision in which the improvements and ~~installments~~ **installations** have not been completed as required by the subdivision control ordinance, if:

- (1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that:
 - (A) is an amount determined by the plan commission or plat committee to be sufficient to complete the improvements and installations in compliance with the ordinance; and
 - (B) provides surety satisfactory to the plan commission or plat committee; or
- (2) with respect to the installation or extension of water, sewer, or other utility service:
 - (A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and
 - (B) the plan commission or plat committee determines based on written evidence that the contract provides satisfactory



assurance that the service will be installed or extended in compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and ~~installments~~ **installations** for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

(d) As used in this section, "land developer" has the meaning set forth in IC 6-1.1-4-12(a).

(e) As used in this section, "under development" means a situation with respect to land in which a primary plat has been filed and approved and work has commenced to make substantive physical improvements to the land, excluding any work performed for the purpose of preparing the land.

(f) Notwithstanding subsection (a), a local unit may not adopt or enforce an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do any of the following:

(1) Obtain a performance bond or other surety before the date on which the land developer records an approved secondary plat. However, a local unit may require the land developer to obtain a performance bond or other surety before an approved secondary plat is recorded if the area under development is:

- (A) within the existing public right-of-way; or
- (B) related to erosion control.

(2) Obtain a maintenance bond that has an effective period greater than three (3) years.

(g) After a secondary plat is approved, a local unit may require, as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control that:

(1) are:

- (A) in the approved development; or
- (B) required to service the approved development; and



(2) are included within:

(A) the legal description of the recorded plat; or

(B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.

(h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:

(1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and

(2) the partial release of the performance bond or other surety on an annual **or on a more frequent** basis in accordance with a partial release schedule agreed to in a signed writing by:

(A) the local unit, or the local unit's designated official or body; and

(B) the land developer or the land developer's designated agent;

before or during development.

(i) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:

(A) the portion of the area or improvement of the project; or

(B) **the** designated section in the project;

being bonded;

(2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and

(3) may not include any land that is not under development at the time the bond or other surety is required, such as sections of adjacent or contiguous land that remain undeveloped, except to the extent that the land not then under development is used to access the site or provide utilities or other necessary services to the land that is under development.

SECTION 4. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1117 — Concur

