

# HOUSE BILL No. 1266

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-22-2-23; IC 5-23-3-2; IC 8-15.5-5-2; IC 8-15.7-5-1.5.

**Synopsis:** Performance and payment bonds. Requires that public-private agreements must contain performance bond and payment bond requirements.

**Effective:** July 1, 2017.

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## Gutwein

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January 10, 2017, read first time and referred to Committee on Government and Regulatory Reform.

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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 BILL No. 1266

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A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 5-22-2-23 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 23. (a) "Public funds"  
3 means money:  
4 (1) derived from the revenue sources of the governmental body;  
5 and  
6 (2) deposited into the general or a special fund of the  
7 governmental body.  
8 (b) The term does not include either of the following:  
9 (1) Money **received by any paid to a person for** managing or  
10 operating a public facility under an authorized operating  
11 agreement under IC 5-23.  
12 (2) Proceeds of bonds payable exclusively by a private entity.  
13 SECTION 2. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2017]: Sec. 2. BOT agreements may provide  
15 the following:  
16 (1) The design, construction, operation, management,  
17 maintenance, or financing of the cost of a public facility shall be



1 partially or entirely the responsibility of the operator.

2 (2) The governmental body shall lease the public facility and real  
3 property owned by the governmental body upon which the public  
4 facility is to be located to the operator for a predetermined period.  
5 The BOT agreement must provide for ownership of all  
6 improvements by the governmental body, unless the  
7 governmental body elects to provide for ownership of the public  
8 facility by the operator during the term of the BOT agreement. In  
9 this case, ownership reverts back to the governmental body upon  
10 the termination of the BOT agreement.

11 (3) The BOT agreement must identify which costs are to be the  
12 responsibility of the operator and which costs are to be the  
13 responsibility of the governmental body.

14 (4) The operator may be authorized to retain a mutually agreed  
15 upon percentage of the revenues received in the operation and  
16 management of the public facility, or the operator may be paid an  
17 amount established by the governmental body, which shall be  
18 applied as follows:

19 (A) Capital outlay costs for the public facility and public  
20 service plus interest and principal repayment for any debt  
21 incurred.

22 (B) Costs associated with the operation, management, and  
23 maintenance of the public facility.

24 (C) Payment to the governmental body for reimbursement of  
25 the costs of maintenance, law enforcement, and other services  
26 if the services are performed by the governmental body under  
27 the BOT agreement.

28 (D) An agreed upon return on investment to the operator.

29 (5) The operator may pay the governmental body either a lease  
30 payment or a percentage of gross revenue per month for the  
31 operator's operation and use of the public facility.

32 (6) The BOT agreement ~~may~~ **must**:

33 (A) require a performance bond **in an amount equal to the**  
34 **cost to design and construct the public facility;** and

35 (B) provide for the payment of contractors and subcontractors  
36 under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is  
37 applicable.

38 SECTION 3. IC 8-15.5-5-2, AS AMENDED BY P.L.91-2014,  
39 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2017]: Sec. 2. A public-private agreement entered into under  
41 this article must provide for the following:

42 (1) The original term of the public-private agreement, which may



1 not exceed seventy-five (75) years.

2 (2) Provisions for a:

3 (A) lease, franchise, or license of the project and the real  
4 property owned by the authority upon which the project is  
5 located or is to be located; or

6 (B) management agreement or other contract to operate the  
7 project and the real property owned by the authority upon  
8 which the project is located or is to be located;

9 for a predetermined period. The public-private agreement must  
10 provide for ownership of all improvements and real property by  
11 the authority in the name of the state or by a governmental entity,  
12 or both.

13 (3) Monitoring of the operator's maintenance practices by the  
14 authority and the taking of actions by the authority that it  
15 considers appropriate to ensure that the project is properly  
16 maintained.

17 (4) The basis upon which user fees that may be collected by the  
18 operator, as determined under this article, are established.

19 (5) Compliance with applicable state and federal laws and local  
20 ordinances.

21 (6) Grounds for termination of the public-private agreement by  
22 the authority or the operator.

23 (7) The date of termination of the operator's authority and duties  
24 under this article.

25 (8) Procedures for amendment of the agreement.

26 (9) Provisions requiring the completion of all environmental  
27 analyses of the project required by state and federal law in the  
28 manner and at the times required by the appropriate state and  
29 federal agencies.

30 (10) An expedited method for resolving disputes between or  
31 among the authority, the parties to the public-private agreement,  
32 and units of local government that contain any part of the project,  
33 as required by IC 8-15.5-10-8.

34 **(11) For a public-private agreement entered into after June**  
35 **30, 2017, bond requirements as follows:**

36 **(A) A performance bond in an amount equal to the cost to**  
37 **design and construct the project.**

38 **(B) A payment bond conditioned on payment for labor and**  
39 **material furnished for use in construction of the project.**

40 SECTION 4. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,  
41 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2017]: Sec. 1.5. In addition to the other requirements of this



- 1 article, a public-private agreement entered into under this article must  
2 include the following:
- 3 (1) A requirement for the completion of all environmental  
4 analyses of the project required by state and federal law in the  
5 manner and at the times required by the appropriate state and  
6 federal agencies.
- 7 (2) A requirement for ownership by the department in the name  
8 of the state of Indiana of:
- 9 (A) all the real property on which the project is located; and  
10 (B) all of the improvements on that real property.
- 11 (3) An expedited method for resolving disputes between or among  
12 the department, the parties to the public-private agreement, and  
13 affected jurisdictions, as required by IC 8-15.7-12-2.
- 14 **(4) For a public-private agreement entered into after June 30,**  
15 **2017, bond requirements as follows:**
- 16 (A) **A performance bond in an amount equal to the cost to**  
17 **design and construct the project.**
- 18 (B) **A payment bond conditioned on payment for labor and**  
19 **material furnished for use in construction of the project.**

