

HOUSE BILL No. 1293

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1-12.

Synopsis: Performance bond for a demolition contractor. Provides that if a contractor enters into a public work contract with a political subdivision under which the contractor is to demolish a building and remove the demolition debris, the contractor is required to furnish a performance bond equal to the contract price plus, if applicable, a reasonable estimate of the value of any salvage materials to which the contractor will be entitled, regardless of the amount to be paid to the contractor under the contract.

Effective: July 1, 2015.

Aylesworth

January 13, 2015, read first time and referred to Committee on Local Government.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1293



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-1-12-1.2, AS AMENDED BY P.L.91-2014,
2 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1.2. The following definitions apply throughout
4 this chapter:
5 (1) "Board" means the board or officer of a political subdivision
6 or an agency having the power to award contracts for public work.
7 (2) "Contractor" means a person who is a party to a public work
8 contract with the board.
9 (3) "Subcontractor" means a person who is a party to a contract
10 with the contractor and furnishes and performs labor on the public
11 work project. The term includes material men who supply
12 contractors or subcontractors.
13 (4) "Escrowed income" means the value of all property held in an
14 escrow account over the escrowed principal in the account.
15 (5) "Escrowed principal" means the value of all cash and



1 securities or other property placed in an escrow account.

2 (6) "Operating agreement" has the meaning set forth in
3 IC 5-23-2-7.

4 **(7) "Performance bond" means an approved form of security
5 that guarantees a contractor's complete execution of the
6 contract and all supplemental agreements.**

7 ~~(7)~~ **(8)** "Person" means any association, corporation, limited
8 liability company, fiduciary, individual, joint venture, partnership,
9 sole proprietorship, or any other legal entity.

10 ~~(8)~~ **(9)** "Property" means all:

11 (A) personal property, fixtures, furnishings, inventory, and
12 equipment; and

13 (B) real property.

14 ~~(9)~~ **(10)** "Public fund" means all funds that are:

15 (A) derived from the established revenue sources of a political
16 subdivision or an agency of a political subdivision; and

17 (B) deposited in a general or special fund of a municipal
18 corporation, or another political subdivision or agency of a
19 political subdivision.

20 The term does not include funds received by any person managing
21 or operating a public project under a duly authorized operating
22 agreement under IC 5-23 or proceeds of bonds payable
23 exclusively by a private entity.

24 ~~(10)~~ **(11)** "Retainage" means the amount to be withheld from a
25 payment to the contractor or subcontractor until the occurrence of
26 a specified event.

27 ~~(11)~~ **(12)** "Specifications" means a description of the physical
28 characteristics, functional characteristics, extent, or nature of any
29 public work required by the board.

30 ~~(12)~~ **(13)** "Substantial completion" refers to the date when the
31 construction of a structure is sufficiently completed, in
32 accordance with the plans and specifications, as modified by any
33 complete change orders agreed to by the parties, so that it can be
34 occupied for the use for which it was intended.

35 SECTION 2. IC 36-1-12-14.5 IS ADDED TO THE INDIANA
36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2015]: **Sec. 14.5. (a) This section applies to a
38 public work contract involving:**

39 **(1) the demolition of a building or other structure; and**

40 **(2) the removal of demolition debris from the site of the
41 demolition;**

42 **regardless of the amount to be paid to the contractor under the**



- 1 contract.
- 2 (b) A contractor that enters into a contract described in
- 3 subsection (a) shall furnish the board awarding the contract with
- 4 a performance bond equal to:
- 5 (1) the amount, if any, to be paid to the contractor under the
- 6 contract for the demolition of the building or other structure;
- 7 plus
- 8 (2) if the contractor will be entitled to salvage materials from
- 9 the demolished building or other structure, a reasonable
- 10 estimate of the value of materials that the contractor will be
- 11 entitled to salvage.
- 12 (c) With the consent of the board, a performance bond
- 13 furnished under this section may provide for incremental bonding
- 14 in the form of multiple or chronological bonds that, when taken as
- 15 a whole, equal the contract price.
- 16 (d) The surety on a performance bond furnished under this
- 17 section may not be released until one (1) year after the date of the
- 18 board's final settlement with the contractor. The performance
- 19 bond must specify that:
- 20 (1) a modification, omission, or addition to the terms and
- 21 conditions of the public work contract, plans, specifications,
- 22 drawings, or profile;
- 23 (2) a defect in the public work contract; or
- 24 (3) a defect in the proceedings preliminary to the letting and
- 25 awarding of the public work contract;
- 26 does not discharge the surety.
- 27 (e) An action against a surety on a performance bond furnished
- 28 under this section must be brought within one (1) year after the
- 29 date of the board's final settlement with the contractor.

