

# HOUSE BILL No. 1374

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Performance and payment bonds. Provides that for public-private BOT agreements, public-private agreements for toll road projects, and public-private partnership agreements for transportation projects entered into after June 30, 2019, requirements for the amount of performance and payment bonds are based on the cost to design and construct the project.

**Effective:** July 1, 2019.

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## Lehman

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January 14, 2019, read first time and referred to Committee on Insurance.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1374

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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 5-23-3-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2019]: Sec. 2. **(a)** BOT agreements may provide  
3 the following:  
4 (1) The design, construction, operation, management,  
5 maintenance, or financing of the cost of a public facility shall be  
6 partially or entirely the responsibility of the operator.  
7 (2) The governmental body shall lease the public facility and real  
8 property owned by the governmental body upon which the public  
9 facility is to be located to the operator for a predetermined period.  
10 The BOT agreement must provide for ownership of all  
11 improvements by the governmental body, unless the  
12 governmental body elects to provide for ownership of the public  
13 facility by the operator during the term of the BOT agreement. In  
14 this case, ownership reverts back to the governmental body upon  
15 the termination of the BOT agreement.  
16 (3) The BOT agreement must identify which costs are to be the  
17 responsibility of the operator and which costs are to be the



1 responsibility of the governmental body.

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

7 (A) Capital outlay costs for the public facility and public  
8 service plus interest and principal repayment for any debt  
9 incurred.

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

12 (C) Payment to the governmental body for reimbursement of  
13 the costs of maintenance, law enforcement, and other services  
14 if the services are performed by the governmental body under  
15 the BOT agreement.

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

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

20 (6) **This subdivision applies only to a BOT agreement entered**  
21 **into before July 1, 2019.** The BOT agreement may require a  
22 performance bond and provide for the payment of contractors and  
23 subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12,  
24 whichever is applicable.

25 (7) **This subdivision applies only to a BOT agreement entered**  
26 **into after June 30, 2019. The BOT agreement must provide**  
27 **for the following:**

28 (A) **The payment of contractors and subcontractors under**  
29 **IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is**  
30 **applicable.**

31 (B) **The bonding provisions stated in subsection (b).**

32 (b) **The BOT agreement provisions for payment and**  
33 **performance bonds under subsection (a)(7) are as follows:**

34 (1) **If the cost to design and construct the public facility is less**  
35 **than twenty-five million dollars (\$25,000,000), the BOT**  
36 **agreement may require performance and payment bonds in**  
37 **the amounts set forth in the BOT agreement.**

38 (2) **If the cost to design and construct the public facility is:**

39 (A) **at least twenty-five million dollars (\$25,000,000); and**

40 (B) **less than two hundred fifty million dollars**  
41 **(\$250,000,000);**

42 **the BOT agreement must require performance and payment**



1           **bonds in an amount equal to the cost to design and construct**  
 2           **the public facility.**

3           **(3) If the cost to design and construct the public facility is two**  
 4           **hundred fifty million dollars (\$250,000,000) or more, the BOT**  
 5           **agreement must require performance and payment bonds in**  
 6           **an amount not less than fifty percent (50%) of the cost to**  
 7           **design and construct the public facility.**

8           SECTION 2. IC 8-15.5-5-2, AS AMENDED BY P.L.189-2018,  
 9           SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10          JULY 1, 2019]: Sec. 2. A public-private agreement entered into under  
 11          this article must provide for the following:

12          (1) The original term of the public-private agreement, which may  
 13          not exceed seventy-five (75) years.

14          (2) Provisions for a:

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

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

21          for a predetermined period. The public-private agreement must  
 22          provide for ownership of all improvements and real property by  
 23          the authority in the name of the state or by a governmental entity,  
 24          or both.

25          (3) Monitoring of the operator's maintenance practices by the  
 26          authority and the taking of actions by the authority that it  
 27          considers appropriate to ensure that the project is properly  
 28          maintained.

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

31          (5) Compliance with applicable state and federal laws and local  
 32          ordinances.

33          (6) Filing by the operator, on a periodic basis, of appropriate  
 34          financial statements in a form acceptable to the authority.

35          (7) Grounds for termination of the public-private agreement by  
 36          the authority or the operator.

37          (8) The date of termination of the operator's authority and duties  
 38          under this article.

39          (9) Procedures for amendment of the agreement.

40          (10) Provisions requiring the completion of all environmental  
 41          analyses of the project required by state and federal law in the  
 42          manner and at the times required by the appropriate state and



1 federal agencies.

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

6 **(12) This subdivision applies only to a public-private**  
7 **agreement entered into after June 30, 2019. The agreement**  
8 **must provide for payment and performance bonds as follows:**

9 (A) If the cost to design and construct the project is less  
10 than twenty-five million dollars (\$25,000,000), the  
11 agreement may require performance and payment bonds  
12 in the amounts set forth in the agreement.

13 (B) If the cost to design and construct the project is:

14 (i) at least twenty-five million dollars (\$25,000,000); and

15 (ii) less than two hundred fifty million dollars  
16 (\$250,000,000);

17 the agreement must require performance and payment  
18 bonds in an amount equal to the cost to design and  
19 construct the project.

20 (C) If the cost to design and construct the project is two  
21 hundred fifty million dollars (\$250,000,000) or more, the  
22 agreement must require performance and payment bonds  
23 in an amount not less than fifty percent (50%) of the cost  
24 to design and construct the project.

25 SECTION 3. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,  
26 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2019]: Sec. 1.5. In addition to the other requirements of this  
28 article, a public-private agreement entered into under this article must  
29 include the following:

30 (1) A requirement for the completion of all environmental  
31 analyses of the project required by state and federal law in the  
32 manner and at the times required by the appropriate state and  
33 federal agencies.

34 (2) A requirement for ownership by the department in the name  
35 of the state of Indiana of:

36 (A) all the real property on which the project is located; and

37 (B) all of the improvements on that real property.

38 (3) An expedited method for resolving disputes between or among  
39 the department, the parties to the public-private agreement, and  
40 affected jurisdictions, as required by IC 8-15.7-12-2.

41 **(4) This subdivision applies only to a public-private**  
42 **agreement entered into after June 30, 2019. The agreement**



1           **must provide for payment and performance bonds as follows:**  
2           **(A) If the cost to design and construct the project is less**  
3           **than twenty-five million dollars (\$25,000,000), the**  
4           **agreement may require performance and payment bonds**  
5           **in the amounts set forth in the agreement.**  
6           **(B) If the cost to design and construct the project is:**  
7           **(i) at least twenty-five million dollars (\$25,000,000); and**  
8           **(ii) less than two hundred fifty million dollars**  
9           **(\$250,000,000);**  
10          **the agreement must require performance and payment**  
11          **bonds in an amount equal to the cost to design and**  
12          **construct the project.**  
13          **(C) If the cost to design and construct the project is two**  
14          **hundred fifty million dollars (\$250,000,000) or more, the**  
15          **agreement must require performance and payment bonds**  
16          **in an amount not less than fifty percent (50%) of the cost**  
17          **to design and construct the project.**

