



April 3, 2019

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# ENGROSSED HOUSE BILL No. 1374

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DIGEST OF HB 1374 (Updated April 2, 2019 12:38 pm - DI 133)

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

**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, a performance bond must be for not less than 50% of the cost to design and construct the project and a payment bond must be for not less than 100% of the cost to design and construct the project.

**Effective:** July 1, 2019.

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## Lehman, Soliday, Frye R

(SENATE SPONSOR — DORIOT)

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January 14, 2019, read first time and referred to Committee on Insurance.  
January 15, 2019, reassigned to Committee on Roads and Transportation.  
February 14, 2019, amended, reported — Do Pass.  
February 18, 2019, read second time, ordered engrossed.  
February 19, 2019, engrossed. Read third time, passed. Yeas 93, nays 2.

SENATE ACTION

March 4, 2019, read first time and referred to Committee on Homeland Security and Transportation.  
April 2, 2019, reported favorably — Do Pass.

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EH 1374—LS 7513/DI 75





April 3, 2019

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.

## ENGROSSED HOUSE BILL No. 1374

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

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responsibility of the governmental body.

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

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

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

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

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

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

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

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

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

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

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

**(1) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the public facility.**

**(2) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the public facility.**

SECTION 2. IC 8-15.5-5-2, AS AMENDED BY P.L.189-2018, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. A public-private agreement entered into under



- 1 this article must provide for the following:
- 2 (1) The original term of the public-private agreement, which may
- 3 not exceed seventy-five (75) years.
- 4 (2) Provisions for a:
- 5 (A) lease, franchise, or license of the project and the real
- 6 property owned by the authority upon which the project is
- 7 located or is to be located; or
- 8 (B) management agreement or other contract to operate the
- 9 project and the real property owned by the authority upon
- 10 which the project is located or is to be located;
- 11 for a predetermined period. The public-private agreement must
- 12 provide for ownership of all improvements and real property by
- 13 the authority in the name of the state or by a governmental entity,
- 14 or both.
- 15 (3) Monitoring of the operator's maintenance practices by the
- 16 authority and the taking of actions by the authority that it
- 17 considers appropriate to ensure that the project is properly
- 18 maintained.
- 19 (4) The basis upon which user fees that may be collected by the
- 20 operator, as determined under this article, are established.
- 21 (5) Compliance with applicable state and federal laws and local
- 22 ordinances.
- 23 (6) Filing by the operator, on a periodic basis, of appropriate
- 24 financial statements in a form acceptable to the authority.
- 25 (7) Grounds for termination of the public-private agreement by
- 26 the authority or the operator.
- 27 (8) The date of termination of the operator's authority and duties
- 28 under this article.
- 29 (9) Procedures for amendment of the agreement.
- 30 (10) Provisions requiring 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 (11) An expedited method for resolving disputes between or
- 35 among the authority, the parties to the public-private agreement,
- 36 and units of local government that contain any part of the project,
- 37 as required by IC 8-15.5-10-8.
- 38 **(12) This subdivision applies only to a public-private**
- 39 **agreement entered into after June 30, 2019. The agreement**
- 40 **must provide for payment and performance bonds as follows:**
- 41 **(A) For a payment bond, an amount not less than one**
- 42 **hundred percent (100%) of the cost to design and**



- 1                   **construct the project.**  
 2                   **(B) For a performance bond, an amount not less than fifty**  
 3                   **percent (50%) of the cost to design and construct the**  
 4                   **project.**  
 5                   SECTION 3. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,  
 6                   SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7                   JULY 1, 2019]: Sec. 1.5. In addition to the other requirements of this  
 8                   article, a public-private agreement entered into under this article must  
 9                   include the following:  
 10                   (1) A requirement for the completion of all environmental  
 11                   analyses of the project required by state and federal law in the  
 12                   manner and at the times required by the appropriate state and  
 13                   federal agencies.  
 14                   (2) A requirement for ownership by the department in the name  
 15                   of the state of Indiana of:  
 16                   (A) all the real property on which the project is located; and  
 17                   (B) all of the improvements on that real property.  
 18                   (3) An expedited method for resolving disputes between or among  
 19                   the department, the parties to the public-private agreement, and  
 20                   affected jurisdictions, as required by IC 8-15.7-12-2.  
 21                   **(4) This subdivision applies only to a public-private**  
 22                   **agreement entered into after June 30, 2019. The agreement**  
 23                   **must provide for payment and performance bonds as follows:**  
 24                   (A) For a payment bond, an amount not less than one  
 25                   hundred percent (100%) of the cost to design and  
 26                   construct the project.  
 27                   (B) For a performance bond, an amount not less than fifty  
 28                   percent (50%) of the cost to design and construct the  
 29                   project.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1374, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 32 through 42, begin a new paragraph and insert:

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

**(1) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the public facility.**

**(2) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the public facility."**

Page 3, delete lines 1 through 7.

Page 4, delete lines 6 through 24, begin a new line block indented and insert:

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

**(A) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the project.**

**(B) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the project."**

Page 4, delete lines 41 through 42, begin a new line block indented and insert:

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

**(A) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the project.**



**(B) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the project."**

Delete page 5.

and when so amended that said bill do pass.

(Reference is to HB 1374 as introduced.)

SULLIVAN

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security and Transportation, to which was referred House Bill No. 1374, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1374 as printed February 15, 2019.)

CRIDER, Chairperson

Committee Vote: Yeas 8, Nays 0

