

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 ENROLLED ACT No. 1374

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

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

SECTION 1. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) BOT agreements may provide the following:

- (1) The design, construction, operation, management, maintenance, or financing of the cost of a public facility shall be partially or entirely the responsibility of the operator.
- (2) The governmental body shall lease the public facility and real property owned by the governmental body upon which the public facility is to be located to the operator for a predetermined period. The BOT agreement must provide for ownership of all improvements by the governmental body, unless the governmental body elects to provide for ownership of the public facility by the operator during the term of the BOT agreement. In this case, ownership reverts back to the governmental body upon the termination of the BOT agreement.
- (3) The BOT agreement must identify which costs are to be the responsibility of the operator and which costs are to be the 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

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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 this article must provide for the following:
- (1) The original term of the public-private agreement, which may not exceed seventy-five (75) years.
 - (2) Provisions for a:

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

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

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

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

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

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

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

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

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

(9) Procedures for amendment of the agreement.

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

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

(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.



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

- (1) A requirement for the completion of all environmental analyses of the project required by state and federal law in the manner and at the times required by the appropriate state and federal agencies.
- (2) A requirement for ownership by the department in the name of the state of Indiana of:
 - (A) all the real property on which the project is located; and
 - (B) all of the improvements on that real property.
- (3) An expedited method for resolving disputes between or among the department, the parties to the public-private agreement, and affected jurisdictions, as required by IC 8-15.7-12-2.
- (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.**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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