



February 10, 2022

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# ENGROSSED SENATE BILL No. 166

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DIGEST OF SB 166 (Updated February 10, 2022 11:39 am - DI 139)

**Citations Affected:** IC 5-23; IC 6-1.1; IC 6-2.5.

**Synopsis:** Public-private agreements. Provides that a governmental body may enter into a public-private agreement with respect to a transportation project. Provides that any public-private agreement with respect to a transportation project may use availability payments to finance all or a portion of the project. Provides that a governmental body may also enter into a development agreement with a private party for the development, construction, and financing of a privately owned and operated transportation or infrastructure project if the development agreement meets certain conditions. Specifies the contents of public-private agreements for transportation facilities or transportation projects and establishes requirements for the operator of the transportation facility or transportation project. Provides for a property tax exemption and a sales tax exemption. Defines terms.

**Effective:** July 1, 2022; January 1, 2023.

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**Walker K, Holdman, Ford Jon,  
Randolph Lonnie M, Buck**

(HOUSE SPONSOR — PRESSEL)

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January 4, 2022, read first time and referred to Committee on Tax and Fiscal Policy.

January 25, 2022, amended, reported favorably — Do Pass.

January 31, 2022, read second time, amended, ordered engrossed.

February 1, 2022, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 7, 2022, read first time and referred to Committee on Roads and Transportation.

February 10, 2022, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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ES 166—LS 6587/DI 134





February 10, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 166

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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 5-23-2-1.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2022]: **Sec. 1.5. "Availability payment" means any funding**  
4 **stream, whether from a private, local, state, or federal source that**  
5 **the governmental body is authorized to use for the construction,**  
6 **maintenance, financing, or operations of any transportation**  
7 **infrastructure located within the boundaries of the governmental**  
8 **body.**
- 9 SECTION 2. IC 5-23-2-5.5 IS ADDED TO THE INDIANA CODE  
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2022]: **Sec. 5.5. "Develop" means to plan, design, finance, lease,**  
12 **acquire, install, construct, or expand under a public-private**  
13 **agreement.**
- 14 SECTION 3. IC 5-23-2-6.3 IS ADDED TO THE INDIANA CODE  
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 2022]: **Sec. 6.3. "Material default" means a nonperformance of**  
17 **its duties by the operator of a public-private agreement which**

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1 **jeopardizes adequate service to the public from the project.**

2 SECTION 4. IC 5-23-2-6.9 IS ADDED TO THE INDIANA CODE  
3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2022]: **Sec. 6.9. "Operate" means to finance, maintain, improve,**  
5 **equip, modify, or repair.**

6 SECTION 5. IC 5-23-2-15.3 IS ADDED TO THE INDIANA CODE  
7 AS **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2022]: **Sec. 15.3. "Qualifying project" refers to either of the**  
9 **following:**

10 **(1) A transportation facility.**

11 **(2) A transportation project.**

12 SECTION 6. IC 5-23-2-15.5 IS ADDED TO THE INDIANA CODE  
13 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2022]: **Sec. 15.5. (a) "Revenues" means the income, earnings,**  
15 **lease payments, or other service payments relating to the**  
16 **development or operation of a transportation facility or**  
17 **transportation project.**

18 **(b) The term includes, but is not limited to, money received as**  
19 **grants or otherwise from the governmental body, the federal**  
20 **government, the state, a public entity, or an agency or**  
21 **instrumentality thereof in aid of the qualifying project.**

22 SECTION 7. IC 5-23-2-17 IS ADDED TO THE INDIANA CODE  
23 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
24 1, 2022]: **Sec. 17. "Transportation facility" means any new or**  
25 **existing road, highway, toll highway, bridge, tunnel, or intermodal**  
26 **facility, located in the jurisdiction of a governmental body.**

27 SECTION 8. IC 5-23-2-18 IS ADDED TO THE INDIANA CODE  
28 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
29 1, 2022]: **Sec. 18. "Transportation project" means any combination**  
30 **of the development, financing, or operation with respect to all or**  
31 **a portion of any transportation facility located in the jurisdiction**  
32 **of a governmental body.**

33 SECTION 9. IC 5-23-8 IS ADDED TO THE INDIANA CODE AS  
34 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY  
35 1, 2022]:

36 **Chapter 8. Transportation and Infrastructure Projects**

37 **Sec. 1. (a) A governmental body may enter into a public-private**  
38 **agreement with respect to a transportation project, if the**  
39 **governmental body complies with the statutory requirements**  
40 **under this article. Any public-private agreement with respect to a**  
41 **transportation project may use availability payments to finance all**  
42 **or a portion of the project.**



1           **(b) A governmental body may also enter into a development**  
 2 **agreement with a private party for the development, construction,**  
 3 **and financing of a privately owned and operated transportation or**  
 4 **infrastructure project if the development agreement:**

5           **(1) does not obligate the governmental body to spend any**  
 6 **public funds for the privately owned and operated**  
 7 **transportation or infrastructure project;**

8           **(2) obligates the private party to operate the transportation or**  
 9 **infrastructure project without limitation on the persons, class**  
 10 **of persons, or vehicles using the project, except as may be**  
 11 **dictated by safety, security, design, and load capacities of the**  
 12 **project; and**

13           **(3) obligates the private party to permit local, state, and**  
 14 **federal emergency vehicles, including vehicles operated by**  
 15 **police, fire, emergency medical services, and sheriff**  
 16 **personnel, to use the transportation project without tolls or**  
 17 **fees.**

18           **Sec. 2. (a) Before developing or operating the qualifying project,**  
 19 **the operator must enter into a public-private agreement with the**  
 20 **governmental body. The public-private agreement must provide**  
 21 **for the following:**

22           **(1) Delivery of performance and payment bonds, letters of**  
 23 **credit, or other security acceptable to the governmental body**  
 24 **in connection with the development or operation of the**  
 25 **qualifying project in the form and amount required by**  
 26 **IC 5-23-3-2(a)(8).**

27           **(2) Review of the design for the qualifying project by the**  
 28 **governmental body and, if the design conforms to standards**  
 29 **acceptable to the governmental body, the approval of the**  
 30 **governmental body. This subdivision does not require the**  
 31 **operator to complete the design of the qualifying project**  
 32 **before the execution of the public-private agreement.**

33           **(3) Inspection of the qualifying project by the governmental**  
 34 **body to ensure that the operator's activities are acceptable to**  
 35 **the governmental body as outlined in the public-private**  
 36 **agreement.**

37           **(4) Maintenance of a policy of public liability insurance, a**  
 38 **copy of which must be filed with the governmental body and**  
 39 **accompanied by proofs of coverage, or self-insurance, each in**  
 40 **the form and amount satisfactory to the governmental body**  
 41 **and reasonably sufficient to ensure coverage of tort liability**  
 42 **to the public and employees and to enable the continued**



- 1 operation of the qualifying project.  
 2 (5) Monitoring by the governmental body of the maintenance  
 3 practices to be performed by the operator to ensure that the  
 4 qualifying project is properly maintained.  
 5 (6) Periodic filing by the operator of the appropriate financial  
 6 statements that pertain to the qualifying project.  
 7 (7) Procedures that govern the rights and responsibilities of  
 8 the governmental body and the operator in the course of the  
 9 construction and operation of the qualifying project and in  
 10 the event of the termination of the public-private agreement  
 11 or a material default by the operator. The procedures must  
 12 include conditions that govern the assumption of the duties  
 13 and responsibilities of the operator by an entity that funded,  
 14 in whole or part, the qualifying project or by the  
 15 governmental body, and must provide for the transfer or  
 16 purchase of property or other interests of the operator by the  
 17 governmental body.  
 18 (8) Have safeguards in place to ensure that additional costs or  
 19 service disruptions are not imposed on the public in the event  
 20 of material default or cancellation of the public-private  
 21 agreement by the governmental body.  
 22 (9) Have safeguards in place to ensure that the governmental  
 23 body or operator has the opportunity to add capacity to the  
 24 proposed qualifying project or other facilities serving similar  
 25 predominantly public purposes.  
 26 (10) Duties of the operator, including the terms and conditions  
 27 that the governmental body determines serve the public  
 28 purpose of this section.  
 29 (b) The public-private agreement under this chapter may  
 30 include the following:  
 31 (1) An agreement by the governmental body to make grants  
 32 or loans to the operator from amounts received from the  
 33 federal, state, or local government or an agency or  
 34 instrumentality thereof.  
 35 (2) A provision under which each entity agrees to provide  
 36 notice of default and cure rights for the benefit of the other  
 37 entity, including, but not limited to, a provision regarding  
 38 unavoidable delays.  
 39 (3) A provision that terminates the authority and duties of the  
 40 operator under this section and dedicates the qualifying  
 41 project to the governmental body.  
 42 Sec. 3. (a) The operator shall do the following:



- 1           **(1) Develop or operate the qualifying project in a manner that**  
 2           **is acceptable to the governmental body in accordance with the**  
 3           **provisions of the public-private agreement.**  
 4           **(2) Maintain or provide by contract for the maintenance or**  
 5           **improvement of the qualifying project if required by the**  
 6           **public-private agreement.**  
 7           **(3) Cooperate with the governmental body in making best**  
 8           **efforts to establish interconnection between the qualifying**  
 9           **project and any other facility or infrastructure as requested**  
 10           **by the governmental body in accordance with the provisions**  
 11           **of the public-private agreement.**  
 12           **(4) Comply with the operating agreement.**  
 13           **(b) Each private facility that is constructed under this section**  
 14           **must comply with the requirements of the following:**  
 15           **(1) Federal, state, and local laws.**  
 16           **(2) State, regional, and local comprehensive plans.**  
 17           **(3) The governmental body's rules, procedures, and standards**  
 18           **for facilities.**  
 19           **(4) All other conditions that the governmental body**  
 20           **determines to be in the public's best interest and that are**  
 21           **included in the public-private agreement.**  
 22           **(c) The governmental body may provide services to the operator**  
 23           **at its option. An agreement for maintenance and other services**  
 24           **entered into under this section must provide for full**  
 25           **reimbursement for services rendered for qualifying projects.**  
 26           **(d) An operator of a qualifying project may provide additional**  
 27           **services for the qualifying project to the public or to other private**  
 28           **entities if the provision of additional services does not impair the**  
 29           **operator's ability to meet its commitments to the governmental**  
 30           **body under the public-private agreement.**  
 31           SECTION 10. IC 6-1.1-10-49 IS ADDED TO THE INDIANA  
 32           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 33           [EFFECTIVE JULY 1, 2022]: **Sec. 49. (a) This section applies to**  
 34           **assessment dates occurring after December 31, 2022.**  
 35           **(b) Tangible property (including without limitation, land,**  
 36           **personal property, real property, and improvements to land) is**  
 37           **exempt from property taxation if the property is used as a part of**  
 38           **or incorporated into a transportation facility (as defined**  
 39           **IC 5-23-2-17) under a public-private agreement executed in**  
 40           **accordance with IC 5-23-8-1(a) or a development agreement**  
 41           **executed in accordance with IC 5-23-8-1(b).**  
 42           **(c) The application of the exemption described in subsection (b)**



1 shall apply to otherwise qualifying tangible property irrespective  
2 of the owner or taxpayer of the property or when such property  
3 was placed in service.

4 SECTION 11. IC 6-2.5-5-56 IS ADDED TO THE INDIANA CODE  
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
6 JANUARY 1, 2023]: **Sec. 56. (a) Transactions involving tangible**  
7 **personal property are exempt from the state gross retail tax if the**  
8 **person acquiring the property acquires it for incorporation into a**  
9 **transportation facility (as defined in IC 5-23-2-17) under a:**

10 (1) public-private agreement executed in accordance with

11 IC 5-23-8-1(a); or

12 (2) development agreement executed in accordance with

13 IC 5-23-8-1(b).

14 (b) The exemption described in subsection (a) shall not apply to  
15 the extent that the applicable public-private agreement or  
16 development agreement is entered into before January 1, 2023.





## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 166, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-23-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 1.5. "Availability payment" means any funding stream, whether from a private, local, state, or federal source that the governmental body is authorized to use for the construction, maintenance, financing, or operations of any transportation infrastructure located within the boundaries of the governmental body.**

SECTION 2. IC 5-23-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 5.5. "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand under a public-private agreement.**

SECTION 3. IC 5-23-2-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 6.3. "Material default" means a nonperformance of its duties by the operator of a public-private agreement which jeopardizes adequate service to the public from the project.**

SECTION 4. IC 5-23-2-6.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 6.9. "Operate" means to finance, maintain, improve, equip, modify, or repair.**

SECTION 5. IC 5-23-2-15.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 15.3. "Qualifying project" refers to either of the following:**

**(1) A transportation facility.**

**(2) A transportation project.**

SECTION 5. IC 5-23-2-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2022]: **Sec. 15.5. (a) "Revenues" means the income, earnings, lease payments, or other service payments relating to the development or operation of a transportation facility or transportation project.**

**(b) The term includes, but is not limited to, money received as**



grants or otherwise from the governmental body, the federal government, the state, a public entity, or an agency or instrumentality thereof in aid of the qualifying project."

Page 1, line 6, delete "under" and insert "located in".

Page 1, line 12, delete "under" and insert "located in".

Page 2, line 1, delete "Sec. 1." and insert "Sec. 0.5. This chapter applies to public-private agreements in counties that have a population of more than one hundred ninety-nine thousand (199,000) persons, according to the most recent United States decennial census.

Sec. 1."

Page 2, line 5, delete "tolling or".

Page 2, line 18, delete "or" and insert "and".

Page 2, delete lines 24 through 42, begin a new paragraph and insert:

"Sec. 2. (a) Before developing or operating the transportation facility or transportation project, the operator must enter into a public-private agreement with the governmental body. The public-private agreement must provide for the following:

(1) Delivery of performance and payment bonds, letters of credit, or other security acceptable to the governmental body in connection with the development or operation of the project in the form and amount required by IC 5-23-3-2(a)(8).

(2) Review of the design for the qualifying project by the governmental body and, if the design conforms to standards acceptable to the governmental body, the approval of the governmental body. This subdivision does not require the operator to complete the design of the qualifying project before the execution of the public-private agreement.

(3) Inspection of the qualifying project by the governmental body to ensure that the operator's activities are acceptable to the governmental body as outlined in the public-private agreement.

(4) Maintenance of a policy of public liability insurance, a copy of which must be filed with the governmental body and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the governmental body and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

(5) Monitoring by the governmental body of the maintenance practices to be performed by the operator to ensure that the



qualifying project is properly maintained.

(6) Periodic filing by the operator of the appropriate financial statements that pertain to the qualifying project.

(7) Procedures that govern the rights and responsibilities of the governmental body and the operator in the course of the construction and operation of the qualifying project and in the event of the termination of the public-private agreement or a material default by the operator. The procedures must include conditions that govern the assumption of the duties and responsibilities of the operator by an entity that funded, in whole or part, the qualifying project or by the governmental body, and must provide for the transfer or purchase of property or other interests of the operator by the governmental body.

(8) Have safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the public-private agreement by the governmental body.

(9) Have safeguards in place to ensure that the governmental body or operator has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

(10) Duties of the operator, including the terms and conditions that the governmental body determines serve the public purpose of this section.

(b) The public-private agreement under this chapter may include the following:

(1) An agreement by the governmental body to make grants or loans to the operator from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

(2) A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

(3) A provision that terminates the authority and duties of the operator under this section and dedicates the qualifying project to the governmental body.

Sec. 3. (a) The operator shall do the following:

(1) Develop or operate the qualifying project in a manner that is acceptable to the governmental body in accordance with the provisions of the public-private agreement.



**(2) Maintain or provide by contract for the maintenance or improvement of the qualifying project if required by the public-private agreement.**

**(3) Cooperate with the governmental body in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the governmental body in accordance with the provisions of the public-private agreement.**

**(4) Comply with the operating agreement.**

**(b) Each private facility that is constructed under this section must comply with the requirements of the following:**

**(1) Federal, state, and local laws.**

**(2) State, regional, and local comprehensive plans.**

**(3) The governmental body's rules, procedures, and standards for facilities.**

**(4) All other conditions that the governmental body determines to be in the public's best interest and that are included in the public-private agreement.**

**(c) The governmental body may provide services to the operator at its option. An agreement for maintenance and other services entered into under this section must provide for full reimbursement for services rendered for qualifying projects.**

**(d) A operator of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the operator's ability to meet its commitments to the governmental body under the public-private agreement.**

SECTION 4. IC 6-1.1-10-49 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 49. (a) This section applies to assessment dates occurring after December 31, 2022.

**(b) Tangible property (including without limitation, land, personal property, real property, and improvements to land) is exempt from property taxation if the property is used as a part of or incorporated into a transportation facility (as defined IC 5-23-2-17) under a public-private agreement executed in accordance with IC 5-23-8-1(a) or a development agreement executed in accordance with IC 5-23-8-1(b).**

**(c) The application of the exemption described in subsection (b) shall apply to otherwise qualifying tangible property irrespective of the owner or taxpayer of the property or when such property was placed in service.**



SECTION 5. IC 6-2.5-5-56 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023]: **Sec. 56. (a) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation into a transportation facility (as defined in IC 5-23-2-17) under a:**

**(1) public-private agreement executed in accordance with IC 5-23-8-1(a); or**

**(2) development agreement executed in accordance with IC 5-23-8-1(b).**

**(b) The exemption described in subsection (a) shall not apply to the extent that the applicable public-private agreement or development agreement is entered into before January 1, 2023."**

Page 3, delete lines 1 through 17.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 166 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 13, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 166 be amended to read as follows:

Page 2, line 25, after "tunnel," insert "**or**".

Page 2, line 26, delete "intercity or high speed passenger or commercial rail, or".

Page 2, line 27, delete "other transportation facility or infrastructure,".

Page 5, line 8, delete "public- private" and insert "**public-private**".

Page 5, line 31, after "(d)" delete "A" and insert "**An**".

Renumber all SECTIONS consecutively.

(Reference is to SB 166 as printed January 26, 2022.)

WALKER K

ES 166—LS 6587/DI 134



COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 166, 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 37 through 40.

Page 3, line 22, delete "transportation" and insert "**qualifying project**".

Page 3, line 23, delete "facility or transportation project".

Page 3, line 28, after "operation of the" insert "**qualifying**".

Page 4, line 27, after "proposed" insert "**qualifying**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 166 as reprinted February 1, 2022.)

PRESSEL

Committee Vote: yeas 11, nays 0.

