

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.

## SENATE ENROLLED ACT No. 166

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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 5-23-2-1.5 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,**

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**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 6. 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.**

SECTION 7. IC 5-23-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 17. "Transportation facility" means any new or existing road, highway, toll highway, bridge, tunnel, railroad (as defined in IC 8-3-1-2), or intermodal facility, located in the jurisdiction of a governmental body.**

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

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

**Chapter 8. Transportation and Infrastructure Projects**

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

**(b) 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:**

- (1) does not obligate the governmental body to spend any public funds for the privately owned and operated transportation or infrastructure project;**
- (2) obligates the private party to operate the transportation or infrastructure project without limitation on the persons, class of persons, or vehicles using the project, except as may be dictated by safety, security, design, and load capacities of the project; and**
- (3) obligates the private party to permit local, state, and federal emergency vehicles, including vehicles operated by police, fire, emergency medical services, and sheriff personnel, to use the transportation project without tolls or fees.**

**Sec. 2. (a) Before developing or operating the qualifying 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 qualifying 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 qualifying 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) An 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 10. 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 11. 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.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**SEA 166 — Concur**

