

SENATE BILL No. 482

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22-2-23; IC 5-23-3-2; IC 8-15.5-5-2; IC 8-15.7-5-1.5.

Synopsis: Performance and payment bonds. Requires that public-private agreements must contain performance bond and payment bond requirements.

Effective: July 1, 2015.

Eckerty

January 14, 2015, read first time and referred to Committee on Tax & Fiscal Policy.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 482

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 5-22-2-23 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23. (a) "Public funds"
- 3 means money:
- 4 (1) derived from the revenue sources of the governmental body;
- 5 and
- 6 (2) deposited into the general or a special fund of the
- 7 governmental body.
- 8 (b) The term does not include either of the following:
- 9 (1) Money **received by any paid to a person for** managing or
- 10 operating a public facility under an authorized operating
- 11 agreement under IC 5-23.
- 12 (2) Proceeds of bonds payable exclusively by a private entity.
- 13 SECTION 2. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS
- 14 [EFFECTIVE JULY 1, 2015]: Sec. 2. BOT agreements may provide
- 15 the following:
- 16 (1) The design, construction, operation, management,



1 maintenance, or financing of the cost of a public facility shall be
2 partially or entirely the responsibility of the operator.

3 (2) The governmental body shall lease the public facility and real
4 property owned by the governmental body upon which the public
5 facility is to be located to the operator for a predetermined period.
6 The BOT agreement must provide for ownership of all
7 improvements by the governmental body, unless the
8 governmental body elects to provide for ownership of the public
9 facility by the operator during the term of the BOT agreement. In
10 this case, ownership reverts back to the governmental body upon
11 the termination of the BOT agreement.

12 (3) The BOT agreement must identify which costs are to be the
13 responsibility of the operator and which costs are to be the
14 responsibility of the governmental body.

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

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

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

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

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

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

33 (6) The BOT agreement ~~may~~ **must**:

34 (A) require a performance bond **in an amount equal to the**
35 **cost to design and construct the public facility;** and

36 (B) provide for the payment of contractors and subcontractors
37 under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is
38 applicable.

39 SECTION 3. IC 8-15.5-5-2, AS AMENDED BY P.L.91-2014,
40 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2015]: Sec. 2. A public-private agreement entered into under
42 this article must provide for the following:



- 1 (1) The original term of the public-private agreement, which may
 2 not exceed seventy-five (75) years.
- 3 (2) Provisions for a:
- 4 (A) lease, franchise, or license of the project and the real
 5 property owned by the authority upon which the project is
 6 located or is to be located; or
- 7 (B) management agreement or other contract to operate the
 8 project and the real property owned by the authority upon
 9 which the project is located or is to be located;
- 10 for a predetermined period. The public-private agreement must
 11 provide for ownership of all improvements and real property by
 12 the authority in the name of the state or by a governmental entity,
 13 or both.
- 14 (3) Monitoring of the operator's maintenance practices by the
 15 authority and the taking of actions by the authority that it
 16 considers appropriate to ensure that the project is properly
 17 maintained.
- 18 (4) The basis upon which user fees that may be collected by the
 19 operator, as determined under this article, are established.
- 20 (5) Compliance with applicable state and federal laws and local
 21 ordinances.
- 22 (6) Grounds for termination of the public-private agreement by
 23 the authority or the operator.
- 24 (7) The date of termination of the operator's authority and duties
 25 under this article.
- 26 (8) Procedures for amendment of the agreement.
- 27 (9) Provisions requiring the completion of all environmental
 28 analyses of the project required by state and federal law in the
 29 manner and at the times required by the appropriate state and
 30 federal agencies.
- 31 (10) An expedited method for resolving disputes between or
 32 among the authority, the parties to the public-private agreement,
 33 and units of local government that contain any part of the project,
 34 as required by IC 8-15.5-10-8.
- 35 **(11) For a public-private agreement entered into after June**
 36 **30, 2015, bond requirements as follows:**
- 37 (A) A performance bond in an amount equal to the cost to
 38 design and construct the project.
- 39 (B) A payment bond conditioned on payment for labor and
 40 material furnished for use in construction of the project.
- 41 SECTION 4. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,
 42 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2015]: Sec. 1.5. In addition to the other requirements of this
2 article, a public-private agreement entered into under this article must
3 include the following:

4 (1) A requirement for the completion of all environmental
5 analyses of the project required by state and federal law in the
6 manner and at the times required by the appropriate state and
7 federal agencies.

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

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

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

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

15 **(4) For a public-private agreement entered into after June 30,
16 2015, bond requirements as follows:**

17 **(A) A performance bond in an amount equal to the cost to
18 design and construct the project.**

19 **(B) A payment bond conditioned on payment for labor and
20 material furnished for use in construction of the project.**

