



PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 304 be amended to read as follows:

- 1 Page 2, after line 24, begin a new paragraph and insert:
- 2 "SECTION 2. IC 5-23-3-2, AS AMENDED BY P.L.211-2019,
- 3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2021]: Sec. 2. (a) BOT agreements may provide the following:
- 5 (1) The design, construction, operation, management,
- 6 maintenance, or financing of the cost of a public facility shall be
- 7 partially or entirely the responsibility of the operator.
- 8 (2) The governmental body may lease the public facility and real
- 9 property owned by the governmental body upon which the public
- 10 facility is to be located to the operator for a predetermined period.
- 11 Except as provided in subdivision (7), the BOT agreement must
- 12 provide for ownership of all improvements by the governmental
- 13 body, unless the governmental body elects to provide for
- 14 ownership of the public facility by the operator during the term of
- 15 the BOT agreement. In this case, ownership reverts back to the
- 16 governmental body upon the termination of the BOT agreement.
- 17 (3) The BOT agreement must identify which costs are to be the
- 18 responsibility of the operator and which costs are to be the
- 19 responsibility of the governmental body.
- 20 (4) The operator may be authorized to retain a mutually agreed
- 21 upon percentage of the revenues received in the operation and

1 management of the public facility, or the operator may be paid an
 2 amount established by the governmental body, which shall be
 3 applied as follows:

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

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

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

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

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

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

22 (7) If a regional jail (as defined in IC 11-12-5.5-1) is the subject
 23 of a BOT agreement under this chapter, the operator and the
 24 governmental body may mutually agree that ownership of the
 25 regional jail will remain with the operator during the term of the
 26 BOT agreement and after termination of the BOT agreement. The
 27 governmental body shall pay costs associated with the design,
 28 construction, financing, operation, management, and maintenance
 29 of the regional jail from funds identified under IC 11-12-5.5-3.

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

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

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

36 **(9) The BOT agreement may provide for the transfer of the**
 37 **public facility to the governmental body by means of a lease**
 38 **or an installment contract. The lease payments or installment**
 39 **payments may be made from any source legally available to**
 40 **the governmental body for such purpose. Lease payments or**
 41 **installment payments payable from property taxes pursuant**
 42 **to a BOT agreement constitute "debt service obligations of a**
 43 **political subdivision" for purposes of IC 6-1.1-20.6.**

44 (b) The BOT agreement provisions for payment and performance
 45 bonds under subsection (a)(8) are as follows:

46 (1) For a payment bond, an amount not less than one hundred

- 1 percent (100%) of the cost to design and construct the public
- 2 facility.
- 3 (2) For a performance bond, an amount not less than fifty percent
- 4 (50%) of the cost to design and construct the public facility.".
- 5 Renumber all SECTIONS consecutively.
(Reference is to ESB 304 as printed March 25, 2021.)

Representative Bartels