

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington St., Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
iga.in.gov

**FISCAL IMPACT STATEMENT**

**LS 6433**

**BILL NUMBER:** SB 304

**NOTE PREPARED:** Apr 12, 2021

**BILL AMENDED:** Apr 1, 2021

**SUBJECT:** Indemnity Agreements in Public Works Contracts.

**FIRST AUTHOR:** Sen. Messmer

**FIRST SPONSOR:** Rep. Torr

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Indemnity Agreements:* The bill provides that a statute that invalidates indemnity agreements in construction contracts relating to providing certain professional services is applicable to such contracts relating to public works projects. It provides that a specified chapter does not apply to: (1) projects covered by INDOT's contractor qualification statute; or (2) a project that is the construction, improvement, alteration, repair, or maintenance of a highway, street, or road.

*BOT Agreements:* The bill provides that a BOT agreement may provide for the transfer of a public facility to a governmental body by means of a lease or an installment contract.

It defines certain terms.

**Effective Date:** July 1, 2021.

**Explanation of State Expenditures:** *Indemnity Agreements:* The bill could increase expenditures by increasing state agencies' potential liability on professional services contracts for public works projects. By specifying that IC 26-2-5-4 applies to public works contracts, the bill would prohibit a professional (design professional, architect, engineer, surveyor, etc.) from being required to indemnify a public agency from certain liability and from being required to defend a public agency against a professional liability claim. A design professional would only be required to cover its proportion of the fault. The Attorney General's workload and expenditures could increase by being required to defend public agencies against professional liability claims.

The bill applies to all state agencies, state educational institutions, and bodies corporate and politic created

by statute. The bill does not apply to judicial or legislative departments or the Indiana Department of Transportation.

*BOT Agreements:* To the extent a state agency enters into a lease to reacquire the rights to a BOT asset, state expenditures to make lease payments could increase. These expenditures could be offset to the extent the state entity is able to collect a user fee from the BOT asset. The bill's net impact on state expenditures and revenue is indeterminable.

**Explanation of State Revenues:** *BOT Agreements:* See *Explanation of State Expenditures*.

**Explanation of Local Expenditures:** *Indemnity Agreements:* The bill applies to counties, municipalities, townships, school corporations, certain conservancy districts, fire protection districts, departments of aviation, and airport authorities, but does not apply to a highway, street, road, or railroad project. [See *Explanation of State Expenditures* for further information regarding the bill's impacts to public agencies.]

*BOT Agreements:* To the extent a local unit of government enters into a lease to reacquire the rights to a BOT asset, local expenditures to make lease payments could increase. These expenditures could be offset to the extent the local entity is able to collect a user fee from the BOT asset. The bill's net impact on local expenditures and revenue is indeterminable.

**Explanation of Local Revenues:** *BOT Agreements:* See *Explanation of Local Expenditures*.

**State Agencies Affected:** Attorney General, state agencies, state educational institutions, and bodies corporate and politic created by statute.

**Local Agencies Affected:** Counties, municipalities, townships, school corporations, certain conservancy districts, fire protection districts, departments of aviation, and airport authorities; potentially all local units.

**Information Sources:** [https://www.in.gov/idoa/files/standard\\_contract\\_language\\_designer\\_agreement.pdf](https://www.in.gov/idoa/files/standard_contract_language_designer_agreement.pdf);  
<https://www.in.gov/idoa/2484.htm>.

**Fiscal Analyst:** Heather Puletz, 317-234-9484; Bill Brumbach, 317-232-9559.