

# HOUSE BILL No. 1128

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-23-8-2.

**Synopsis:** Governance of public-private agreements. Requires a governmental body to hold a public comment hearing regarding the necessity of a qualifying project prior to issuing a request for proposal or a request for quotation for the qualifying project. After the governmental body selects the operator, but before the operator begins developing or operating the qualifying project, requires: (1) the governmental body to consult with an external entity that specializes in public financial planning; (2) the external entity to produce a report that verifies the financial feasibility of the qualifying project; and (3) that the report be made available to the public. Provides that for both performance and payment bonds, the amount must be an amount not less than 100% of the cost to design and construct the qualifying project. Requires the governmental body and the operator to provide full disclosure in the public-private agreement and to the public of any imputed interest rate regarding the qualifying project. Requires the governmental body to report to the department of local government finance the amount and duration of any availability payment related to the qualifying project.

**Effective:** July 1, 2025.

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January 8, 2025, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session of the 124th General Assembly (2025)

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 2024 Regular Session of the General Assembly.

# HOUSE BILL No. 1128

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 5-23-8-2, AS ADDED BY P.L.57-2022, SECTION  
2 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2025]: Sec. 2. **(a) Prior to issuing a request for proposal or a**  
4 **request for quotation for a qualifying project, the governmental**  
5 **body shall:**  
6 **(1) hold a public comment hearing, which may be conducted**  
7 **by the governmental body or any officer, member, or agent**  
8 **designated by the governmental body, on the necessity of the**  
9 **qualifying project, after giving notice by publication in one (1)**  
10 **newspaper of general circulation in the city, town, or county**  
11 **where the qualifying project is to be located at least ten (10)**  
12 **days in advance of the public comment hearing; and**  
13 **(2) include a detailed agenda of the public comment hearing**  
14 **within the notice described in subdivision (1).**  
15 **(b) After the governmental body selects the operator, but before**  
16 **the operator begins developing or operating the qualifying project:**  
17 **(1) the governmental body shall consult with an external**



1           **entity that specializes in public financial planning;**  
 2           **(2) the external entity shall produce a report, the cost of which**  
 3           **may be borne by either the operator or the governmental**  
 4           **body, that verifies the financial feasibility of the qualifying**  
 5           **project; and**  
 6           **(3) the report by the external entity must be made available to**  
 7           **the public.**

8           (a) (c) Before developing or operating the qualifying project, the  
 9 operator must enter into a public-private agreement with the  
 10 governmental body. The public-private agreement must provide for the  
 11 following:

12           (1) Delivery of performance and payment bonds, letters of credit,  
 13 or other security acceptable to the governmental body in  
 14 connection with the development or operation of the qualifying  
 15 project. ~~in the form and amount required by IC 5-23-3-2(a)(8).~~  
 16 **For each performance and payment bond, the amount must**  
 17 **be an amount not less than one hundred percent (100%) of**  
 18 **the cost to design and construct the qualifying project.**

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

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

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

35           (5) Monitoring by the governmental body of the maintenance  
 36 practices to be performed by the operator to ensure that the  
 37 qualifying project is properly maintained.

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

40           (7) Procedures that govern the rights and responsibilities of the  
 41 governmental body and the operator in the course of the  
 42 construction and operation of the qualifying project and in the



1 event of the termination of the public-private agreement or a  
 2 material default by the operator. The procedures must include  
 3 conditions that govern the assumption of the duties and  
 4 responsibilities of the operator by an entity that funded, in whole  
 5 or part, the qualifying project or by the governmental body, and  
 6 must provide for the transfer or purchase of property or other  
 7 interests of the operator by the governmental body.

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

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

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

19 **(11) Full disclosure of any imputed interest rate regarding the**  
 20 **qualifying project and a requirement that any such imputed**  
 21 **interest rate be published in one (1) newspaper of general**  
 22 **circulation in the city, town, or county where the qualifying**  
 23 **project is to be located.**

24 **(12) A requirement that the governmental body report to the**  
 25 **department of local government finance the amount and**  
 26 **duration of any availability payment related to the qualifying**  
 27 **project.**

28 ~~(b)~~ **(d)** The public-private agreement under this chapter may include  
 29 the following:

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

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

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

