

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 304

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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 5-16-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

**Chapter 15. Application of Certain Statutes to Public Works Contracts**

**Sec. 1. This chapter does not apply to a project covered by IC 8-23-10.**

**Sec. 2. As used in this chapter, "applicable public works statute" refers to whichever of the following statutes is applicable to the public works project of a public agency:**

- (1) IC 4-13.6.
- (2) This article.
- (3) IC 5-23-4 (build, operate, transfer, and public-private agreements).
- (4) IC 5-30 (design-build).
- (5) IC 5-32 (employment of construction manager as constructor).
- (6) IC 36-1-12.
- (7) Any other statute applicable to the public works projects of the public agency.

**Sec. 3. As used in this chapter, "contract" refers to a contract**

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for professional services of any of the following for a public works project:

- (1) A design professional.
- (2) An architect.
- (3) An engineer.
- (4) An environmental consultant.
- (5) A geologist.
- (6) A geotechnical consultant.
- (7) A landscape architect.
- (8) A surveyor.

**Sec. 4.** As used in this chapter, "public agency" has the meaning set forth in IC 5-30-1-11.

**Sec. 5. (a)** As used in this chapter, "public works project" refers to a construction project governed by an applicable public works statute.

**(b)** The term does not include any of the following:

- (1) A project on the state highway system (as defined in IC 8-23-1-40).
- (2) A railroad project (as defined in IC 8-5-15-1).

**Sec. 6.** IC 26-2-5-4 applies to a contract.

SECTION 2. IC 5-23-3-2, AS AMENDED BY P.L.211-2019, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) BOT agreements may provide the following:

- (1) The design, construction, operation, management, maintenance, or financing of the cost of a public facility shall be partially or entirely the responsibility of the operator.
- (2) The governmental body may lease the public facility and real property owned by the governmental body upon which the public facility is to be located to the operator for a predetermined period. Except as provided in subdivision (7), the BOT agreement must provide for ownership of all improvements by the governmental body, unless the governmental body elects to provide for ownership of the public facility by the operator during the term of the BOT agreement. In this case, ownership reverts back to the governmental body upon the termination of the BOT agreement.
- (3) The BOT agreement must identify which costs are to be the responsibility of the operator and which costs are to be the responsibility of the governmental body.
- (4) The operator may be authorized to retain a mutually agreed upon percentage of the revenues received in the operation and management of the public facility, or the operator may be paid an amount established by the governmental body, which shall be



applied as follows:

- (A) Capital outlay costs for the public facility and public service plus interest and principal repayment for any debt incurred.
- (B) Costs associated with the operation, management, and maintenance of the public facility.
- (C) Payment to the governmental body for reimbursement of the costs of maintenance, law enforcement, and other services if the services are performed by the governmental body under the BOT agreement.
- (D) An agreed upon return on investment to the operator.
- (5) The operator may pay the governmental body either a lease payment or a percentage of gross revenue per month for the operator's operation and use of the public facility.
- (6) This subdivision applies only to a BOT agreement entered into before July 1, 2019. The BOT agreement may require a performance bond and provide for the payment of contractors and subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable.
- (7) If a regional jail (as defined in IC 11-12-5.5-1) is the subject of a BOT agreement under this chapter, the operator and the governmental body may mutually agree that ownership of the regional jail will remain with the operator during the term of the BOT agreement and after termination of the BOT agreement. The governmental body shall pay costs associated with the design, construction, financing, operation, management, and maintenance of the regional jail from funds identified under IC 11-12-5.5-3.
- (8) This subdivision applies only to a BOT agreement entered into after June 30, 2019. The BOT agreement must provide for the following:
  - (A) The payment of contractors and subcontractors under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable.
  - (B) The bonding provisions stated in subsection (b).
- (9) The BOT agreement may provide for the transfer of the public facility to the governmental body by means of a lease or an installment contract. The lease payments or installment payments may be made from any source legally available to the governmental body for such purpose. Lease payments or installment payments payable from property taxes pursuant to a BOT agreement constitute "debt service obligations of a political subdivision" for purposes of IC 6-1.1-20.6.**
- (b) The BOT agreement provisions for payment and performance



bonds under subsection (a)(8) are as follows:

- (1) For a payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the public facility.
- (2) For a performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the public facility.



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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: \_\_\_\_\_

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