

HOUSE BILL No. 1109

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-23-8; IC 6-1.1-10-49; IC 6-2.5-5-56.

Synopsis: Governance of public-private agreements. Requires a governmental body to entertain more than one bidder before entering into a public-private agreement for a qualifying project. 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 operator to perform at least 30% of the work on 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. Requires the governmental body to hold a public comment hearing regarding the necessity of the qualifying project.

Effective: July 1, 2024.

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January 8, 2024, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1109

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 5-23-8-1, AS ADDED BY P.L.57-2022, SECTION
2 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2024]: Sec. 1. **(a) A governmental body must entertain more than
4 one (1) bidder before entering into an agreement under subsection
5 (b) or (c).**

6 ~~(a)~~ **(b)** A governmental body may enter into a public-private
7 agreement with respect to a transportation project, if the governmental
8 body complies with the statutory requirements under this article. Any
9 public-private agreement with respect to a transportation project may
10 use availability payments to finance all or a portion of the project.

11 ~~(b)~~ **(c)** A governmental body may also enter into a development
12 agreement with a private party for the development, construction, and
13 financing of a privately owned and operated transportation or
14 infrastructure project if the development agreement:

15 (1) does not obligate the governmental body to spend any public
16 funds for the privately owned and operated transportation or
17 infrastructure project;



1 (2) obligates the private party to operate the transportation or
 2 infrastructure project without limitation on the persons, class of
 3 persons, or vehicles using the project, except as may be dictated
 4 by safety, security, design, and load capacities of the project; and
 5 (3) obligates the private party to permit local, state, and federal
 6 emergency vehicles, including vehicles operated by police, fire,
 7 emergency medical services, and sheriff personnel, to use the
 8 transportation project without tolls or fees.

9 SECTION 2. IC 5-23-8-2, AS ADDED BY P.L.57-2022, SECTION
 10 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 11 2024]: Sec. 2. (a) Before developing or operating the qualifying
 12 project, the operator must enter into a public-private agreement with
 13 the governmental body. The public-private agreement must provide for
 14 the following:

15 (1) Delivery of performance and payment bonds, letters of credit,
 16 or other security acceptable to the governmental body in
 17 connection with the development or operation of the qualifying
 18 project. ~~in the form and amount required by IC 5-23-3-2(a)(8).~~

19 **For each performance and payment bond, the amount must**
 20 **be an amount not less than one hundred percent (100%) of**
 21 **the cost to design and construct the qualifying project.**

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

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

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

38 (5) Monitoring by the governmental body of the maintenance
 39 practices to be performed by the operator to ensure that the
 40 qualifying project is properly maintained.

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



- 1 (7) Procedures that govern the rights and responsibilities of the
2 governmental body and the operator in the course of the
3 construction and operation of the qualifying project and in the
4 event of the termination of the public-private agreement or a
5 material default by the operator. The procedures must include
6 conditions that govern the assumption of the duties and
7 responsibilities of the operator by an entity that funded, in whole
8 or part, the qualifying project or by the governmental body, and
9 must provide for the transfer or purchase of property or other
10 interests of the operator by the governmental body.
- 11 (8) Have safeguards in place to ensure that additional costs or
12 service disruptions are not imposed on the public in the event of
13 material default or cancellation of the public-private agreement by
14 the governmental body.
- 15 (9) Have safeguards in place to ensure that the governmental body
16 or operator has the opportunity to add capacity to the proposed
17 qualifying project or other facilities serving similar predominantly
18 public purposes.
- 19 (10) Duties of the operator, including the terms and conditions
20 that the governmental body determines serve the public purpose
21 of this section, **and a requirement that the operator perform**
22 **at least thirty percent (30%) of the work on the qualifying**
23 **project.**
- 24 (11) **Full disclosure of any imputed interest rate regarding the**
25 **qualifying project and a requirement that any such imputed**
26 **interest rate be published in one (1) newspaper of general**
27 **circulation in the city, town, or county where the qualifying**
28 **project is to be located.**
- 29 (12) **A requirement that the governmental body report to the**
30 **department of local government finance the amount and**
31 **duration of any availability payment related to the qualifying**
32 **project.**
- 33 (b) The public-private agreement under this chapter may include the
34 following:
- 35 (1) An agreement by the governmental body to make grants or
36 loans to the operator from amounts received from the federal,
37 state, or local government or an agency or instrumentality thereof.
- 38 (2) A provision under which each entity agrees to provide notice
39 of default and cure rights for the benefit of the other entity,
40 including, but not limited to, a provision regarding unavoidable
41 delays.
- 42 (3) A provision that terminates the authority and duties of the



1 operator under this section and dedicates the qualifying project to
2 the governmental body.

3 **(c) The governmental body shall hold a public comment hearing,**
4 **which may be conducted by the governmental body or any officer,**
5 **member, or agent designated by the governmental body, on the**
6 **necessity of the qualifying project, after giving notice by**
7 **publication in one (1) newspaper of general circulation in the city,**
8 **town, or county where the qualifying project is to be located at**
9 **least ten (10) days in advance of the public comment hearing.**

10 SECTION 3. IC 6-1.1-10-49, AS ADDED BY P.L.57-2022,
11 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2024]: Sec. 49. (a) This section applies to assessment dates
13 occurring after December 31, 2022.

14 (b) Tangible property (including without limitation, land, personal
15 property, real property, and improvements to land) is exempt from
16 property taxation if the property is used as a part of or incorporated into
17 a transportation facility (as defined IC 5-23-2-17) under a
18 public-private agreement executed in accordance with ~~IC 5-23-8-1(a)~~
19 **IC 5-23-8-1(b)** or a development agreement executed in accordance
20 with ~~IC 5-23-8-1(b)~~ **IC 5-23-8-1(c)**.

21 (c) The application of the exemption described in subsection (b)
22 shall apply to otherwise qualifying tangible property irrespective of the
23 owner or taxpayer of the property or when such property was placed in
24 service.

25 SECTION 4. IC 6-2.5-5-56, AS ADDED BY P.L.57-2022,
26 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2024]: Sec. 56. (a) Transactions involving tangible personal
28 property are exempt from the state gross retail tax if the person
29 acquiring the property acquires it for incorporation into a transportation
30 facility (as defined in IC 5-23-2-17) under a:

31 (1) public-private agreement executed in accordance with
32 ~~IC 5-23-8-1(a)~~; **IC 5-23-8-1(b)**; or

33 (2) development agreement executed in accordance with
34 ~~IC 5-23-8-1(b)~~ **IC 5-23-8-1(c)**.

35 (b) The exemption described in subsection (a) shall not apply to the
36 extent that the applicable public-private agreement or development
37 agreement is entered into before January 1, 2023.

