Performance and payment bonds. Requires that public-private agreements must contain performance bond and payment bond requirements.

Page 3, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 2. IC 5-22-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 23. (a) "Public funds" means money:

(1) derived from the revenue sources of the governmental body; and
(2) deposited into the general or a special fund of the governmental body.

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

(1) Money received by any paid to a person for managing or operating a public facility under an authorized operating agreement under IC 5-23.
(2) Proceeds of bonds payable exclusively by a private entity.

SECTION 3. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 shall 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. 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) A BOT agreement may:

(1) require a performance bond in an amount that is at least eighty percent (80%) of the cost to design and construct the public facility; and

(2) 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."

Page 37, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 54. IC 8-15.5-5-2, AS AMENDED BY P.L.91-2014, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. A public-private agreement entered into under this article must provide for the following:

(1) The original term of the public-private agreement, which may not exceed seventy-five (75) years.

(2) Provisions for a:

(A) lease, franchise, or license of the project and the real property owned by the authority upon which the project is located or is to be located; or
(B) management agreement or other contract to operate the
project and the real property owned by the authority upon
which the project is located or is to be located;
for a predetermined period. The public-private agreement must
provide for ownership of all improvements and real property by
the authority in the name of the state or by a governmental entity,
or both.
(3) Monitoring of the operator's maintenance practices by the
authority and the taking of actions by the authority that it
considers appropriate to ensure that the project is properly
maintained.
(4) The basis upon which user fees that may be collected by the
operator, as determined under this article, are established.
(5) Compliance with applicable state and federal laws and local
ordinances.
(6) Grounds for termination of the public-private agreement by
the authority or the operator.
(7) The date of termination of the operator's authority and duties
under this article.
(8) Procedures for amendment of the agreement.
(9) Provisions requiring the completion of all environmental
analyses of the project required by state and federal law in the
manner and at the times required by the appropriate state and
federal agencies.
(10) An expedited method for resolving disputes between or
among the authority, the parties to the public-private agreement,
and units of local government that contain any part of the project,
as required by IC 8-15.5-10-8.
(11) For a public-private agreement entered into after June
30, 2017, bond requirements as follows:
(A) A performance bond in an amount that is at least
eighty percent (80%) of the cost to design and construct
the project.
(B) A payment bond conditioned on payment of the full
amount of the cost for labor and material furnished for use
in construction of the project.

SECTION 55. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,
SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2017]: Sec. 1.5. In addition to the other requirements of this
article, a public-private agreement entered into under this article must
include the following:

(1) A requirement for the completion of all environmental analyses of the project required by state and federal law in the manner and at the times required by the appropriate state and federal agencies.

(2) A requirement for ownership by the department in the name of the state of Indiana of:

   (A) all the real property on which the project is located; and
   (B) all of the improvements on that real property.

(3) An expedited method for resolving disputes between or among the department, the parties to the public-private agreement, and affected jurisdictions, as required by IC 8-15.7-12-2.

(4) For a public-private agreement entered into after June 30, 2017, bond requirements as follows:

   (A) A performance bond in an amount that is at least eighty percent (80%) of the cost to design and construct the project.
   (B) A payment bond conditioned on payment of the full amount of the cost for labor and material furnished for use in construction of the project."

Renumber all SECTIONS consecutively.

(Reference is to HB 1002 as printed January 27, 2017.)