



National Association of Surety Bond Producers

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Delivered via U.S. Mail and email to: Senator.Kenley@iga.in.gov

Chairman Luke Kenley
Appropriations Committee
200 W. Washington Street
Indianapolis, IN 46204

RE: SB 225—Section 30(6) Bonding Requirements for Public-Private-Partnerships (P3 Projects)

Dear Chairman Kenley:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing professional surety bond producers licensed and conducting business in Indiana, I am contacting you concerning SB 225, specifically Section 30 subsection 6. In this bill, the scope of Indiana's Public-Private Partnership (P3) law is expanded to include projects as well as facilities. SB 225 and current law IC 5-23-3-2(6) appear to grant discretion to public contracting authorities in requiring surety bonds on P3 projects.

NASBP would request that you consider amending SB 225 Section 30(6) and thus amending current law in the following manner: (6) The BOT agreement may shall require a performance bond and provide for the a payment bond of contractors and subcontractors under IC4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is applicable.

Indiana law has long required performance and payment bonds to be in place on all public construction projects. (See Indiana Code 1-13.6-7-6 and 4-13.6-7-7). There is good public policy for the universal requirement of surety bonds on state public works projects. The payment bond guarantees that covered subcontractors, suppliers, and laborers on the job will get paid. Generally, mechanics liens cannot be asserted against public property. Subcontractors, suppliers, and laborers on public works projects must rely on the general contractor's payment bond for protection in the event of nonpayment. If no payment bond is required, these parties are left with little or no means to collect for their services and supplies if the contractor is unable or unwilling to pay them. The performance bond guarantees that the public works project will be undertaken by a qualified company and is completed according to the construction contract.

While a P3 project may be managed by a private entity, the completed construction project is a public works project and an asset of the state. Thus, the public owner, taxpayers, subcontractors, and suppliers must be protected as on any other public works project. Bonded projects

undertaken for public benefit and welfare through P3 contracts offer contracting authorities proper prequalification of entities performing construction services; guarantees of performance from solvent, third-party corporate sureties; and payment remedies for unpaid subcontractors and suppliers.

For these reasons, I urge you to make sure that bonding is mandatory on P3 projects. Please consider amending Section 30(6) of SB 225 and thus current law to require bonding is in place as required for all other public works projects in Indiana. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is written in a cursive, flowing style.

Lawrence E. LeClair
Director, Government Relations